

STATE OF OHIO)
PORTAGE COUNTY) SS: IN THE COURT OF COMMON PLEAS

CASE NO. 07 CV 1774

VILLAGE OF WINDHAM, ET AL.)
Plaintiffs)
VS.) DEPOSITION
WINDHAM TOWNSHIP, ET AL.) OF
Defendants) CLARENCE SIMPSON

DEPOSITION taken before me, Gina M. Allen, a Notary Public within and for the State of Ohio, on the 14th Day of May, 2009, pursuant to Agreement and at the time and place therein specified, to be used pursuant to the Rules of Civil Procedure or by agreement of counsel in the above cause of action, pending in the Court of Common Pleas, within and for the County of Portage, State of Ohio.

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STIPULATIONS

It is stipulated and agreed by and between counsel for the parties hereto that the deposition may be taken at this time, 1:40 p.m., May 14, 2009, in the offices of Atty. Mark S. Finamore, 258 Seneca Avenue N.E., Warren, Ohio.

It is further stipulated and agreed by and between counsel that the deposition may be taken in shorthand by Gina M. Allen, a Notary Public within and for the State of Ohio, and may be by her transcribed with the use of computer-assisted transcription; that the witness' signature to the finished transcript of his\her deposition may be and is hereby waived by agreement of the parties; and that the deposition may be thereupon used on behalf of the parties in the aforesaid cause of action as fully and to the same extent as if written in the presence of the witness and subscribed by the witness in the presence of the Notary Public.

2
1 APPEARANCES
2
3 On Behalf of Plaintiffs:
4 David C. Comstock, Jr., Attorney at Law
5 Comstock, Springer & Wilson
6 100 Federal Plaza East
7 Suite 926
8 Youngstown, Ohio 44503
9 On Behalf of Defendant, Windham Township
10 Board of Trustees:
11 Mark S. Finamore, Attorney at Law
12 258 Seneca Avenue N.E.
13 Warren, Ohio 44481
14 On Behalf of Defendant, Janet Esposito:
15 Theresa Scahill, Attorney at Law
16 466 S. Chestnut Street
17 Ravenna, Ohio 44266
18 Also Present:
19 Mayor Robert Donham
20 Mr. Cecil James Moore
21 Mr. Dann Timmons
22 Mr. Brian Miller
23
24

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9 OBJECTIONS AND MOTIONS: NONE
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13 EXHIBITS INTRODUCED: NONE
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1 WHEREUPON,
 2 CLARENCE SIMPSON,
 3 of lawful age, being by me first duly
 4 sworn to testify the truth, the whole
 5 truth, and nothing but the truth, as
 6 hereinafter certified, deposes and
 7 says as follows:
 8 CROSS EXAMINATION:
 9 BY MR. COMSTOCK, JR.
 10 Q Could you please state your full name?
 11 A Clarence George Simpson, Sr..
 12 Q You go by Clare?
 13 A My legal name's Clarence, but I do go by
 14 Clare, yeah.
 15 Q Okay. As you know, my name's David
 16 comstock. For the record, I go by the nickname Chip. You
 17 may refer to me by my nickname throughout this deposition.
 18 As I promised you, I don't think this is going to take
 19 that long, but if for any reason you need to stop, want to
 20 take a break, let me know and we'll stop.
 21 A Okay.
 22 Q If I ask you a question that you don't
 23 understand, let me know, and I'll try to rephrase or
 24 repeat my question so you do understand what it is I'm

1 A Twenty-one and twenty-three.
 2 Q Okay. Do your kids live in the Windham
 3 area?
 4 A My daughter lives at home. My son lives
 5 in Kent.
 6 Q Okay. Where did you attend high school?
 7 A Windham.
 8 Q Graduate in 1980 or '81?
 9 A Well, I was supposed to.
 10 Q Okay. Any time in the military?
 11 A No.
 12 Q Any post high school education?
 13 A As far as college?
 14 Q Yeah.
 15 A No.
 16 Q Any outside of firefighting, any
 17 specialized or EMS specialized training or education?
 18 A No.
 19 Q Where are you presently employed?
 20 A Atlas America, Incorporated.
 21 Q And what do you do there?
 22 A Supervisor.
 23 Q And what does Atlas do; what kind of --
 24 A Oil and gas.

1 asking. If you don't know an answer to a question, just
 2 tell me you don't know or you don't recall. I'll ask you
 3 to make sure you keep your voice out loud so everybody
 4 here can hear what you have to say and the court reporter
 5 takes down your words accurately.
 6 Please wait until I finish my question before you
 7 answer. Likewise, I'll wait until you finish your answer
 8 before I ask the next question simply so the court
 9 reporter only takes down one of us talking at the same
 10 time. Understand all my instructions?
 11 A Yes.
 12 Q Okay. Clare, what we're going to do is
 13 just get some real brief background information from you
 14 starting with your present age?
 15 A Forty-six.
 16 Q And where do you presently live?
 17 A 9621 Wolf Road, Windham.
 18 Q And you've lived there how long?
 19 A Eleven years.
 20 Q Marital status?
 21 A Married.
 22 Q Any kids?
 23 A Two.
 24 Q How old?

1 Q Okay. And how long have you been there?
 2 A Eight and a half years.
 3 Q You're presently affiliated with the
 4 Windham Fire Department; is that correct?
 5 A Correct.
 6 Q And your position there is chief?
 7 A Yes.
 8 Q And how long have you been chief?
 9 A Since August 7 of 2002. I believe
 10 that's the right date.
 11 Q And on that date, August 17, 2002 when
 12 you were made chief, how -- how did that -- well, explain
 13 to me the procedure how you were appointed chief.
 14 A Oh, the existing chief resigned.
 15 Q That was whom?
 16 A Don Miller.
 17 Q Okay.
 18 A He resigned as chief, and I think it was
 19 effective June of 2002.
 20 Q Okay.
 21 A He recommended myself or Rich Gano, who
 22 is the second assistant chief, and village and township
 23 both interviewed me and come to the conclusion to appoint
 24 me as chief.

1 Q was it a joint interview, or did they
2 interview you separately?
3 A The township interviewed me. I think
4 the mayor at the time was in -- in the room when they
5 interviewed me.
6 Q Okay. who -- who swore you in?
7 A The mayor, Jim Moore.
8 Q How long have you been on the Windham
9 Fire Department?
10 A Thirty years.
11 Q who originally appointed you, village or
12 the township?
13 A Actually I was voted on by the members
14 of the department.
15 Q Okay. Do you have a recollection of
16 your name being presented for appointment to either the
17 village or the township?
18 A No, I don't. I don't know if it was or
19 not, truthfully. I'm sure that it was, but I don't know
20 to which one.
21 Q That's fine. It's been a few years.
22 You're not presently chief. You started off as a
23 firefighter. What ranks have you held in between?
24 A I actually started out as a cadet.

1 chief, do you know that the village, as part of its
2 council meetings, then officially appoints those people?
3 A They have done a few of them, yes.
4 Q Okay. Are you aware of the township
5 ever appointing any personnel as part of the township
6 meeting?
7 A I believe they have, yes.
8 Q And have they done that after -- did
9 they do that before this lawsuit was filed?
10 A That I'm not 100 percent sure on.
11 Q Okay. You are aware that they appointed
12 people after this lawsuit that we're here for today was
13 filed?
14 A I believe so, yes.
15 Q Okay. Do you know whether or not they
16 ever officially appointed you as the chief after the
17 lawsuit was filed?
18 A I know they rehire all their employees
19 at the end, you know, at their organizational meeting,
20 and, you know, I get a paycheck from the township, so I
21 would imagine that would be reappointing me.
22 Q During the entire time that you were the
23 chief, that you've been the chief, have you always
24 received a check from the township, or was there any

1 Q Okay.
2 A Then a reserve firefighter, firefighter,
3 lieutenant, captain, second assistant chief, first
4 assistant chief and then chief.
5 Q So you've basically run the entire
6 ladder?
7 A Yes.
8 Q That's going up the ranks. Who do
9 you -- as it relates to the operational directions, who do
10 you report to?
11 A As far as operations?
12 Q Is there -- I'm not talking money
13 issues. I'm saying you need to make decisions related to
14 policy, personnel, appointments, that sort of thing. Is
15 there any particular person you go to?
16 A We -- if we vote somebody on, as a --
17 you know, on our department, the department members vote
18 them on.
19 Q Okay.
20 A And then we report it to both the
21 village and the township on who we brought on --
22 Q Okay.
23 A -- by changing in the roster.
24 Q During the period that you've been

1 period of time that you received a check from the village?
2 A I think since I've been chief they've
3 all come from the township.
4 Q Do you have any written operational
5 policies or procedures?
6 A As far as? For the organization --
7 Q For the fire department, for the fire
8 department.
9 A We have some, yes.
10 Q Okay. Did the fire department ask
11 either the township or the village or both to approve
12 those?
13 A No.
14 Q Does the fire department have separate
15 checking accounts -- or let me ask you this. Is there a
16 firemen's association?
17 A Yes.
18 Q Do you know whether or not the firemen's
19 association is incorporated?
20 A I don't believe that it is.
21 It used to be at one time.
22 Q Does the firemen's association have its
23 own checking account?
24 A Yes.

1 Q Just one account, if you know?
 2 A Checking and I think two savings.
 3 Q Okay. And the funds from the firemen's
 4 association that go into those accounts come from where?
 5 A Fundraisers.
 6 Q Any mills other than fundraisers?
 7 A Maybe a couple donations that are
 8 donated to the -- you know, made out to the fire
 9 department, you know.
 10 Q So a check would come in made payable to
 11 Windham Fire Department, they'd put that in the checking
 12 account?
 13 A Uh-huh.
 14 Q Yes?
 15 A Yes.
 16 Q Okay.
 17 A Sorry.
 18 Q What are the typical things that the
 19 fire department would use the money for other than for
 20 social purposes like, you know, dinners and whatnot?
 21 A I know -- I know for a fact we bought a
 22 cascade system to fill Scott bottles with.
 23 Q Okay.
 24 A Radios, uniforms, T-shirts, tables and

1 chairs for the station.
 2 Q When the firemen's association purchases
 3 those types of things that are used for -- in connection
 4 with delivery of fire services, again, as opposed to
 5 dinners or something like that, and I'll use the cascade
 6 system as a good example, does the cascade system actually
 7 -- it's a fixed cascade system I assume; it's in the
 8 station?
 9 A Yes.
 10 Q And has the association gone to either
 11 the township or the village and said we would like you to
 12 accept this gift?
 13 A No.
 14 Q Okay. Who insures that equipment, if
 15 you know?
 16 A It's added right in with the building
 17 policy.
 18 Q Okay. Do you know -- do you have any
 19 knowledge as to whether or not the firemen's -- is it
 20 called the Windham Firemen's Association?
 21 A Windham Volunteer Fire Department.
 22 Q That's what you guys -- it's a Windham
 23 Volunteer Fire Department is the name?
 24 A Yes.

1 Q Is the -- is the Windham Volunteer Fire
 2 Department, does it have its own insurance policy, or is
 3 it under some other policy?
 4 A As far as?
 5 Q Liability.
 6 A No, we do not.
 7 Q Okay. Does your department do annual
 8 mask fit tests?
 9 A For?
 10 Q For --
 11 A Fit test?
 12 Q Yeah, for the mask.
 13 A No.
 14 Q Okay. Do you go -- are all the people
 15 who drive your equipment, they've gone through apparatus
 16 or EVOC class?
 17 A No.
 18 Q Do you do annual medical certifications
 19 for people who are going to use SCBA?
 20 A No.
 21 Q Have the trustees -- have the township
 22 trustees, to your knowledge, adopted any type of sexual
 23 discrimination or harassment policy relating to the
 24 members of the fire department?

1 A No. We adopted one at the station.
 2 Q The firefighters themselves did?
 3 A Yes. We -- we had a policy wrote up,
 4 and we had to have that placed when we got our FEMA grant
 5 in 2003.
 6 Q Are all your -- speaking of grants, are
 7 all your folks NIMS certified to the appropriate levels?
 8 A They're real close.
 9 (Discussion off the record)
 10 Q I just want to spend a little bit more
 11 time. I mean, when a person gets appointed, you talk to
 12 me about the vote. What's -- if I want to join the
 13 Windham Fire Department, what's the procedure for me to do
 14 that?
 15 A You would come up and ask for an
 16 application, fill it out, hand it back to the members, you
 17 know, hand it back to me.
 18 Q I was going to say. It's got to be
 19 one -- you know, I can't just say here, members. I got to
 20 hand it to somebody?
 21 A Yeah, you would hand it to either me or
 22 one of the assistant chiefs.
 23 Q Okay.
 24 A During our business meeting, we bring it

1 up, and the members of the department vote on bringing
2 them on.

3 Q How do -- and I don't mean to sound kind
4 of wacky here, but how do you make -- does a person come
5 like around the station a whole bunch, or they got to come
6 to drills, or they got to -- I mean, how does -- how do
7 the members make a decision as to whether they want the
8 person or not? And I understand there's no --

9 A Truthfully I've never seen anybody not
10 get voted on.

11 Q Okay.

12 A You know, most of the time they know
13 somebody. Somebody knows them.

14 Q Brings them in?

15 A Talk to the department, yeah,

16 Q And then that person sort of says, hey,
17 I know this guy. Here's where he works, and they sort of
18 vouch for him?

19 A Yes.

20 Q And then so once the membership itself
21 votes on it, then that's when you said the name then goes
22 to the trustees and village council; correct?

23 A Yes.

24 Q How many current members on the

1 Q How is it done? What's your procedure?

2 You guys -- you get a 911 call for, you know, chest pain.

3 A Oh, okay.

4 Q You guys are dispatched. You go out,
5 transport -- and you have a transporting EMS unit;
6 correct?

7 A Yes.

8 Q You transport the patient to the
9 hospital. You got the paperwork. Tell me what happens
10 from there.

11 A Paperwork -- a copy of the EMS run
12 report gets mailed to Life Force Management.

13 Q And then Life Force Management bills the
14 insurance carrier or the resident?

15 A Yes.

16 Q And that money that is received, does
17 the money from -- that's billed out to the resident, does
18 that come directly to the township, or does it go to Life
19 Force Management first, if you know?

20 A Some of it -- I believe most of it goes
21 straight to the township.

22 Q And then the township reimburse -- or
23 pays Life Force Management a fee?

24 A Yes.

1 department?

2 A Right around 35.

3 Q And when we say 35, different
4 departments are different ways. Some are active. Some
5 are inactive. Are all 35 of yours active members who
6 participate in training?

7 A Majority of them, yeah. Probably most
8 of them are --

9 Q Okay.

10 A -- active. There's a couple on there
11 that the one's on medical leave.

12 Q Okay. And what is the level of training
13 to which your firefighters are certified? Are they all 36
14 hour? Do you have some that are more than 36 hour
15 trained?

16 A I have a couple that's 120 and a couple
17 that's 240.

18 Q Okay.

19 A And there are some of them that's just
20 EMS people.

21 Q Okay. Of the 35, how many are EMS only?

22 A Probably about six.

23 Q How is EMS billing done now?

24 A As far as who is doing it?

1 Q All right. And then does -- to your
2 knowledge, does the money from the EMS billing go into a
3 separate EMS account?

4 A No.

5 Q All right. Is it -- is it safe to say
6 that since you've been chief, in the general scheme of
7 things, the fire department has, for better, for worse,
8 acted fairly autonomously?

9 A Fairly what?

10 Q Autonomously. People just leave you
11 guys alone, and you just carry out and take care of what
12 needs to be done?

13 A Yeah.

14 Q I mean, what I get the feeling is that
15 at least at the present time there's not a lot of
16 oversight or control of the fire department. They -- most
17 the township and the village township look to you as the
18 chief and say, deliver fire services, and we'll leave you
19 alone?

20 A Yeah.

21 Q Okay. And I -- I will comment that I
22 know, and you can say yes, that with this lawsuit you are
23 put in a very uncomfortable position between the village
24 and the township as you try to deliver services, and I

1 think I can speak for everybody in this room that we
 2 understand the difficult position you are in.
 3 A Yes.
 4 MR. FINAMORE: Here, here.
 5 MR. COMSTOCK, JR.: I'm done. No
 6 further questions. You have the right to read this
 7 transcript, if it's typed up, to check it for its
 8 accuracy, or you can waive the reading. We've had one
 9 witness today read and one witness waive. It's up to you.
 10 I don't care. If you want to spend some time with our --
 11 THE WITNESS: If it's in shorthand, I'll
 12 never be able to read it anyway.
 13 MR. FINAMORE: What she would do,
 14 there's a -- she would type it up, and it's not that like
 15 you can change what you said, but if you feel that there
 16 was a mistake as to how something was not printed properly
 17 or taken down, she gives you a sheet where you mark that.
 18 And you fill those out and then she simply attaches it to
 19 the transcript, so it doesn't change what she does, but
 20 this way people looking at it can see that you believe
 21 that this was in error, that was in error. And a lot of
 22 people just say, hey, you know what? I said what I said,
 23 and I don't even have to read it. So it's up to you as to
 24 what you want to do.

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 5 REPORTER'S CERTIFICATE
 6
 7 I HEREBY CERTIFY that the above and foregoing is a
 8 true and correct transcript of all the testimony
 9 introduced and proceedings had in the taking of the
 10 testimony in the above-entitled matter, as shown by my
 11 stenotype notes taken by me at the time said testimony was
 12 taken.
 13
 14
 15 Gina M. Allen
 16 Registered Professional Reporter
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1 THE WITNESS: I think I'm good.
 2 MR. FINAMORE: Most people --
 3 MR. COMSTOCK, JR.: Most people waive.
 4 You'll waive your signature?
 5 THE WITNESS: Yes.
 6 SIGNATURE WAIVED
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1 STATE OF OHIO }
 2 TRUMBULL COUNTY } SS: NOTARY CERTIFICATE
 3
 4 I, Gina M. Allen, Notary Public
 5 within the State and County aforesaid, duly commissioned
 6 and qualified, do hereby certify that the within-named
 7 deponent was by me first duly sworn to testify the truth,
 8 the whole truth, and nothing but the truth, and that the
 9 foregoing testimony was written by me in stenotype in the
 10 presence of the witness; that by agreement of counsel,
 11 signature was waived.
 12
 13 I do further certify that I am not of
 14 counsel, attorney or relative to either party, or
 15 otherwise interested in the event of this action or
 16 proceeding.
 17
 18 IN WITNESS WHEREOF, I have hereunto set
 19 my hand and seal of office at Youngstown, Ohio, this 3rd
 20 Day of June, 2009.
 21
 22
 23 Gina M. Allen, Notary Public
 24 My Commission Expires 08/01/11