

MCLAWHORN
— & ASSOCIATES —

October 29, 2014

County of Beaufort
c/o Randell Woodruff, County Manager
121 W. 3rd Street
Washington NC 27889

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Chocowinity Emergency Medical Services, Inc. v. County of Beaufort

Dear Mr. Woodruff:

Enclosed please find a Summons and Complaint that our firm has filed on behalf of Chocowinity Emergency Medical Services, Inc. Thank you.

Very truly yours,

MCLAWHORN & ASSOCIATES



Hillary L. Lynn
Legal Assistant

Enclosures

— ATTORNEYS AT LAW —

501 GREENVILLE BOULEVARD SE—GREENVILLE, NORTH CAROLINA 27858
POST OFFICE BOX 8188—GREENVILLE, NORTH CAROLINA 27835-8188
TELEPHONE (252) 321-0473—FAX (252) 321-0482

STATE OF NORTH CAROLINA

File No.

14CVD 902

Beaufort County

In The General Court Of Justice

District Superior Court Division

Name Of Plaintiff
Chocowinity Emergency Medical Services, Inc. c/o Charles L. McL
Address
501 SE Greenville Boulevard
City, State, Zip
Greenville NC 27858

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3, 4

VERSUS

Name Of Defendant(s)
County of Beaufort

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
County of Beaufort
c/o Randell Woodruff, County Manager
121 W. 3rd Street
Washington NC 27889

Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)
Charles L. McLawhorn, Jr.
Serenity Rasmussen
501 SE Greenville Boulevard
Greenville NC 27858

Date Issued
10-29-14
Time
8:45
 AM
 PM
Signature
Haven C Ward
 Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement
Time
 AM
 PM
Signature
 Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

NORTH CAROLINA
BEAUFORT COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

2014 OCT 29 A 8:45

FILE NO. 14 CVD 902

Chocowinity Emergency Medical
Services, Inc.,

BEAUFORT COUNTY, N.C. S.C.

Plaintiff,

KCW

v.

County of Beaufort,

Defendant.

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says as follows:

INTRODUCTION

1. In this action, Plaintiff Chocowinity Emergency Medical Services, Inc. ("CEMS") seeks an order declaring that neither the County of Beaufort, North Carolina (the "County"), nor any agency or department thereof, possesses the authority to interfere with any lawful business activity that CEMS may conduct separate and apart from the performance of its obligations pursuant to the terms of a contract entered into on September 3, 2002 (the "Contract").

2. Plaintiff also seeks immediate and permanent injunctive relief to end the current, and to prohibit future, irreparable harm wrought by the County's interference with CEMS's lawful business activities.

PARTIES

3. Plaintiff is a domestic non-profit corporation with its principal place of business in Beaufort County, North Carolina.

4. Defendant County of Beaufort is a body politic and corporate of the State of North Carolina as set forth in N.C. Gen. Stat. § 153A-11.

JURISDICTION AND VENUE

5. Plaintiff's claims alleged herein arise under the common law of North Carolina and N.C. Gen. Stat. §§ 1-253 *et seq.* and 1A-1, Rules 57 and 65.

6. This Court has personal jurisdiction over Defendant pursuant to N.C. Gen. Stat. §1-75.4.

7. This Court is the proper venue for this action pursuant to N.C. Gen. Stat. §1-82.

8. This Court has subject matter jurisdiction over this action because the controversy arises from the valid Contract between the County and CEMS.

FACTUAL ALLEGATIONS

9. In 2002, the County and CEMS entered into the Contract (attached hereto as Exhibit A), the terms of which require CEMS to dispatch upon call the necessary equipment and personnel deemed adequate to provide emergency medical care in any area of the County.

10. The Contract does not bestow upon the County, or any employee, agent, or department thereof, the authority to regulate the business activities of CEMS, an independent non-profit corporation, other than those activities expressly mandated and/or described within the Contract.

11. CEMS is one of only two paramedic-level emergency response squads that provide services within the County.

12. CEMS currently owns two emergency transport vehicles and employs the staff necessary to provide one emergency medical service response team 24 hours a day, seven days a week.

13. In early 2014, CEMS learned of the growing demand in the County for transfers between medical facilities and the dramatic increase in wait times for patients requiring transport from within the County to Vidant Medical Center in Greenville, Pitt County, North Carolina.

14. In a letter dated July 7, 2014 (the "July Letter," attached hereto as Exhibit B), CEMS notified the County of its intention to begin providing paramedic-level interfacility transfers.

15. With the increased revenue from these transfers, CEMS planned to increase its personnel so it could consistently provide two emergency medical response teams 24 hours a day, 7 days a week.

16. In the July Letter, CEMS assured the County that CEMS's top priority would remain the provision of emergency response services to persons within the County and that it would never agree to an interfacility transfer if one of the two response teams was already out on an emergency call.

17. While relying on the anticipated increased revenue from interfacility transfers, CEMS ordered an additional emergency response vehicle at a cost of \$185,000.

18. The acquisition of this third emergency response vehicle, along with the additional personnel, will enable CEMS to have two response teams available 24 hours, seven days a week and a backup vehicle should one of the other vehicles become inoperable.

19. On July 25, in response to the July Letter, John W. Pack, Jr., the Emergency Manager of Beaufort County Office of Emergency Services, informed CEMS of his belief that the Contract prohibits CEMS from performing interfacility transfers.

20. CEMS then contacted Randall Likens, Eastern Regional Systems Specialist for the North Carolina Office of Emergency Medical Services.

21. Mr. Likens informed CEMS via email that the County has regulatory authority only on emergency responses agencies “where service begins and ends within the county limits.”

22. On August 5, 2014, Mr. Pack sent a letter to Vidant Beaufort Hospital (the “August Letter,” attached hereto as Exhibit C) in Washington, North Carolina, stating that CEMS was “not authorized” to make interfacility transfers.

23. Because of this letter, grounded in a misinterpretation of the Contract, Vidant Beaufort Hospital has not asked, and will not ask, CEMS to perform interfacility transfers from within Vidant Beaufort Hospital to Vidant Medical Center in Greenville, North Carolina or any other facility outside the boundaries of the County.

24. Because of the scarcity of emergency response services with the County, the inability of CEMS to perform these interfacility transfers significantly increases the time patients must wait for transfer to other facilities, e.g., the East Carolina Heart Center at Vidant Medical Center.

25. Without the opportunity to perform these interfacility transfers, CEMS cannot recruit the additional personnel necessary to provide the second 24-hour response team.

26. This unauthorized restriction on CEMS’s business substantially and irreparably harms CEMS’s financial condition and renders it unable to pay for the third emergency response vehicle.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray to this Court as follows:

1. That the Court enter an order declaring that the County has no authority, by contract or otherwise, to prohibit CEMS from providing interfacility transfers;

2. That the Court enter an order enjoining the County, or any employee, agent, or department thereof, from interfering with CEMS's lawful business activities, including the provision of interfacility transfers from within the County to facilities outside the County.


3. That the Court award Plaintiffs their attorney's fees and costs incurred by them in connection with this action; and

4. For such other and further relief as the Court deems just and proper.

This the 28th day of October, 2014.

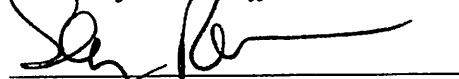
McLAWHORN & ASSOCIATES, P.A.

By:



Charles L. McLawhorn, Jr.
N. C. Bar no. 07419
P. O. Box 8188
Greenville, NC 27835-8188
Tel. (252) 321-0473
Fax (252) 321-0482

Counsel for Plaintiffs



Serenity S. Rasmussen
N. C. Bar no. 44730
P. O. Box 8188
Greenville, NC 27835-8188
Tel. (252) 321-0473
Fax (252) 321-0482

Counsel for Plaintiffs

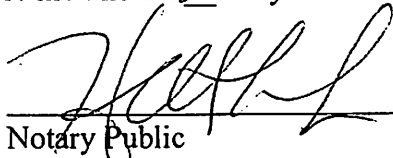
VERIFICATION

Jay McRoy, being first duly sworn, deposes and says that he is the Chairman of the Board of Chocowinity Emergency Medical Services, Inc., Plaintiff in the above-entitled action; that he has read the foregoing Complaint and that the same is true to the best of his knowledge, except as to those matters and things stated upon information and belief, and as to those he believes them to be true.

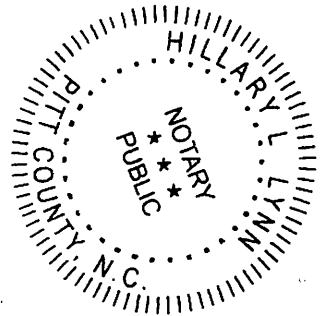

Jay McRoy

STATE OF NORTH CAROLINA
COUNTY OF PITT

Sworn to and subscribed before me this the 28th day of October, 2014.


Notary Public

My commission expires: 06/14/15



TUESDAY, SEPTEMBER 3, 2002

NORTH CAROLINA
BEAUFORT COUNTY

CONTRACT FOR RESCUE/EMS SERVICES

On motion by Commissioner Frank Bonner, seconded by Commissioner Carolyn Harding, the Board voted unanimously adopting the following contract form for Rescue/EMS Services with the County:

BEAUFORT COUNTY CONTRACT FOR RESCUE/EMS SERVICES

NORTH CAROLINA
BEAUFORT COUNTY

This Contract for Rescue/Emergency Medical Services, made and entered into this 3rd day of September, 2002, by and between the County of Beaufort, a body politic and corporate of the State of North Carolina: and Chocowinity EMS, Inc., hereafter referred to as Rescue/EMS squad,

WITNESSETH:

That for and in consideration of the covenants and agreements of the parties hereto, and pursuant to the provisions of Chapter 160A, section 487 and Chapter 143-517 of the N.C. General Statutes enabling and authorizing financial support for rescue squads; providing the scope of training for EMS personnel in accordance with G.S. 143-514, and other applicable statutes relating to EMS/Rescue operations as classification of Rescue or EMS squad will be defined by the N.C. OEMS, N.C. Department of Insurance and N.C. Association of Rescue Squads terms; the parties to this contract agree as follows:

1. The Rescue/EMS squad agrees to furnish and provide continuing Rescue/EMS service to all persons within the district boundaries and response area of the Rescue/EMS squad in the incorporated and unincorporated areas of Beaufort County. The Rescue/EMS squad will dispatch upon call within the approved boundaries necessary equipment and personnel deemed adequate to provide emergency medical care in the response area served or when requested to provide mutual aid within another squads boundaries as addressed in the County of Beaufort Selective Mutual Aid Pact Guidelines.
2. The squads may at their discretion charge for calls when authorized by their squad's Board of Directors. All funds collected will go directly to the squad from the agency doing the billing and collections as stated in the contract between these two parties. The individual squads will pay all insurance coverage such as general liability and workers compensation. Grant Fund applications are sole responsibility of the Squad.
3. As a part of this contract, the Squad agrees to furnish the Beaufort County Emergency Management Coordinator the following information by the designated time:

Exhibit A

TUESDAY, SEPTEMBER 3, 2002

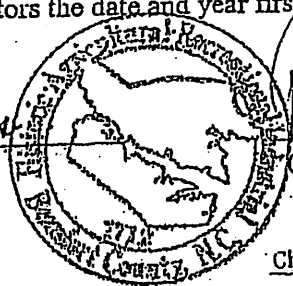
<u>Item</u>	<u>Due Date</u>
Log sheets of their monthly calls	quarterly
Worker's Compensation Certificate of Insurance	June 30
Membership Roster with officers and telephone numbers	June 30
Member additions/removals	Immediate

4. The Squad further agrees to maintain all necessary reports, records, logs, insurance coverage, equipment maintenance, and accounting procedures as needed to successfully obtain and maintain the level of service license registered with the North Carolina State OEMS, to comply with Federal Communication Rules and Regulations and County Guidelines in regard to operation on the County Communications System.
5. It is required that all squads use the PREMIS form from N.C. OEMS to maintain unity in the system statistics database.
6. In consideration of the above, the County will collect district service taxes and remit the pro rata share to the Squad within thirty (30) days of collection. Any Squad that does not comply to this contract may have its service tax funds withheld at the discretion of the County Manager until such time as the Squad is in compliance with all terms of this contract.
7. This contract is contingent on availability of funds collected from service district taxes assessed to defray the cost of operation and approved by the Beaufort County Board of Commissioners with the adoption of the budget each fiscal year.
8. This contract may be terminated by either party at the end of each fiscal year or, if earlier, by giving 180 days prior written notice by certified mail of its intent to terminate. All tax monies for the service district will terminate with the contract cancellation.

In witness whereof the County of Beaufort has caused this instrument to be signed in its name by its Chairman of the Board of County Commissioners and attested by its Clerk to the Board, and Rescue Squad has caused this contract to be signed in its name by its President and attested by its Secretary of the Board of Directors the date and year first above entered.

ATTEST:

Sharon C. Super
 Clerk to the Board



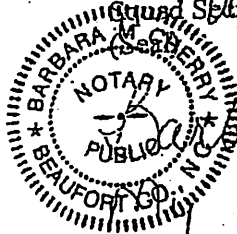
[Signature]
 Chairman, Board of County Commissioners

(Seal)
 ATTEST:

Jiffrey Bland
 Squad Secretary

Chocowinity Rescue/EMS Squad

Sharon H. Buck
 President, Squad Board of Directors



Barbara M. Cherry - Notary
Commission Expires - July 24, 2007

Exhibit A

TUESDAY, SEPTEMBER 3, 2002

NORTH CAROLINA
BEAUFORT COUNTY

I, Sharon C. Singleton, Clerk to the Board of County Commissioners, do hereby certify that the above is a true and verified copy of a resolution adopted by the Beaufort County Board of Commissioners in regular session on Tuesday, September 3, 2002.



Sharon C. Singleton

Sharon C. Singleton
Clerk to the Board

Exhibit A



CHOCOWINITY EMS

7/7/2014

John Pack, Emergency Manager
Beaufort County Office of Emergency Services
1420 Highland Drive
Washington, NC 27889

Mr. Pack,

We are notifying you of the intent of Chocowinity Emergency Medical Services, Inc. to begin Paramedic interfacility transfers as of August 1st 2014.

We will not be performing non-emergency transports and will be transferring patients to a hospital facility outside the County borders and therefore do not fall under the requirements of the EMS System Oversight Ordinance, Section 3.

The addition of this service will not hinder our obligations under our current contract, or any of the provisions outlined in the draft contract that our service has received from your office. In fact we believe, by the wording in the draft contract that we received, the County supports our efforts to provide interfacility transfers by the wording "Chocowinity EMS squad shall not be utilized ... for interfacility (hospital) transfers unless deemed appropriate by Medical Control." Rest assured that we will never conduct an interfacility transfer unless it is deemed medically necessary by the Medical Control Physician.

As of August 1st 2014 we will staff two ambulances 24 hours a day and 7 days a week at the Paramedic level. This will allow us to perform Paramedic Interfacility Transfers without utilizing our primary Paramedic response ambulance. Another benefit of this expanded coverage will be an additional staffed Paramedic ambulance coverage at times where we currently only have one. Although this ambulance may perform the occasional interfacility transfer, the amount of time that it will spend in service within the County will prove to be a benefit. Our intent is not to send our second ambulance for an interfacility transfer when our first ambulance is already responding to a 911 call. As always, we will keep the 911 calls as our priority.

In doing research on this topic, I have found that there is a need for this service to be located within the County. Our Medical Director has expressed that the wait times for a patient to be transferred to Vidant Medical Center in Greenville has been growing due to an increase in demand within the hospital system as well as the distance for other services to respond with a Paramedic level ambulance. She has also stated no opposition to our intent.


After speaking with Randall Likens from the NCOEMS, we have determined that no modifications to our service level are required. There are also no other requirements, outside of our normal operation, that we would have to meet in order to provide Paramedic Interfacility Transfers.

Exhibit B

Since Chocowinity Emergency Medical Services, Inc. is a designated non-profit organization, the additional revenue that we will see from transfer billing will only be used to expand our service abilities and improve the services that we provide to the Citizens of Beaufort County without the requirement of additional tax funding. As you have mentioned before, the expansion of the EMS system as a whole can be expensive and therefore requires some creative solutions. We hope to use this additional revenue to also provide benefits for full-time employees in the near future, which will allow our entire EMS system to be more self-sufficient and rely less on providers that primarily work in other Counties or organizations.

As always, we appreciate the opportunity to be a part of the development of the Beaufort County Emergency Medical Service system.

Sincerely,



DANA HUNNEWELL
AAS NR/CCEMT-P

Dana Hunnewell AAS NR/CCEMT-P
Captain
Chocowinity EMS, Inc.

cc: Randell Woodruff, Jay McRoy

Beaufort County

Emergency Management, Fire Marshal & Emergency Services

August 5, 2014

Wident Beaufort Hospital
Attn: You Montez-Rhodes
628th East 12th Street
Washington, NC 27889

Dear Mrs. Montana-Rhodes:

This is to officially notify you that Chocowinity EMS is not authorized to perform interfacility transfers. Any previous information to that regard that has been received by your facility is incorrect.

This agency will inform you should that status be changed by the Beaufort County Commission, the Beaufort County Manager or the undersigned.

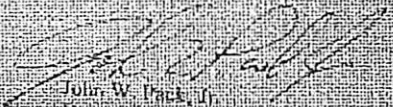

John W. Pack, II
Director and PMS Administrator for
Beaufort County Emergency Services

Exhibit C