

October 9, 2014

Albert L. Chollet, III  
Direct Telephone: 312-219-6918  
achollet@wthf.com

**VIA FEDEX**

City of Urbana  
Legal Division  
Attn: James L. Simon  
400 S. Vine St.  
Urbana, Illinois 61801

Re: **City of Urbana's Claim Against Bond**  
**Principal: Ronald C. Eldridge**  
**Surety: RLI Insurance Company**  
**Obligee: City of Urbana**  
**Bond No.: RSB602243**  
**Client/Matter: 103578.18**

Dear Mr. Simon:

Please be advised that Watt, Tieder, Hoffar & Fitzgerald, L.L.P., represents RLI Insurance Company in connection with the referenced matter. As you are aware by virtue of your prior correspondence with RLI representative Timothy Winship, RLI is in possession of the City of Urbana's (City) claim against the referenced Bond and the subsequent supplements to that claim. After carefully considering the information provided by the City as well as additional information obtained from third parties, RLI respectfully denies the City's claim for the reasons which follow.

**A. THE BOND.**

On or about January 13, 1995, RLI issued, as surety, Official Bond and Oath (Bond) number RSB602243 on behalf of Ronald C. Eldridge (Eldridge), as principal, for the City of Urbana, as obligee. A copy of the Bond is attached hereto as Exhibit A. The Bond was issued in the penal sum of \$1 Million. The Bond was issued to secure Eldridge's faithful performance of his duties as Comptroller for the City. So long as he faithfully performed those duties, then RLI owed no duty or other obligation to the City for the duration of the Bond.

**B. THE INITIAL CLAIM AND SUBSEQUENT SUPPLEMENTS.**

On June 23, 2014, the City submitted a memorandum of claims against an employee dishonesty insurance policy issued by Travelers and the Bond issued by RLI. A copy of the initial claim is attached hereto as Exhibit B. The claim alleged that Eldridge committed certain

unlawful and dishonest acts which led to the City paying Eldridge an undetermined amount in City funds. The City's initial claim alleged that the unlawful conduct occurred between the period of January 1, 2006 and January 28, 2013.

The City's initial claim posited that Eldridge engaged in a scheme to accrue compensatory time and use that time in lieu of vacation and sick time in violation of federal and state statutes. The City alleged that, upon his retirement in January, 2013, Eldridge was paid "between \$28,042.29 and \$54,094.31" in excess of his entitlement. The City urged that Eldridge was an exempt employee for the Fair Labor Standards Act purposes and was therefore not entitled to accrue or use compensatory time. The City also alleged that "*following* his retirement" Eldridge received \$14,400 in unused sick time for which he had already been paid. Exhibit B (emphasis added).

On July 24, 2014, the City supplemented its claim against the Bond. A copy of the July 24, 2014 Supplement is attached hereto as Exhibit C. Among other things, the City set forth a total claim amount of \$42,209.75. This claim amount reached based on allegations of damages relating to the compensatory time issue of \$28,042.29 and \$14,167.46 for the "overpayment for unused sick time." The City asserted in this correspondence that there was no policy which permitted any exempt City employee to accrue compensatory time in lieu of vacation time.

The City then supplemented its claim yet again on July 29, seeking to increase the claim amount by adding costs incurred due to the Brown Smith Wallace, LLC forensic accounting that the City allegedly incurred. A copy of the July 29 Supplement is attached hereto as Exhibit D. The Supplement sought to increase the claim by \$43,119.68 to a total of \$85,329.43. No backup or substantiating documentation relating to the costs incurred was submitted to RLI for consideration.

### **C. RLI'S CLAIM RESPONSE.**

It is axiomatic in Illinois that the purpose of obtaining an official bond is to provide indemnity to the public body for wrongful acts done by the bond principal under color of office. *People, for Use of Bothman, v. Brown*, 272 Ill. 146, 111 N.E. 557 (1916); *Bencie v. Williams*, 337 Ill. App. 414, 86 N.E.2d 258 (4th Dist. 1949); *Town of City of Peoria v. Rauschkolb*, 333 Ill. App. 411, 78 N.E.2d 123 (2d Dist. 1948). This requires not only that the official commit a wrongful act, but that the wrongful act be performed by the official under color of office and during the performance of official duties. *See Id.* Where the official acts outside the scope of his/her official duty, the surety cannot be liable. *People, for Use of Fleishman v. Sowell*, 186 Ill. App. 617, 1914 WL 2428 (4th Dist. 1914).

#### **1. RLI Investigation.**

Upon receipt of the City's initial claim, RLI undertook its investigation of the facts and law which bear upon the claim. This involved multiple requests for documentation to both the City and other sources and interviews of potential witnesses. RLI reviewed all documents provided by the City, though the City has apparently failed to produce all documents responsive

to RLI's request and relevant to the claim. For example, the City has not provided all documentation concerning compensatory time claims by exempt employees in all City departments. The audit submitted by the City makes it clear that Eldridge was not the only City official to avail himself of the compensatory time policy that was in place.

RLI also obtained evidence relating to the claim from other sources. RLI was provided an Affidavit from the former Mayor of the City Tod Satterthwaite. A copy of the Satterthwaite Affidavit is attached hereto as Exhibit E. Satterthwaite was the Mayor from 1993 to 2005. During his tenure, he was aware of exempt employees in each City department. Satterthwaite states that the City had an existing policy and practice that an exempt employee could avail itself of the existing flex-time policy. Satterthwaite was aware that Eldridge would utilize the flex-time policy in a manner "consistent with my understanding of Urbana policy and practice for exempt employees." In Satterthwaite's opinion, Eldridge was "diligent" and "professional" in discharging his duties; he was a department head who ran a department that was recognized for its transparency and achievement by the Government Financial Officers Association.

Additionally, RLI received a copy of the attached correspondence from Eldridge's successor as Comptroller of the City, Bill DeJarnette, to the Illinois Department of Labor. A copy of the DeJarnette Correspondence is attached hereto as Exhibit F. The DeJarnette Correspondence was directed to a Wage Claim Specialist for the Department of Labor, and it concerned former employee Liz Walden. Among the noteworthy factual statements contained in the DeJarnette Correspondence are the following: (1) the Urbana Finance Department had an exempt employee compensatory time policy in place, and that policy dated back to the early 1980s; (2) the City had knowledge of the policy in that Department due to a complaint made by Finance Department employee Merdy Smith in the early 1980s; (3) Merdy Smith's complaint in the early 1980s directly alleged that Eldridge took time off in the afternoons during the Summer; (4) Merdy Smith's complaint was submitted to Urbana's Human Relations Director; (5) as a result of the complaint, it was decided that all compensatory time for exempt employees in the Finance Department would be tracked and recorded to provide a mechanism for tracking extra time worked; and (6) the log of the compensatory time was maintained on a ledger by the Finance Department Office Supervisor. DeJarnette confirmed, "All employee accrual and use of comp time including exempt comp time was approved in advance and noted on the city bi weekly payroll time sheets approved by Ron Eldridge and later me." Exhibit F.

## **2. Compensatory Time Component of the City's Claim.**

The City has failed to produce any compelling evidence of a failure by Eldridge to faithfully perform the duties of the Comptroller office. The prevailing theme among the documents made available to RLI is that Eldridge was a long-time employee with an exemplary record. Indeed, all available evidence indicates that Eldridge's use of compensatory time was consistent with long standing policy of the Finance Department and perhaps other departments. Eldridge engaged in this behavior with the actual knowledge of the City, and for approximately thirty (30) years the City did not object to this practice or attempt to curtail it. Eldridge's practices concerning compensatory time were transparent and with the approval of the City.

While the City contends that the compensatory time practice was unique to the Finance Department, RLI notes that the City has failed to produce all records of compensatory time claims by exempt City employees from other departments. RLI believes that other departments within the City enjoy the freedom to handle compensatory time policies consistent with Eldridge and his successors' practice in the Finance Department. Even if the compensatory practice was limited solely to the Finance Department, it is clear based on the DeJarnette Correspondence that the City (by and through the Merdy Smith claim and the referral to the Human Relations Director) had direct, actual knowledge of the practice for approximately thirty (30) years without taking any action to curb the policy. The City cannot now claim that this longstanding policy suddenly now constitutes a violation when the City ratified and/or acquiesced to the practice for three decades. Any payments made by the City to Eldridge were made with the full knowledge of this approved practice.

**3. The Vacation Time Claim Did Not Arise During Eldridge's Performance of his Official Duties and is Therefore Not an Event Covered by the Bond.**

It is clear that the claim relating to the City's payment of unused sick time accrued after Eldridge's retirement and did not accrue during the course of Eldridge's performance of his official duties. The City itself alleges that Eldridge was mistakenly paid by the City *after* Eldridge's retirement in January 2013. Accordingly, the portion of the claim which relates to unused sick time did not accrue during the course of Eldridge's tenure which was covered by the Bond and was not the product of any failure by Eldridge to "faithfully perform the duties of his said office...." See Exhibit A. The City's own claim correspondence admits that the application for payment of sick time was not made until after the cessation of Eldridge's official duties as Comptroller. Accordingly, the \$14,400 claimed for the City's mistaken payment of unused sick time is not covered under the Bond. As cited above, RLI is not liable for acts or events which occurred outside the scope or term of the office.

**4. The City is not entitled to recover audit costs.**

The City does not have any viable claim to recover its audit costs. First, RLI owes no obligation under the Bond to the City because there is no evidence that Eldridge failed to faithfully discharge his duties as Comptroller. Without this initial finding, it is unnecessary to even consider additional defects in the City's claim to recover audit costs. However, it is noteworthy that the Bond terms which dictate RLI's liability do not include audit costs or other fees as recoverable damages. Further, by the City's own admission, the audit was commissioned in response to concerns about other employees and not Eldridge. Finally, the City has not produced any records to substantiate the costs being claimed with respect to the audit, such records to include time statements that demonstrate the amount incurred and the reasonableness. Accordingly, these costs are not properly recoverable.

**D. CONCLUSION.**

For the foregoing reasons, RLI denies the City's claim against the Bond in its entirety. If you feel that additional facts or law compel a different outcome, then I encourage you to forward that information to me for RLI's timely consideration. In the meantime, RLI continues to operate under a reservation of its rights under the Bond and any governing agreements and law.

Sincerely,

**Watt, Tieder, Hoffar & Fitzgerald, L.L.P.**

A handwritten signature in cursive script, appearing to read "Albert Chollet, III".

Albert L. Chollet, III

ALC  
Enclosures

cc: Timothy E. Winship, Claims Director  
John E. Sebastian, Esq.



9025 North Lindbergh Dr. • Peoria, IL 61615  
(309) 692-1000

**OFFICIAL BOND AND OATH**

BOND NO: RSB602243 \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That we, Ronald C. Eldridge, as Principal, and RLI Insurance Company, a corporation duly licensed to do business in the State of Illinois, as Surety, are held and firmly bound unto the City of Urbana in the penal sum of One Million (\$ 1,000,000.00) DOLLARS, to the payment of which sum, well and truly to be made, we jointly and severally bind ourselves and our legal representatives firmly by these presents.

Dated this 13th day of January, 19 95.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas, the said Principal was duly  elected  appointed to the office of Comptroller in the City of Urbana, State of Illinois, for the term commencing on the 6th day of January, 1995.

NOW THEREFORE, if the said Principal shall faithfully perform the duties of his said office, then this obligation shall be void and of no effect, otherwise to remain in full force and effect.

Countersigned \_\_\_\_\_ Principal  
By \_\_\_\_\_ Resident Agent  
*Jonathan E. Michael*  
Jonathan E. Michael, President



APPROVAL:

I have inspected the above Bond and do hereby certify that the same is sufficient.

\_\_\_\_\_  
Approving Officer's Title \_\_\_\_\_

OATH OF OFFICE

STATE OF \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss

\_\_\_\_\_, being duly sworn, says that he will support the Constitution of the United States and the Constitution of the State of \_\_\_\_\_, and that he will faithfully discharge the duties of his said office as \_\_\_\_\_.

\_\_\_\_\_  
Principal

Sworn to before me and signed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

My Commission Expires \_\_\_\_\_  
Notary Public

\_\_\_\_\_, 19 \_\_\_\_\_



ACKNOWLEDGEMENT OF SURETY  
(Corporate Officer)

STATE OF ILLINOIS    )  
                              )ss  
County of Peoria

On this 13th day of January, 1995, before me, the undersigned officer, personally appeared Jonathan E. Michael, who acknowledged himself to be the aforesaid officer of the RLI INSURANCE COMPANY, a corporation, and he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires 2/24/98

*Gina M. Kuhn*





**LEGAL DIVISION**  
400 S. Vine St., Urbana, IL 61801  
P.O. Box 219, Urbana, IL 61803-0219  
(217) 384-2464  
Fax: (217) 384-2460

**DATE:** June 23, 2014  
**TO:** Luke Sherman, Commercial Agent, Wells Fargo Insurance Services, USA, Inc.  
**CC:** Mayor Prussing  
**FROM:** Jim Simon / *James L. Simon*

**RE: Insurance and Bond Claims Re Comptroller's Alleged Misappropriation of City of Urbana Funds.**

Please consider this memorandum as the City of Urbana's ("City") claims on the City's insurance policy (Employee Dishonesty coverage, Policy No. 106014610 issued by Travelers) and the bond which covered the previous City Comptroller (Bond No. RSB602243 issued by RLI). These claims assert that Ronald Eldridge, City Comptroller (hereinafter, "Eldridge") allegedly committed certain unlawful or dishonest acts which led to the City paying him between \$42,442.29 and \$58,492.32 in City funds.<sup>1</sup> Eldridge's allegedly unlawful conduct occurred during the period January 1, 2006 through January 28, 2013 (the "Relevant Period").

As discussed below, during the Relevant Period, Eldridge engaged in a scheme whereby he accrued compensatory time ("comp time") and used that time in lieu of vacation and sick time notwithstanding federal and state statutes which gave him no lawful right to do so. As a result Eldridge's allegedly unlawful activities he was able to accumulate and preserve his sick time and vacation time such that, upon his retirement (effective January 28, 2013), he was paid between \$28,042.29 and \$54,094.31 more than what he was allegedly entitled to receive. The City reasonably believes that Eldridge's comp time scheme commenced well before January 1, 2006. However, the City, in light of I.R.S. regulations, did not retain payroll, timesheet and related pay records for more than seven (7) years. Thus, payroll, timesheet and related pay records for the period prior to January 1, 2006 do not exist. In addition to Eldridge's comp time scheme, following his retirement he received \$14,400 in unused sick time for which he had already been paid.

**A. ELDRIDGE'S ALLEGEDLY UNLAWFUL ACCRUAL AND USE OF COMP TIME:**

Eldridge engaged in an allegedly unlawful scheme during the Relevant Period whereby he caused the City to pay him an aggregate amount from \$28,042.29 and \$54,094.31 to which he was not allegedly entitled. The City believes that Eldridge's scheme commenced well before the Relevant Period. However, since payroll records and time sheets do not exist for the period prior

<sup>1</sup> See below insofar as how each amount is calculated.





to January 1, 2006, these claims are limited to the period January 1, 2006 through the effective date of his retirement (January 28, 2013).

**1. Applicable Law:**

At all times during the Relevant Period, the federal Fair Labor Standards Act (29 U.S.C. § 213(a)(1) et seq.) (“FSLA”) and the Illinois Minimum Wage Law (820 ILCS 105/1 et seq.) (“Wage Law”), and the respective regulations promulgated pursuant thereto, governed who is lawfully entitled to accrue and use compensatory time (“comp time”). At all times during the Relevant Period, the Wage Law deferred to the FLSA to determine whether an employee was “exempt.” The following discussion of the FLSA and its regulations applies to the Relevant Period.

The FLSA requires an employer to pay an employee at a “rate not less than one and one-half times the regular rate at which he is employed” – i.e., overtime at the rate of time-and-a-half. 29 U.S.C.A. § 207(a). However, the protections generally afforded by the FLSA and the Wage Law to employees do not apply to “any employee employed in a bona fide executive, administrative, or professional capacity.” 29 U.S.C. § 213(a)(1); 29 CFR § 541.103(a). Federal regulations delineate when an employee is “employed in a bona fide executive, administrative, or “professional capacity.” 29 CFR § 541.101 et seq. It is worth noting that the employee’s job title, alone, does not establish exempt status for the employee. The determination for whether an employee is exempt from FLSA is based on the employee’s salary and employment duties. 29 CFR § 541.2.

a. Exemption from FLSA by Reason of Employment in an Executive Capacity:

Any “employee employed in a bona fide executive capacity” means an employee –

- i. who is compensated on a salary basis at the rate of \$455/week or more;
- ii. whose primary duty is management of a recognized department or subdivision of the employer;
- iii. who customarily and regularly directs the work of two or more other employees; and
- iv. who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of the status of other employees are given particular weight.

Subsequent federal regulations define and describe what is meant by portions of 29 CFR § 541.100.

Management of a department or subdivision of the employer is defined as, but is not necessarily limited to –

activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; ... appraising employees' productivity and efficiency for the purpose of

recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; ... planning and controlling the budget; and monitoring or implementing legal compliance measures.

29 CFR § 541.102. The phrase “a customarily recognized department or subdivision” means “[a] customarily recognized department or subdivision must have a permanent status and a continuing function.” 29 CFR § 541.103, brackets supplied. “Two or more other employees” means two or more full-time employees. 29 CFR § 541.104. In determining whether the employee’s “suggestions and recommendations ... are given particular weight”, the factors in such determination included, but are not limited to –

whether it is part of the employee's job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. Generally, an executive's suggestions and recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include an occasional suggestion with regard to the change in status of a co-worker. An employee's suggestions and recommendations may still be deemed to have “particular weight” even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

As demonstrated below, Eldridge clearly was employed in a “bona fide executive capacity” for FLSA purposes and, thus, was exempt from the protections of the FLSA. Walden may also qualify for this exemption.

b. Exemption from FLSA by Reason of Employment in an Administrative Capacity:

An “employee employed in a bona fide administrative capacity” is one (i) who is compensated on a salary basis at the rate of not less than \$455/week; (ii) whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer; and (iv) whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. 29 CFR § 541.200. Subsequent federal regulations define and describe what is meant by portions of 29 CFR § 541.200.

To qualify for the administrative exemption, an employee's primary duty must be –

the performance of work directly related to the management or general business operations of the employer .... The phrase “directly related to the management or general business operations” refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

29 CFR § 541.201(a). “Work directly related to management or general business operations” includes, but is not limited to –

work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; ..., government relations; computer network, internet and database administration; ... regulatory compliance; and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption.

29 CFR § 541.201(b). The phrase “exercise of discretion and independent judgment with respect to matters of significance involves –

the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term “matters of significance” refers to the level of importance or consequence of the work performed.

\* \* \*

Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

\* \* \*

... [E]mployees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term “discretion and independent judgment” does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review

does not mean that the employee is not exercising discretion and independent judgment. ...

29 CFR § 541.202(a), (b), (c), brackets supplied.

As discussed below, Walden and Eldridge clearly meet the definition of an employee “employed in a bona fide administrative capacity” and, thus were exempt for FLSA purposes.

c. Exemption from FLSA by Reason of Employment in a Professional Capacity:

An employee employed in a “bona fide professional capacity” must generally satisfy the same requirements of an employee employed in a bona fide executive or administrative capacity with a few differences. 29 CFR § 541.300. Unlike the previously-discussed two categories, the “professional capacity” requires “knowledge of an advanced type in a field of ... learning customarily acquired by a prolonged course of specialized intellectual instruction.” *Id.* Accountants, especially those holding the Certified Public Accountant certificate, are deemed employees employed in a “professional capacity” when supervising and performing their accounting work. *Id.*

As demonstrated below, Eldridge was employed in a “bona fide professional capacity.”

d. Other Bases for Exemption:

Employees whose annual compensation is \$100,000 or more are deemed exempt for FLSA purposes. 29 CFR § 541.601.

2. Eldridge Was An Exempt Employee for FLSA Purposes and Therefore, Not Entitled to Accrue or Use Comp Time:

Eldridge commenced his employment with the City well before the start of the Relevant Period. During the Relevant Period he served as Comptroller, head of the City’s Finance Department, and as the City’s chief financial officer. He served in these capacities until his retirement, effective January 28, 2013. Eldridge was included on the annual mayoral appointment list for each Fiscal Year during the Relevant Period. Throughout the Relevant Period, Eldridge was paid well in excess of \$455 per week.

As the following demonstrates, Eldridge was employed by the City in a “bona fide” “executive”, “administrative”, and/or “professional capacity” for FLSA purposes and, thus, was exempt from the protections of FLSA including the right to accrue and use comp time.

In addition to supervising the division heads within the Finance Department, Eldridge had ultimate responsibility for all of the employees within the City’s Finance Department. During the Relevant Period, Eldridge -

- Served as the chief fiscal officer of the City.
- Was full-time and part of the City’s executive management team.
- Performed advanced professional work managing a wide array of accounting functions within the City.

- Planned, directed and administered development and maintenance of internal control systems, policies, and procedures.
- Acted as the liaison between the Finance Department and the City's auditors, outside fiscal agencies, the public, and other City departments.
- Was responsible for ensuring compliance with applicable laws and regulations.
- Worked under limited supervision.
- Utilized considerable independent judgment when performing his work.
- Prepared financial statements and reports, resolutions, policies and procedures.
- Planned, coordinated, and evaluated the activities of professional and clerical staff.
- Represented the Mayor at meetings and sitting on committees.
- Adhered to generally accepted accounting principles (GAAP) and Government Accounting Standard Board (GASB) standards.
- Managed activities relating to and prepared the City's budget, financial, and accounting reporting systems and audits.
- Developed the annual budget format, coordinates the budget process, and prepares the budget document.
- Reviewed all proposed budget amendments and ordinances.
- Provided long range City financial planning to establish future revenue needs and updates annually.
- Developed and recommends City investment policies; approves investment decisions based on these policies.
- Maintained and reviewed purchasing procedures
- Identified budget variances and/or discrepancies to manage performance and areas of weakness with City finances.
- Performing other related work as required.
- Reviewed key operations and activities at regular intervals to help assure standard operating procedures are followed and performance standards are met.
- Developed systems to monitor the fiscal status of all City functions, prepared reports, and regularly reviewed and advised the Mayor on fiscal condition, changes, and trends.
- Established systems to record all financial transactions and maintained records pursuant to law and good fiscal practice.
- Developed liability and worker's compensation insurance plans and policies, and secured coverage.
- Coordinated claims administration with insurance carriers and functions as the City's Risk Manager.

It is also important to note that Eldridge held a Certified Public Accountant certificate for the State of Illinois. He was paid during the 2006 through the date of his retirement, a salary of at least \$100,000 per year. Finally, the position of City Comptroller which Eldridge held, as a matter of state law (65 ILCS 5/3.1-30-5(a)(3)) and City ordinance (Urbana City Code Sec. 2-42), required annual appointment by the Mayor and confirmation by the City Council.

Given the nature of Eldridge's job duties, his CPA status, his level of compensation, the fact that he was paid more than \$455 per week, and his status as an appointed officer, surely Eldridge was well aware that he was an exempt employee for FLSA purposes since he was employed in a bona fide executive, administrative and professional capacity. At no time during the period 2006 to the effective date of his retirement (January 31, 2013) did Eldridge cease

serving as the City's chief financial officer (Comptroller). Thus, at all times during the Relevant Period, Eldridge was an exempt employee for FLSA and Wage Law purposes. At no time during the Relevant Period did Eldridge submit any objection to any City officer in which he complained about his status as an exempt employee for FLSA and Wage Law purposes.

3. **Eldridge's Allegedly Unlawful Conduct Regarding His Use of Comp Time in Lieu of Vacation and/or Sick Time:**

During the Relevant Period, one of Eldridge's subordinate's, Elizabeth Walden, Accounting Supervisor,<sup>2</sup> was primarily and directly responsible for the City's payroll system and all records related thereto. Eldridge, as Comptroller, was responsible for supervising Ms. Walden in connection with her payroll duties.

As an exempt employee, on or about the anniversary date of Eldridge's employment with the City, he received a lump sum allotment of vacation and sick time based on the then existing policies of the City. Thus, unlike non-exempt employees, Eldridge would receive at the beginning of each new anniversary period the full amount of sick and vacation time to which he was entitled for that year coming employment year.<sup>3</sup> Eldridge was entitled to roll-over any unused vacation and sick time from year to year. Thus, unless taken, Eldridge's unused sick and vacation time accumulated from year to year

During the Relevant Period, Eldridge knew or should have known that the City's computerized payroll system could not account for comp time accrued and/or used by exempt employees since they were not entitled to accrue and use comp time on any regular or periodic basis. Thus, Eldridge kept his own personal record of comp time he accrued and used. Generally, he recorded his accrual and use of comp time on his bi-weekly time sheet. Eldridge periodically provided Ms. Walden with his comp time accrual and usage information (typically, by turning in his bi-weekly time sheet to her). He either directed Ms. Walden to create, maintain and periodically update or knew or should have known that she had created and would maintain and periodically update a spreadsheet on which she recorded Eldridge's accrual and usage of comp time since he provided her with his accrual and use of comp time. Eldridge knew that his personal record (his bi-weekly timesheet) and Ms. Walden's spreadsheet of his comp time accrual and usage were kept wholly separate and apart from the City's financial, accounting and payroll records since, at no time, did any outside City auditor ever discover this scheme.<sup>4</sup>

During the Relevant Period, Eldridge knowingly used comp time in lieu of using sick time and/or vacation time when he took time off of work. On days when he was absent from work, he often would record on his timesheet that he was using comp time rather than vacation or sick time even though he knew or should have known that he was not entitled to take any such comp time. Since Eldridge knew or should have known that the City's computerized payroll system could not account for an exempt employee's accrual and use of comp time, he also was

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<sup>2</sup> Ms. Walden was employed by the City as Accounting Supervisor during the Relevant Period. At all times relevant hereto, she reported directly to and was under the direct supervision of Eldridge.

<sup>3</sup> Non-exempt employees earned sick and vacation time throughout the work year based on the formulae set forth in City policy rather than receiving such time in an advance lump-sum on their anniversary date.

<sup>4</sup> If any outside City auditor uncovered Eldridge's allegedly unlawful accrual and use of comp time, that auditor never reported such activity to anyone other than someone in the Finance Department which was supervised by Eldridge.

aware or should have been aware that the City's payroll records would reflect that he was present at work during those hours or on those days when he took comp time in lieu of taking sick or vacation time. Thus, Eldridge knew or should have known that, by taking comp time in lieu of vacation time, the City's payroll system would reflect his present at work even though he was in fact absent therefrom. Eldridge's practice of accruing comp time and taking comp time in lieu of vacation allowed him to preserve his vacation time and that he would be compensated for his unused vacation time upon his retirement or departure from his employment from the City.

Following his retirement, Eldridge received payouts for his unused sick and vacation time. Because he regularly and periodically accrued and used comp time in lieu of sick and vacation time, the numbers of hours of unused sick and vacation time were artificially inflated such that Eldridge's payments were significantly more than what he was otherwise entitled to.

It is important to note that Eldridge also knew or should have known that one or more of exempt employees in the Finance Department also accrued and used comp time in lieu of sick or vacation time. Thus, Eldridge approved of other exempt Finance Department employees accruing comp time and using comp time in lieu of sick time or vacation time thereby allowing those exempt employees to preserve their sick time and/or vacation time. Such conduct also damaged the City.

#### **4. Forensic Audit Reports:**

The City retained the auditing firm of Brown Smith Wallace, LLC ("BSW") (6 Cityplace Drive, Suite 900, St. Louis, MO 63141) ("BSW Report") to undertake and complete a forensic audit in an effort to determine a value of the sick and/or vacation which Eldridge and other Finance Department exempt employees received as a result of Eldridge's acquiescence in the above-described comp time scheme. The BSW Report initially reviewed payroll, time, and other records of all exempt City employees for the two-year period July 1, 2011 through June 30, 2013. BSW's audit found that the accrual of comp time and the use of comp time in lieu of sick and/or vacation time was almost exclusively confined to exempt employees within the Finance Department. BSW also found that Eldridge was by far the greatest abuser of his scheme. Later on, BSW determined that the unlawful use of comp time was confined strictly to exempt employees within the Finance Department, again, with Eldridge being the biggest abuser.<sup>5</sup>

Given that no exempt employees in any of the City's departments other than the Finance Department maintained a record of accrual and use of comp time, BSW reviewed payroll, timesheet and other records of Finance Department exempt employees to identify, quantify and value their accrual and use of comp time in lieu of sick time and vacation time back to January 1, 2006. Finally, as a more conservative measure, BSW, again, reviewed payroll, time and other records of Finance Department exempt employees for the period January 1, 2006 through June 30, 2013 and weeded out usages of comp time in increments of less than four hours per day.<sup>6</sup>

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<sup>5</sup> A few Public Works Department exempt employees reported accruing and using comp time. However, upon closer scrutiny at a later date, BSW found that those employees had reported to work despite the closing of the City due to a heavy snowfall even though they were non-essential workers. The City elected to give those employees time off because they had reported to work when the City was closed. They erroneously listed the hours they worked as "comp time." Thus, as it turned out, only Finance Department exempt employees used comp time in lieu of sick or vacation time.

<sup>6</sup> During the Relevant Period, there was no written policy within the City which allowed exempt employees to accrue and use (footnote continued ...)

Prior to any adjustment for use of comp time in less than four-hour increments, BSW determined that Eldridge had been paid \$54,094.31 for the vacation time he preserved by using comp time in lieu thereof. The forensic auditors also determined that for comp time usage limited to increments of four hours or more, Eldridge had been paid \$28,042.29 for the vacation time he preserved by using comp time in lieu thereof.

Thus, through his knowing and intentional conduct, Eldridge allegedly misappropriated from the City between \$28,042.29 and \$54,094.31, depending on whether one removes from consideration his use of comp time in lieu of vacation time in increments of less than four-hours – notwithstanding the fact that the FLSA and City policies made no provision for allowing exempt City employees to accrue comp time and take comp time in lieu of sick or vacation time in less than four-hour increments.

**B. ALLEGEDLY UNLAWFUL DOUBLE PAY OUT OF SICK TIME TO ELDRIDGE:**

As stated above, Eldridge was ultimately responsible for the City's payroll system and records related thereto. Among other information, the City's payroll system kept track of accrued, unused and used sick time. During the Relevant Period, the City had a policy that, following the official announcement of an employee's retirement date, such retiring employee was entitled to turn in unused sick time and receive compensation therefore. Any unused sick time turned into the City prior to the employee's official retirement or departure date and for which the employee was compensated would be credited toward the employee's compensation for the month or months received and such credit would be considered when computing the retiring or departing employee's Illinois Municipal Retirement Fund ("IMRF") benefits. Further, for the two-month period following an employee's departure from the City, City policy allowed that employee to turn in unused sick time and receive compensation therefore. In certain instances, the receipt of payment for sick time turned in following the employee's departure date would be credited toward his or her compensation for computing IMRF benefits. Eldridge was well acquainted with these City policies.

Prior to December 20, 2012, Eldridge submitted a request to be compensated for 149.86 hours of unused sick time. On December 20, 2012, Eldridge received payment of \$9,616.52 for the 149.86 hours of unused sick time. Prior to January 31, 2012, Eldridge submitted a request to be compensated for an additional 70.92 hours of unused sick time. On January 31, 2013, Eldridge received payment of \$4,550.94 for the 70.92 hours of unused sick time. Thus, prior to the effective date of his retirement, Eldridge had been compensated by the City for 220.78 hours of unused sick time. Following January 31, 2013, Eldridge submitted two more requests to be compensated for unused sick time. The sick time hours for which Eldridge sought compensation in his last two requests did not net out the 220.78 hours of unused sick time for which he had already been paid. Clearly, Eldridge was aware that he had previously been paid for the aforesaid 220.78 hours of sick time. The value of the 220.78 hours is \$14,400.00. Thus, Eldridge applied for and received \$14,400.00 more than what he was entitled to receive.

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(... footnote continued)

comp time in increments of less than four (4) hours per day. Further, there was no City-wide custom or practice of allowing exempt employees to accrue and use comp time in lieu of sick and/or vacation time, as evidenced by the fact that the unlawful practice was confined to the Finance Department.



## CONCLUSION

Based on the foregoing, the City's claims seek coverage for an amount between \$42,442.29 (which excludes comp time taken in lieu of sick and/or vacation time in increments of less than four hours plus the double payment for unused sick time) and \$58,492.32 (which does not exclude comp time taken in lieu of sick and/or vacation time in increments of less than four hours plus the double payment for unused sick time).

The City remains ready and willing to provide all information in its possession which the insurance carriers need or request in order to process these claims.



**LEGAL DIVISION**  
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**DATE: July 24, 2014**  
**TO: Timothy E. Winship, Claims Director, RLI Surety.**  
**CC: Vacellia Clark, Corey Franklin**  
**FROM: Jim Simon**

**RE: City of Urbana, Illinois Claim Under Comptroller Bond – Ronald C. Eldridge.**

You raised several matters during our earlier telephone conversation regarding the City of Urbana, Illinois's (hereinafter, the "City") claim for \$42,209.75 submitted under its comptroller bond. This sum includes –

- \$28,042.29 which the City believes was wrongfully paid to Ronald C. Eldridge ("Eldridge") based on his allegedly unauthorized and unlawful use of compensatory time ("comp time") in lieu of using vacation time which allowed him to preserve his vacation time for future payout (hereinafter, "Comp Time Claim"), and
- \$14,167.46 which Eldridge received as an overpayment for unused sick time (hereinafter, "Sick Time Claim").

I provide the following to summarize and clarify the City's claim and its basis. Regarding the Comp Time Claim, I also briefly respond to Eldridge's assertions that he was merely following some sort of long-established City policy regarding exempt employees tracking and using comp time in lieu of vacation time. You did not mention during our conversation whether you and Eldridge discussed the City's Sick Time Claim.

The documents you requested in your July 9, 2014 letter are being sent via FedEx and under separate cover.

**A. SUMMARY OF THE CITY'S CLAIM COMPONENTS:**

**1. Relevant Time Period:**

The time period covered by the Comp Time Claim is January 1, 2006 through the date when Eldridge was paid for his unused vacation time. Based on the documents provided to you and Eldridge's representations to you, the City reasonably believes that Eldridge took advantage of and benefitted from his comp time scheme well before January 1, 2006. Unfortunately, the City does not have payroll and related records for the period prior to January 1, 2006 since it kept those records for a period of seven (7) years in compliance with I.R.S. guidelines and regulations. The period covered by the Sick Time Claim is between December 1, 2012 and April 30, 2013 during which he received payments for his unused sick time, including the



overpayment. For purposes of this memorandum, the relevant period will be limited to January 1, 2006 through April 30, 2013 (hereafter, the "Relevant Period").

2. Comp Time Claim (\$28,042.29):

The Comp Time Claim is based on Eldridge's unauthorized and unlawful accrual and use of comp time in lieu of using vacation time when he was took time off of work. By using comp time instead of vacation time when he was absent from work, Eldridge was able to preserve his vacation time such that he would be and was paid the value that preserved vacation time upon his retirement from the City. The documents which accompany this memorandum demonstrate that, contrary to Eldridge's representations to you, the City did not have a policy which allowed exempt City employees to accrue and use comp time in lieu of using vacation time.<sup>1</sup> Further, the City did not have a City-wide custom or practice whereby exempt City employees accrued and used comp time in lieu of vacation time. Rather, Eldridge concocted the comp time scheme for his and exempt Finance Department employees' personal benefit and gain. The absence of any such policy, custom or practice is further demonstrated by the fact that the City's payroll system made no provision for exempt City employees to record or track accrual and use of comp time. The payroll system only allowed non-exempt employees to record and track their accrual and use of comp time.

The City's outside legal counsel has requested Eldridge to refund to the City the \$28,042.29 he improperly received as a result of the comp time scheme. He has not responded to the City's request.

3. Sick Time Claim (\$14,167.46):

Prior to the effective date of Eldridge's retirement (January 28, 2013), he sought to "cash in" a portion (220.78 hours) of his unused sick time hours. The City either paid Eldridge directly or deposited into his health savings account the monetary value of the 220.78 unused sick time hours. Following the effective date of his retirement, Eldridge sought payout of his remaining unused sick time hours. However, in doing so, neither he nor the person who ultimately made this second calculation accounted for the value of the sick time previously paid out to Eldridge. Thus, Eldridge was paid twice (whether directly or through deposit into his personal health savings account) the value of the 220.78 sick time hours.

Given that the sick time issue was discovered very recently and Eldridge's failure or refusal to respond to the City's request for refund of what he received by reason of the comp time scheme, the City has not made any demand that he refund the \$14,167.46 overpayment he received.

**B. LAW APPLICABLE TO COMP TIME CLAIM:**

During our conversation, you indicated that you and your staff would need to undertake legal research, at least on the issues surrounding the Comp Time Claim. To assist you in this endeavor, I provide the following:

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<sup>1</sup> As discussed later in this memorandum, whether an employee is "exempt" or "non-exempt" is determined by the Illinois Minimum Wage Law, the federal Fair Labor Standards Act, and their respective companion regulations.

Illinois Minimum Wage Law provides that:

(1) Except as otherwise provided in this Section, no employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than 1 1/2 times the regular rate at which he is employed.

(2) The provisions of subsection (1) of this Section are not applicable to:

D. Any employee of a governmental body excluded from the definition of "employee" under paragraph (e)(2)(C) of Section 3 of the Federal Fair Labor Standards Act of 1938.

820 ILCS 105/4a(2)D, emphasis supplied. Thus, for purposes of the Comp Time Claim, Illinois law defers to the Fair Labor Standards Act of 1938 (hereinafter, the "FLSA") and the federal regulations promulgated pursuant thereto. 29 U.S.C. 201 *et seq.*; 29 CFR § 541.0 *et seq.* The relevant provisions of the FLSA and their accompanying federal regulations include:

- 29 U.S.C. § 213(a)(1) provides that:

"The provisions of section 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to –

(1) any employee employed in a bona fide executive, administrative, or professional capacity ...

- 29 CFR § 541.100 defines as exempt employees those persons who are employed in a bona fide executive capacity. A fair reading of this regulation demonstrates that Eldridge was employed in a bona fide executive capacity since he was the City's most senior financial and fiscal officer. Compare Eldridge's job description with 29 CFR § 541.102 which describes the type of activities which "management" comprises. See also, 29 CFR § 541.103 which provides that to be deemed employed in a bona fide executive capacity, one must customarily and regularly direct the work of two or more employees. Eldridge customarily and regularly supervised, directed and was responsible for more than two City employees including those who were exempt and non-exempt. Eldridge clearly qualified as exempt from the FLSA under the executive exemption.
- 29 CFR § 541.200 defines as exempt employees persons those who are employed in a bona fide administrative capacity. Eldridge clearly qualified as someone employed in a bona fide administrative capacity. Compare Eldridge's job description with 29 CFR § 541.201 which describes the kind of duties which qualify for the administrative exemption. See also, 29 CFR § 541.202 which describes the nature of the discretion and independent judgment which an employee exempt under the administrative exemption exercises. See also, 29 CFR § 541.203 which indicates that employees who lead a team of other employees on major projects qualifies for the administrative exemption. Eldridge clearly qualified as exempt from the FLSA under the administrative exemption.

- 29 CFR § 541.300 defines as exempt employees those employees who are deemed to be professionals in their respective fields. The professional exemption includes a requirement of possessing knowledge of an advanced type in a field of learning customarily acquired by a prolonged course of specialized intellectual instruction. See also, 29 CFR § 541.301 which provides that the field of learning includes the traditional professions expressly including accounting. Given that Eldridge was a certified public accountant and concentrated in municipal finance, he clearly qualified for the professional exemption.
- 29 CFR §§ 541.600, 602, 700, 703 define other criteria for qualifying as being employed in a bona fide executive, administrative and/or professional capacity including that an exempt employee be paid more than \$455.00 per week. Eldridge was clearly paid far more than the aforesaid amount.
- 29 CFR § 541.601 provides that a person who receives a total annual compensation of at least \$100,000 is deemed an exempt employee if he/she is employed in a bona fide executive, administrative or professional capacity. Eldridge's total annual compensation during the Relevant Period exceeded \$100,000.
- 29 CFR § 541.710 provides that employees of public agencies who meet the salary requirements of 29 CFR § 541.602 (i.e., earning a salary, as opposed to hourly wages, of at least \$455.00 per week) are not disqualified from being classified as exempt employees under 29 CFR § 541.100 (executive exemption), 29 CFR § 541.200 (administrative exemption), or 29 CFR § 541.300 (professional exemption).

**C. LAW APPLICABLE TO SICK TIME CLAIM:**

Illinois common law of misappropriation, unjust enrichment, conversion, breach of fiduciary duty, and constructive trust apply to the Sick Time Claim.

**D. SUMMARY OF BASIS FOR CITY'S COMP TIME CLAIM:**

My initial memorandum dated June 23, 2014 summarized the evidence which supports the City's Comp Time Claim. The City is producing the documents which you requested. Based on the documents being provided, this memorandum expands on the basis for the Comp Time Claim and addresses Eldridge's contention that the City had some sort of longstanding custom and practice of allowing exempt employees to accrue and use comp time in lieu of using vacation time. Unless provided otherwise, the following relates to the Relevant Period.

- Relevant City personnel and benefit policies provided that:
  - Non-exempt employees officially verify their hours worked by recording the same. Sec. 1.2.
  - Records of comp time accrued by non-exempt employees should be retained. Sec. 1.2.

- Questions about exempt or non-exempt status of employees under FLSA should be directed to the Personnel Manager. Sec. 1.2.
  - The City seeks to avoid or minimize the use of comp time by non-exempt employees. Sec. 1.5.
  - Non-exempt employees are eligible for overtime pay at the rate of one and one-half times their actual hourly rate for hours worked over 40 hours per week. Sec. 2.1.
  - The City shall remain in compliance with the overtime provisions of FLSA. Sec. 2.5.
  - Non-exempt employees shall be paid overtime or they, at their election, may earn comp time for hours worked in excess of 40 hours in a week. Sec. 2.5
  - “All compensatory time accrued and/or used will be recorded on the official payroll records submitted to the Finance Department.” Sec. 2.5.
  - “Unofficial compensatory time will **not** be accrued or used.” Sec. 2.5, emphasis in original.
  - Upon the City’s receipt of an irrevocable letter of resignation, the City will pay accrued vacation and sick pay as designated by the employee in the month prior to the month of termination, the month of termination, or within two months following the employee’s separation. Sec. 2.8.
- The City had no policy which permitted any exempt City employee to accrue comp time in lieu of vacation time.
  - The forensic accounting firm reviewed timesheets and payroll records for all exempt City employees and found that the accrual and use of comp time in lieu of vacation time was confined to exempt employees within the Finance Department including Eldridge. Thus, there was no City-wide custom or practice of allowing exempt City employees to accrue and use comp time in lieu of vacation time thereby allowing those employees to preserve as unused their vacation time.
  - Based on the forensic accountant’s report, of the unauthorized comp time accrued and used by exempt Finance Department employees (after eliminating uses of less than four hours), Eldridge’s use represented 79% of all the comp time used. The monetary value of the comp time taken by Eldridge, however, represented 87% of the value of all comp time taken by exempt Finance Department employees – i.e., \$28,042.29 out of \$32,207.22 for all exempt Finance Department employees. Clearly, Eldridge was, by far, the greatest abuser of his comp time scheme.
  - Out of an average of approximately 40 City employees who qualified as exempt employees annually, only Eldridge and five other Finance Department exempt employees accrued and used comp time in lieu of vacation time. No exempt employees in any other

City Department accrued and used comp time in lieu of vacation time. Hardly evidence of the City-wide practice which Eldridge contends.

- Looking at exempt employee use of comp time in lieu of vacation in increments of four (4) hours or more (hereinafter, the “four-hour rule”), only two exempt employees recorded and tracked accrual and use of comp time. These employees included Eldridge and one other exempt Finance Department employee.<sup>2</sup>
- Bill DeJarnette wrote a letter to the Illinois Department of Labor (“IDOL”) in support of Elizabeth Walden’s (former Accounting Supervisor) wage claim against the City which explains how and why Eldridge concocted the comp time scheme. Mr. DeJarnette, a subordinate of Eldridge, stated in his letter that Eldridge initiated the scheme because another Finance Department employee complained that he was taking far too much time off to play golf without deducting that time off as vacation time. Mr. DeJarnette also stated that the comp time log kept for Eldridge and the other exempt Finance Department employees was located on the City’s computer system in a place which was accessible only by those who needed to see the log – i.e., Eldridge and the other Finance Department exempt employees. He further states that all accrual and use of comp time for exempt employees was approved in advance by Eldridge during his employment with the City. Since Eldridge concocted the comp time scheme, it can hardly be said that he was following some longstanding custom and practice.
- In April 2013, one of Eldridge’s subordinates, Elizabeth Walden, wrote an e-mail to an employee in the Public Works Department, Barb Stiehl, Assistant to the Director of the Public Works Department. In the aforesaid e-mail Ms. Walden stated that –

Everyone has been set up except those classified as “management”. Since they are exempt employees they don’t get comp time. You will have to track that on the side.

Clearly, if there had been a longstanding custom and practice among exempt employees as contended by Mr. Eldridge, there would have been no need for Ms. Walden’s e-mail to the Assistant to the Director of the Public Works Department. As heretofore noted, the City’s forensic accountant found no evidence that any exempt employee in the Public Works Department tracked and recorded the accrual and use of comp time.

- Recently Ms. Walden executed an affidavit in connection with settling litigation between her and the City.<sup>3</sup> In her affidavit, Ms. Walden averred that:

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<sup>2</sup> There was no City policy which permitted exempt employees to use comp time in less than four-hour increments in lieu of using vacation time. Thus, there was, in fact, no “four-hour rule” in effect in the City. The forensic accountant created the “four-hour rule” as a conservative check on its methodology.

<sup>3</sup> In the Walden litigation, the City moved for leave to file a counterclaim against Walden to recover \$4,164.93. The forensic accountant determined that the aforesaid amount was the value of the unused vacation time which Ms. Walden had preserved by accruing and using comp time in lieu of vacation. Ms. Walden received that amount upon her separation from the City. The Court denied the City’s motion given how far along the parties were in the litigation. The Court indicated that the City was free to file a separate action against Ms. Walden to recover the aforesaid sum. Following the denial of the City’s motion, Ms. Walden and the City entered into and executed a settlement agreement pursuant to which she paid the City \$4,164.93 and dismissed her claims against the City. The settlement agreement also provided for the affidavit referenced above.

- From May 1996 until Eldridge's retirement she reported directly to Eldridge.
  - At the direction of and with the knowledge of Eldridge, compensatory time accrued and used by Finance Department exempt employees was recorded.
  - Exempt employees within the Finance Department, including Eldridge, had a practice of accruing and using comp time.
  - Eldridge approved every compensatory time entry.
  - The City's payroll system did not provide any way for exempt employees to record accrual or use of comp time.
  - When Finance Department exempt employees used comp time for absences, such use was recorded in the City's payroll system in a manner such that the City's payroll records reflected that the respective exempt employees had worked a full day even though they were absent for part or the entire day.
  - Exempt employees within the Finance Department were compensated for a full day of work on days when they had been partially or completely absent without any deductions being made from accrued vacation and sick leave balances.
  - All uses of comp time were approved by Eldridge.
  - Eldridge recorded excess time worked as comp time and used his accrued comp time when he was absent from work.
- As we discussed, the forensic accountant's final report to the City regarding the accrual and use of comp time only considered time taken in four-hour or greater increments (i.e., applying the four-hour rule). In other words, time taken in less than four-hour increments was not considered and, therefore, excluded from the computations for arriving at the value of comp time which Eldridge wrongfully used to preserve his vacation time for future payout at the time of his retirement. While the City does not seek to recover the full extent of Eldridge's allegedly improper use of comp time, it is worth noting that Mr. DeJarnette's letter to IDOL indicates that it was "The routine practice to allow straight time off for comp time earned in an hour for hour basis." Mr. DeJarnette makes no reference or allusion to any four-hour type rule.
  - As further evidence that Eldridge managed the City's Finance Department as his own little fiefdom, Eldridge failed to follow the City's policy provides which provided that –

... it is the policy of the City of Urbana that all deposits in a financial institution shall be 100% covered by FDIC insurance or collateralized by the financial institution to the amount of 125% of the market value of securities it owns. There shall be a written collateralization agreement approved by the institution's Board of Directors.



See, Policy and Procedure sec. 7.6, adopted 11-1-1995 concerning investments of City funds. Despite the aforesaid policy, Eldridge did not collateralize all of the City's depositions in one or more local financial institutions. Eldridge's practice of not collateralizing the City's deposits occurred during the recent deep recession which commenced in 2008 and from which the community and nation are still recovering. His conduct placed approximately \$5 million of City funds at risk.

- As another example of how Eldridge managed the City's Finance Department, in February 2001 he issued an e-mail to Finance Department employees which stated –

City policy on above says can only use sick days for illness of spouse/children up to a maximum of 3 days per year but allows dept. head to change the limit.

I am increasing the limit to 12 days per year. I interpret illness to include doctors appointments, etc.

If you have used vacation time over the past 3 years due to the 3 day limit, please tell delora, liz or bill the number of hours and I will change these to sick and credit back to vacation for you.

At the time Eldridge issued the above e-mail to his Finance Department employees, the City did not have any policy which allowed Eldridge unilaterally and across the board to quadruple the amount of sick time which an employee could in the event of a spouse's or child's illness. Likewise, the City had no policy which allowed Eldridge to credit back to Finance Department employees any vacation time used in the three years preceding the e-mail when any such employee used vacation time instead of sick time to care for an ill spouse or child. In short, Eldridge without any authority changed stated City policy for his and his staff's personal benefit and gain. It is very likely that such unauthorized policy change had a negative monetary impact on the City which, due to the absence of records, cannot be quantified at this time.

#### **E. OVERPAYMENT FOR SICK TIME:**

As noted in the memorandum I previously sent to you –

- On December 20, 2012, the City paid Eldridge \$9,616.52 for 149.86 hours of unused sick time.
- On January 31, 2013, the City paid Eldridge \$4,550.94 for another 70.92 of used sick time.
- The aforesaid unused sick time for which Eldridge received payment (220.78 hours) represented only a portion of his unused sick time.
- Following his retirement, Eldridge sought to "cash-in" the remainder of his unused sick time hours.

- The payout which Eldridge received or which was deposited into his health savings account as a result of his request following his retirement included the same 220.78 hours of unused sick time for which he had been previously paid.
- There is no City policy, custom or practice which allows a City employee, exempt or non-exempt, to receive double payment for accrued but unused sick time upon his or her retirement.

**F. REQUESTED DOCUMENTS:**

In your July 9, 2014 letter, you request the City to produce 13 categories of documents covering the entire period of Eldridge's employment with the City.<sup>4</sup> The documents are being sent under separate cover.

Please note that Eldridge commenced his employment with the City on November 19, 1979 and, thus, was employed over 33 years. Given that Internal Revenue Service rules and regulations generally require employers to maintain payroll records for a period of seven (7) years, the City no longer has the records requested for the period November 19, 1979 through December 31, 2005. Unless expressly provided otherwise, the City is producing the documents you have requested for the Relevant Period:

**Request No. 1 – Forensic Accountant's Report:** The City is producing for the Relevant Period.

**Request No. 2 – Payroll, Timesheets, Pay Records:** The City is producing for the Relevant Period.

**Request No. 3 – Human Resources Policies:** The City is producing for the Relevant Period.

**Request No. 4 – Comptroller Job Description:** The City is producing Eldridge's job description.

**Request No. 5 – Meeting Minutes:** There are no minutes of any meetings which involved approval of any payroll and payroll budget for Eldridge specifically. The City Council, on an annual basis, approved a budget for the City which included employee compensation information. No City budget was approved which included allocations for comp time use, much less comp time use in lieu of vacation time for exempt employees. The City is producing those portions of the annual budgets which relate to the Finance Department for the Relevant Period.

**Request No. 6 – Accounting for Eldridge's Accrual of Vacation and Sick Time:** The City is producing for the Relevant Period. The payroll and paystub records and timesheets which

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<sup>4</sup> Your July 19 letter caused me to contact you. During that telephone conference you informed of a conversation you had with Eldridge in which he stated that he was merely following so-called longstanding City policy. This memorandum refutes his assertion.

include this information are being produced. The forensic accounting report (response to Request No. 1) contains the analysis of this information.

**Request No. 7 – Accounting for Eldridge’s Use of Vacation and Sick Time:** The City is producing for the Relevant Period. The payroll and paystub records, timesheets and forensic accounting report include this information.

**Request No. 8 – Accounting for Eldridge’s Use of Comp Time:** The City is producing for the Relevant Period. The payroll and paystub records, timesheets and forensic accounting report which include this information.

**Request No. 9 – Accounting for When Eldridge Was Not At Work:** There is no specific accounting for when Eldridge was not at work. However, from the payroll and paystub records, timesheets and forensic accounting report one can determine when Eldridge was absent from work. This information is being produced.

**Request No. 10 – Accounting of Other Finance Department Employees’ Use of Comp Time:** The City is producing for the Relevant Period. The payroll and paystub records, timesheets and forensic accounting report which include this information.

**Request No. 11 – Policies and Bonds Relating to Employee Dishonesty:** You already have the comptroller’s bond which the City purchased and the application on which the bond was issued. To my understanding, a comptroller’s bond was issued to the City covering Eldridge in 1995 when we commenced his position as comptroller and that the same policy based on the same application was simply renewed until Eldridge retired. The City is producing those portions of the City’s general liability policy which dealt with employee dishonesty.

**Request No. 12 – Correspondence Regarding Eldridge’s Accrual and Use of Vacation and Sick Time:** To the City’s knowledge, there is no correspondence regarding Eldridge’s use of vacation and/or sick time since the City was unaware of the magnitude of any problem regarding Eldridge’s accrual and use of comp time in lieu of vacation time and Eldridge’s receipt of a payout for twice the amount actually due him for 220.78 hours of his unused sick time until after his retirement.

**Request No. 13 – Employee Handbooks:** The City’s employment policies are embodied in its Policies and Procedures which are being produced.

### **CONCLUSION**

The City seeks to recover at total of **\$42,209.75** which includes **\$28,042.29** in connection with its Comp Time Claim and **\$14,167.46** in connection with its Sick Time Claim.



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**DATE: July 29, 2014**  
**TO: Timothy E. Winship, Claims Director, RLI Surety.**  
**CC: Vacellia Clark.**  
**FROM: Jim Simon**

**RE: City of Urbana, Illinois Claim Under Comptroller Bond – Ronald C. Eldridge - Supplement.**

The City of Urbana (the “City”) wishes to supplement its claim under the comptroller’s surety bond. Specifically, the City seeks to include as part of its claim the amount which it paid to Brown Smith Wallace, LLC (the forensic accounting firm referred to in my previous memorandum) (hereinafter, “BSW”) which identified the magnitude of the comp time taken by Eldridge in lieu of vacation time and the value of that time which was paid out to Eldridge upon his retirement from the City. The City seeks to increase its claim by **\$43,119.68** which represents the amount which the City paid to BSW for the forensic audit. Thus, the total amount of the City’s claim should be **\$85,329.43**.

As demonstrated below, the BSW forensic audit was originally commissioned in connection with Ms. Walden’s dispute with the City regarding the termination of her employment with the City. It wasn’t until after BSW had determined that Eldridge had taken 79% of the total amount of comp time used in lieu of vacation<sup>1</sup> and had been paid 87% of the total paid out in connection with the comp time scheme that the City decided to seek recovery of the value of the time which Eldridge improperly received. (Please note that the other component of the City’s claim involves Eldridge’s improper receipt of \$14,167.46 for unused sick time even though he had previously been paid for that unused time.)

In late 2012 or early 2013, the City discovered that exempt Finance Department employees (including Eldridge and Ms. Walden) were recording and tracking accrual and use of comp time on a regular and periodic basis. The City had had no evidence that other exempt employees in other departments were doing the same. As discussed in my prior memorandum, the City’s policies only allow non-exempt employees of accruing and using comp time in lieu of being paid for overtime. Likewise, the City’s payroll system makes no provision for exempt employees to record or track accrual and usage of comp time. Further, the City did not know whether any of the exempt Finance Department employees were using comp time instead of

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<sup>1</sup> As discussed in my prior memorandum and below, the BSW forensic audit found that only exempt Finance Department employees took comp time instead of using vacation time. A total of 552.50 hours of comp time were taken by these employees which preserved that same amount of vacation time. Of the total, Eldridge and took 437.00 hours of comp time in lieu of vacation time. A total of \$32,207.22 was paid out by the City which represented the value of vacation time which was preserved when those exempt employees took comp time instead. Eldridge received \$28,042.29.



vacation time thereby preserving their vacation time for future use or payout upon departure from the City. Moreover, the City did not know the value, if any, of the comp time used instead of vacation time.

In June 2013, the Mayor chose not to renew Ms. Walden's appointment as the City's Accounting Supervisor. Thus, Ms. Walden's employment with the City ended with the close of the 2012-2013 fiscal year on June 30, 2013.<sup>2</sup> In response to the Mayor's action, Ms. Walden initiated a complaint against the City under its human rights ordinance. Urbana City Code 12-16 *et seq.* Given Ms. Walden's action, On July 18, 2013 and at the recommendation of its outside legal counsel who had been retained to handle the Walden matter, the City decided to commission BSW to undertake an audit based on the information regarding Ms. Walden's comp time activities which the City had discovered at the end of 2012 or in early 2013. On July 19, 2013, the City notified Ms. Walden that it did not believe that the human rights ordinance could be applied in an action brought by a former employee against the City.<sup>3</sup> However, the City decided to proceed with the BSW forensic audit since it believed that Ms. Walden would likely initiate some other form of action in another forum.

On August 22, 2013, Ms. Walden filed her lawsuit against the City. She essentially raised the same claim which she had sought to raise in her human rights ordinance complaint. Ms. Walden sought declaratory relief insofar as whether she had been improperly discharged from her employment. The City vigorously defended the suit. In mid-February 2014, the City was first notified by the Illinois Department of Labor that Ms. Walden had filed a wage claim back on August 5, 2013. The City responded to the wage claim on March 19, 2014. Thereafter, Ms. Walden replied to the City's wage claim response by, *inter alia*, submitting a letter written on her behalf by another former exempt Finance Department employee, William DeJarnette. In his letter, Mr. DeJarnette stated that Eldridge had concocted the comp time scheme and that all other exempt Finance Department employees sought Eldridge's approval when they sought to use comp time in lieu of vacation time.

In May 2014, BSW provided the City with its final forensic audit report. The report disclosed that (i) after certain adjustments, the only exempt City employees who preserved vacation time by taking comp time were Eldridge and Ms. Walden; (ii) Eldridge had taken 79% of all the comp time hours used; and (iii) Eldridge had received 87% of the total amount paid out for vacation time preserved through the comp time scheme.<sup>4</sup>

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<sup>2</sup> Illinois law and City ordinance confer upon the Mayor the sole discretion insofar as who she includes and who she excludes from her annual mayoral appointment list. 65 ILCS 5/3.1-30-5(a); Urbana City Ordinance Sec. 2-42. The Mayor's annual appointment list must be approved by the City Council. *Id.* On the other hand, the City Council has no role whatsoever when the Mayor chooses not to reappoint an employee. Ms. Walden had been a Mayoral appointee for the period July 1, 2009 through June 30, 2013.

<sup>3</sup> Based on the plain language of the human rights ordinance, the City would have been placed in conflicting positions as investigator of the complaint, prosecutor of the City, defender of the City, and judge of the City. If Ms. Walden could have prevailed in her ordinance violation complaint (which the City believed she could not in any event), the City also would have been placed in the position of levying a fine against itself and then collecting that fine.

<sup>4</sup> By reason of Eldridge's comp time scheme he and Ms. Walden preserved 437.00 and 115.50 hours of vacation time respectively. As a result, upon their departure from the City, Eldridge was paid \$28,042.29 and Ms. Walden was paid \$4,164.92.

Given the amounts which Eldridge and Ms. Walden received by reason of the comp time scheme and given Mr. DeJarnette's letter to the Illinois Department of Labor, the City decided to file a motion requesting leave to file a counterclaim against Ms. Walden and a third-party claim against Eldridge to recover the value of the vacation time which had been paid to them because of their use of comp time instead of vacation time. Included in the City's proposed counterclaim and third-party claim were allegations that Ms. Walden and Eldridge had conspired regarding the comp time scheme. The court ultimately denied the City's motion on the grounds that Ms. Walden's lawsuit and the discovery therein had progressed too far and because adding new claims and another party would delay the scheduled trial. However, the court informed the City and Ms. Walden that the City was free to file a separate suit to assert whatever claims it had against Ms. Walden and Eldridge. The City believes that the court's statement regarding the City's right to file a separate action against Ms. Walden and Eldridge was the catalyst which led to the settlement between Ms. Walden and the City. The City is providing a copy of the settlement agreement along with this supplement memorandum.<sup>5</sup> (The City has already provided the affidavit referred to in the settlement agreement.)

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<sup>5</sup> The settlement agreement resolved all matters between the City and Ms. Walden and reserved the City's right to recover against Eldridge.

## AFFIDAVIT OF TOD F. SATTERTHWAITE

TOD SATTERTHWAITE states and deposes as follows:


1. That I am a resident of Champaign, Champaign County, Illinois. From 1993 to 2005 I was Mayor of the City of Urbana, Illinois. I was elected three times to the position.
2. As Mayor, I was familiar with the personnel policy and practices of the City of Urbana.
3. I was aware that there was a policy and practice on compensatory time for non-exempt employees who would be entitled to overtime pay and other benefits if required to work more than 8 hours in a day or 40 hours in a week. I was also aware that the City of Urbana had employees who were exempt from the compensatory time policy. I was also aware that the City of Urbana had both exempt and non-exempt employees in every department, including Finance, Police, Fire, Community Development and Public Works.
4. The exempt employees would include the Chief of Police, the Fire Chief, the Director of Community Development, the Comptroller, the Director of Public Works and the City Attorney. Division heads within each department were also exempt employees.
5. During my time as Mayor, normal working hours for city employees were 40 hours per week and 80 hours in a two-week payroll period. There were shifts for certain departments such Police, Fire and Public Works, but the general hours for City employees were 8:00 a.m. to 5:00 p.m. Monday through Friday, with one hour off for lunch each day.
6. During my time as Mayor, the City of Urbana had an existing policy and practice that an exempt employee who worked more than eight hours in a work day or worked weekends so that the employee had worked more than 80 hours during a two-week payroll time period, would be allowed to be off work during normal working hours to offset the extra time that had been worked. These exempt employees were not paid overtime and did not accumulate compensatory time as non-exempt employees could, but worked pursuant to a "flex-time" policy.
7. It was routine for exempt employees to be required as part of their duties to attend Urbana City Council meetings on Monday evenings. These meetings would begin at 7:30 p.m. and often would last three hours or more. It was also routine for such exempt employees to have to work early mornings, evenings, weekends or even overnight hours as part of their job duties. The "flex-time" policy was used to fairly treat the employees who were exceeding the expected 80 hours worked during a payroll period. Exempt employees were not expected to use vacation time to offset time off work under these circumstances.
8. Ron Eldridge was the Urbana City Comptroller the entire 12 years I was in office. He was an exemplary city employee, always diligent and always professional in the discharge of his duties. He would submit the city's financial records to a professional accounting



firm for audit and review each year and there were never any critical audit findings to my recollection. Every year that I was Mayor, the City received the Certificate of Achievement for Excellence in Financial Reporting from the Government Financial Officers Association (GFOA). According to the GFOA website, this Certificate program was established to "encourage and assist state and local governments to go beyond the minimum requirements of generally accepted accounting principles, to prepare comprehensive annual financial reports that evidence the spirit of transparency and full disclosure and then to recognize individual governments that succeed in achieving that goal." Ron and his staff prepared and submitted all the reports necessary to receive this Certificate.

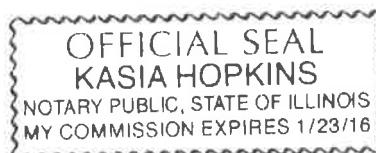
9. I was aware that many times Ron would be present when financial or budgetary issues were on the Urbana City Council agenda. His absence from such meetings would be the exception rather than the rule. Occasionally I would be in the Urbana City Building on weekends and would see Ron in his office working on financial issues.
10. I also knew that Ron would sometimes take time off during the week to play golf or for other personal reasons. I never received a complaint about this and considered Ron's use of time off to be consistent with my understanding of Urbana policy and practice for exempt employees.
11. I was also aware of other employees who would have duties that required them to be working outside of the normal 8 a.m. to 5 p.m. work day, including April Getchius, Community Development Director (City Council meetings, Urbana Plan Commission meetings, Zoning Board of Appeals meetings, Community Development Commission meetings, and other miscellaneous meetings), Bill Gray, Public Works Director (public hearings for transportation issues, intergovernmental meetings and City Council meetings), and Bruce Walden, Chief Administrative Officer (City Council meetings, intergovernmental meetings, and many other meetings for all departments). I was aware that due to the extraordinary schedule of hours these exempt employees worked they would not work a normal 8 a.m. to 5 p.m. day, and would receive their normal compensation on an 80-hour (every two weeks) payroll basis. I never received a complaint about the handling of their work schedule or record keeping of hours.

FURTHER AFFIANT SAYETH NOT

  
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Tod F. Satterthwaite

Subscribed and sworn to me the 22<sup>nd</sup> day of September, 2014

  
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NOTARY PUBLIC







Bill DeJarnette  
CPA

Ms. Charlaïne Cannon  
Wage Claim specialist  
Illinois Department of Labor  
160 LaSalle Street, Suite C-1300  
Chicago Illinois, 60601

Ms. Cannon,

I write this letter on behalf of Liz Walden a former employee in order to correct certain assertions made by the City of Urbana in regard to Wage Claim no. 13005130.

History of Urbana Finance Department Exempt Employee Comp time Log:

In the early 1980s Merdy Smith an employee in the Finance Department was very upset that Ron Eldridge, Comptroller, periodically took time off in the afternoons during the summer.

Although it was explained that he worked Saturdays, evenings, council meetings etc. this was not sufficient. Merdy then took her complaint to the Human Relations Director.

At that time, Ron Eldridge decided that all time worked or used in the 40 hour work week would be tracked by all employees including exempt in the Finance Department. This was done to protect employees from malicious claims and to provide a mechanism to track extra time worked. This "comp time log" was kept for all employees including Ron Eldridge the Department Head.

Application and Usage

The Finance Department exempt employee "comp time log" was not a personal record of Liz Walden. Employee comp time was tracked on a ledger by the Finance Department Office Supervisor who also kept all employee files locked in her office.

Originally, this was a manual ledger but later moved to an electronic version kept on the network drive and readily accessible to those who needed to see it.

All employee accrual and use of comp time including exempt comp time was approved in advance and noted on the city bi weekly payroll time sheets approved by Ron Eldridge and later me.

Employee use of time:

The routine practice was to allow straight time off for comp time earned in an hour for hour basis.

  
Bill DeJarnette

