

IN CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

ST. LOUIS COUNTY, MISSOURI,)
 et al.,)
)
 Plaintiffs,)
)
 v.) Case No. 04CV323913
)
STATE OF MISSOURI,)
)
 Defendant.)

State’s Response to Plaintiffs’ Statement of Facts

Pursuant to Rule 74.04(c)(2), the State responds to each of plaintiffs’ separately numbered paragraphs as follows:

1. Paragraph 1 is a legal conclusion concerning the effective date of §571.101, RSMo (Cum. Supp. 2003), and not a factual statement supported by evidence, per Rule 74.04(c)(1). Therefore, the State need not admit or deny the paragraph. *See Universal Underwriters Ins. Co. v. Dean Johnson Ford, Inc.*, 905 S.W.2d 529, 533 (Mo. App. W.D. 1995)(for purposes of responding to motion for summary judgment, non-movant need not controvert alleged facts that are not facts, but legal conclusions). Though it is immaterial to the issues in this case, it should be noted – as shown in the State’s Suggestion in Opposition to Plaintiffs’ Motion for Summary Judgment (filed herewith) – that Plaintiffs’ assertion regarding the effective date of the Act is incorrect.

- 2. The State admits paragraph 2, a recitation from the parties’ Stipulation of Facts.
- 3. The State admits paragraph 3, a recitation from the parties’ Stipulation of Facts.

4. Paragraph 4 contains both a recitation of a portion of the St. Louis County Charter, and a legal conclusion concerning the effect thereof, not a factual statement supported by evidence, per Rule 74.04(c)(1). Therefore, the State need not admit or deny the paragraph. *See Universal Underwriters, supra.*

5. Paragraph 5 contains a recitation of Mo. Const. art. X, §§16 and 21, and not a factual statement supported by evidence, per Rule 74.04(c)(1). Therefore, the State need not admit or deny the paragraph. *See Universal Underwriters, supra.*

6. The State admits paragraph 6, a recitation from the parties' Stipulation of Facts.

In the copy of Plaintiffs' Statements of Material Facts served on the State, the document appears to end with Paragraph 6, though there is no conclusion, signature block, or other closing. Because Paragraph 6 appears at the bottom of the last page of that document, it appears that additional Paragraphs may have been attached and lost, or intended but never attached. In that case, the State reserves the right to respond to any such additional Paragraph(s).

There is no dispute as to the material facts in this case, but that does not end this Court's analysis. *ITT Comm. Fin. Corp. v. Mid-America Marine Supp. Corp.*, 854 S.W.2d 381, 380 (Mo. banc 1993). Plaintiffs, in order to be entitled to summary judgment, must show that these undisputed facts entitle them to judgment as a matter of law. *Id.* As the State's Suggestions in Opposition to Plaintiffs' Motion for Summary

Judgment show – and as the State’s Motion for Summary Judgment and Suggestions in Support thereof also show – the State is entitled to judgment as a matter of law in this case and the Plaintiffs’ are not so entitled.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing was mailed, postage prepaid, on this _____ day of September, 2004, to:

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