

EXHIBIT

16

R.p.0302

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

DEPOSITION

OF

LAURA W. HENDERSON

At the Offices of Faison & Gillespie
5517 Chapel Hill Boulevard, Suite 2000
Durham, North Carolina

April 10, 2003
10:10 a.m.

B. JORDAN & CO.

CERTIFIED VERBATIM REPORTERS

P.O. BOX 3372 CHAPEL HILL, NORTH CAROLINA 27515 (919) 929-6592

1 MS. HENDERSON

224

2

3 communications between the City of Durham Risk Manager
4 and the Assistant City Attorney that's reflected in
5 this document.

6 Q Well, let me ask you this. Without
7 reference to Exhibit 13, a self-insured retention is
8 commonly referred to as an SIR. Is that correct?

9 A That's right.

10 Q And it otherwise could be defined as a
11 deductible at which point the City maintains its self-
12 insurance followed by a point where an excess policy
13 kicks in.

14 A Technically, no. People call it a
15 deductible because most people are not insurance
16 professionals and don't know the difference. But an
17 excess policy is not a transfer of liability, not a
18 transfer of risk. It is an indemnification agreement.

19 And it is--the risk that you retain is a
20 hundred percent unless the carrier agrees that, yes,
21 it is covered and you have met all the conditions of
22 the policy, and they are in agreement with anything,
23 any payments that are over that.

24 Q Well, let me ask you this. I mean, there's
25 an excess policy of liability insurance which is

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

entered into between the City of Durham and the insurance company, correct?

A Right.

Q And what's the name of the insurance company for the policy which presently exists?

A The North River Insurance Company.

Q Where is that out of?

A It's part of Crum & Forster.

Q What provisions of the policy are you citing the proposition that the liability policy doesn't kick in unless you satisfy certain conditions?

A Well, every liability policy has conditions to it. Okay? An excess policy--I guess probably the easiest way to explain this is in terms of a worker's compensation claim.

If you have an SIR of three hundred and fifty thousand dollars (\$350,000) and the claimant has half a million dollars in medical bills and it's not over, and there are temporary total disability benefits payable in addition to that, any of the benefits that would be paid in accordance with the law, then once you--for certain types of injuries, you have an obligation to report that to the carrier, to

1 MS. HENDERSON
2
3 say to them, "This may cost so much that you will be
4 spending money on this claim," or that "We will look
5 to you to reimburse us for this claim."

6 At the point that you have exceeded the
7 self-insured retention, then you submit documentation
8 to them, they review it, and they determine whether it
9 is owed and whether you have credible evidence that
10 it's owed, and that this was reasonable and necessary
11 under the law and all that.

12 And then they reimburse you based on the
13 terms of the policy.

14 Q You're referring, though, to expenses which
15 are incurred as well as attorney's fees incurred
16 during the course of litigation.

17 A Now, in a general liability case, you
18 basically inform the underwriter and you keep track of
19 the expenses. You maintain the obligation to handle
20 the claim. It's not a situation where you turn over--
21 you turn over the premium to the insurance company,
22 but you don't turn over the claim.

23 You handle it, and at some point they have
24 to agree on who is the claims administrator, they have
25 to agree on who is the legal counsel, and you submit

1 MS. HENDERSON

227

2

3 periodic reports that let them know where you are with
4 this, or if something has changed.

5 And then if you want to settle the case,
6 then you have to contact them and tell them that you
7 want to settle it, and they have to agree. Otherwise,
8 they will not indemnify you.

9 Q But you would agree that the City has waived
10 immunity by the purchase of that excess policy to the
11 extent that it applies?

12 A To the extent that the City has insurance.

13 Q And under the insurance policy, the SIR is
14 reduced by the amount of attorney's fees and expenses
15 which are paid by the City.

16 A It is reduced by payments made to non-staff
17 lawyers and legitimate defense expenses.

18 Q In your opinion, was Corporal Kelly
19 operating his vehicle at the time of the accident with
20 Ms. Jones in the course of performing a governmental
21 function?

22 A Yes. He was at work, responding to a call,
23 performing law enforcement operations. And that's a
24 governmental function.

25 MR. MAHONEY: Let's mark this as Exhibit