

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
AT CINCINNATI

RONALD D. MELL, SR., <i>et al.</i> ,)	
On Behalf of Themselves and)	
All Others Similarly Situated,)	
)	
Plaintiffs,)	CASE NO. 1:08-cv-00715-SAS-TSH
)	
vs.)	
)	
ANTHEM, INC., <i>et al.</i> ,)	(<u>Oral Hearing Requested</u>)
)	
Defendants.)	

**PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT
ON LIABILITY ONLY AGAINST THE ANTHEM DEFENDANTS**

Plaintiffs, the Estate of Frieda M. Wilmes, Robert K. Espel and James C. Matacia, hereby move the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for an Order granting them partial summary judgment and finding Defendant, the City of Cincinnati, Ohio (the “City”), liable to Plaintiffs and all others similarly-situated City employees and retirees on the following seven (three contract and four tort)¹ claims for relief:

- (i) breach of the Guaranty Policy for Future Groups (Fourth Claim for Relief);
- (ii) breach of the Guaranty Policy for Current Groups (Ninth Claim for Relief);
- (iii) breach of agency agreement (Sixteenth Claim for Relief);
- (iv) breaches of fiduciary duties (Sixth and Thirteenth Claims for Relief);
- (v) conversion and misappropriation (Eleventh Claim for Relief); and
- (vi) fraud, concealment and misrepresentation (Seventeenth Claim for Relief).

The grounds for Plaintiffs’ motion for partial summary judgment are there are no genuine issues as to any material fact and Plaintiffs are entitled to judgment against the City as a matter of

¹ Plaintiffs voluntarily dismiss their claim against the City for breach of the Group Policy (Seventh Claim for Relief).

law with respect to each of these claims, as more fully appears from the Memorandum of Law in support of this motion attached hereto and incorporated by reference herein, and the Appendix of Evidence that was separately filed with the Court pursuant to Local Rule 7.2(e).

Accordingly, Plaintiffs request that the Court grant their motion for partial summary judgment as to liability only against the City.

Respectfully submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Plaintiffs' Motion for Partial Summary Judgment on Liability Only Against the City of Cincinnati, Ohio, was filed electronically on September 29, 2009, and that notice of this filing will be sent by operation of the Court's electronic filing system to Christopher G. Scanlon, chris.scanlon@bakerd.com, and Paul A. Wolfla, paul.wolfla@bakerd.com, BAKER & DANIELS LLP, 300 N. Meridian Street, Suite 2700, Indianapolis, Indiana 46204, Attorneys for the Anthem Defendants, and to Terrance A. Nestor, Assistant City Solicitor, Room 214, City Hall, 801 Plum Street, Cincinnati, Ohio 45202, terry.nestor@cincinnati-oh.gov, Attorney for the City of Cincinnati, Ohio, who are registered with the Court's electronic filing system and who may access this filing through the Court's system.

/s/ Eric H. Zagrans

Eric H. Zagrans