

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Orange County Rescue Squad, Inc.,)	
a non-profit North Carolina Corporation,)	
on behalf of itself and others similarly situated,)	Case No. 1:09-cv-244
)	
-and-)	
)	
Gary Clark,)	
on behalf of himself and others similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
County of Orange, a county existing)	
under the laws of the State of North Carolina,)	
)	
-and-)	
)	
Colonel F. Rojas Montes de Oca, Jr.,)	
Orange County Emergency Services Director,)	
in his official capacity,)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT – CLASS ACTION

NOW COMES THE PLAINTIFFS, Orange County Rescue Squad, Inc., on behalf of itself and others similarly situated complaining and Gary Clark on behalf of himself and others similarly situated, by and through counsel of record, Jeremy Todd Browner, Esq., of The Law Office of Jeremy Todd Browner, PLLC, amends their complaint pursuant to Federal Rules of Civil Procedure 15(a)(1) and complain of the County of Orange and

Colonel F. Rojas Montes de Oca, Jr., the Defendants, and for its cause of action Plaintiffs respectfully shows:

JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C. §1983 and North Carolina state common law claims.
2. The U.S. District Court has jurisdiction over the federal matters pursuant to 28 U.S.C §§ 1331 and 1343(3) and the pendant state claims pursuant to 28 U.S.C § 1367(a).
3. Plaintiffs seeks damages and equitable relief pursuant to 42 U.S.C. § 1983 for the violations of its constitutional rights.
4. Plaintiffs also seeks attorney's fees, costs of suit, expert fees, and interest pursuant to 42 U.S.C. § 1988.
5. Pursuant to 28 U.S.C §1391(b), venue is placed in the Middle District of North Carolina because it is where all the defendants are located and where the events complained of occurred.

THE PLAINTIFFS

6. The Orange County Rescue Squad, Inc., (hereinafter known as "Rescue Squad") is a North Carolina not-for-profit corporation that provides rescue and emergency transport services to the citizens of Orange County, its principal place of business is in Hillsborough, North Carolina, and it maintains a squad house to store its rescue apparatus and ambulances in Orange County, North Carolina.

7. The Rescue Squad is a person within the meaning of 42 U.S.C. § 1983.
8. Gary Clark is an individual domiciled in Orange County, North Carolina, and is a fully qualified North Carolina licensed paramedic.
9. Gary Clark is a person within the meaning of 42 U.S.C. § 1983.

THE DEFENDANTS

10. Defendant County of Orange (hereinafter known as “OC”) is a county existing under the laws of the State of North Carolina.
11. OC is a person within the meaning of 42 U.S.C. § 1983.
12. Defendant Colonel F. Rojas Montes de Oca, Jr. (hereinafter known as “Colonel Montes de Oca”), is the duly appointed and serving Orange County Emergency Services Director and is sued in that official capacity.

INTRODUCTION

13. The Rescue Squad has been in operation since 1968 providing volunteer rescue and emergency medical transport service to the citizens of Orange County.
14. During January 2005, OC awarded a franchise to the Rescue Squad to perform heavy rescue extrication and emergency medical transport in accordance with North Carolina Association of Rescue and EMS (hereinafter known as “NCAR EMS”).
15. On June 27, 2008, at or about 4:30 PM, Colonel Montes de Oca, called Chief Brian Matthews (hereinafter known as Chief Matthews) of the Rescue Squad by telephone and issued a “stand-down” order.

16. This “stand-down” order prevented the Plaintiff Rescue Squad from using OC’s 911 Dispatch System to be assigned to emergency calls and thus prohibits the Plaintiff Rescue Squad from being dispatched to any emergency calls to assist the citizens of Orange County who are in distress.
17. This action was later followed up with a memo from Colonel Montes de Oca stating law enforcement would be summoned if the Rescue Squad’s members were found on any emergency scene administering aid to victims.
18. In efforts to resolve any issues between the Rescue Squad and OC, Chief Brian Matthews attempted to discover the source of concern by meeting with Colonel Montes de Oca on several occasions.
19. It appears that although the meetings were amicable, Colonel Montes de Oca did not lift the “stand-down” order in respect to the rescue operations nor did he put the emergency transport operations of the Rescue Squad back into service as was in practice prior to the “stand-down” order.

FIRST CAUSE OF ACTION

Federal Due Process Violation

20. All prior paragraphs are incorporated by reference.
21. To the extent, if at all, that the Court finds that OC and Colonel Montes de Oca is entitled to immunity from the state law claims of breach of contract, breach of implied contract, state constitutional violations, or these claims fail, the Rescue Squad will not have an adequate remedy at law against these defendants.

22. Under the Fourteenth Amendment to the federal constitution the Rescue Squad has a property interest in the following:
- a. The franchise agreement entered into with OC;
 - b. Being included and using the OC's Computer Aided Dispatch system;
and/or
 - c. The dispatch protocol is use prior to June 27, 2008.
23. That property interest can only be taken from someone situated like the Rescue Squad upon written notice of the charges and the opportunity to request a full hearing on those charges.
24. On March 6, 2009, the undersigned counsel sent a letter to all of Orange County Board of Commissioners and the Orange County Manager requesting a hearing on the matter of the "stand-down" order.
25. In the response to the undersigned counsel's letter the Orange County Staff Attorney ignored the request for a hearing.
26. Acting under color of state law and in violation of the Due Process Clause of the United States Constitution, the defendants violated the Rescue Squad's constitutional rights by refusing to have any hearing on the issue of the "stand-down" order.
27. Defendants' actions were and are being undertaken under color of State law and have deprived and continue to deprive the Rescue Squad of its federal rights, privileges and/or immunities.

28. Defendants' action represented official policy of OC.
29. Defendants' actions are unlawful and done for the purpose of interfering with Plaintiff Rescue Squad's rights.
30. By reason of Defendants' actions, Plaintiff Rescue Squad seeks recovery in damages from OC in an amount of excess of \$400,000.
31. In addition, the Rescue Squad seeks a preliminary and permanent injunction and declaratory relief rescinding the "stand-down" order and returning the dispatch protocol to what existed to prior to June 27, 2008.

SECOND CAUSE OF ACTION

Federal and State "Equal Protection" Violation

32. All prior paragraphs are incorporated by reference.
33. Although the Rescue Squad's Agreement with OC calls for "Primary Ambulance Provider (Special Events Coverage Only)" prior to the June 27, 2008, "Stand-Down" Order the Rescue Squad regularly provided ambulances to OC when emergency transport assets were depleted and no other units were available.
34. After the "Stand-Down" order OC only uses the Rescue Squad ambulances during special events.
35. South Orange Rescue Squad, Inc. (hereinafter known as "South Orange"), another rescue service that is located in Orange County has a similar franchise agreement with OC that only calls for "Primary Ambulance Provider (Special Events Coverage Only)"

36. However, OC uses South Orange's ambulances whenever it is depleted of ambulance assets.
37. OC regularly allows South Orange to place a ambulance on every Thursday, Friday, Saturday, Sunday, as a Primary Call Ambulance in knowing violation of the Franchise Agreement.
38. The Rescue Squad has been treated differently from others similarly situated under the color of state law.
39. The unequal treatment is the result of intentional or purposeful discrimination.
40. Defendants' action represented official policy of OC.
41. That uniformity, equal protection is, for all practical purposes, the same under both the State and Federal Constitutions.
42. By reason of Defendants' actions, Plaintiff Rescue Squad seeks recovery in damages from OC in an amount of \$400,000.
43. In addition, the Rescue Squad seeks injunctive and declaratory relief prohibiting OC and Colonel Montes de Oca from treating the Rescue Squad differently from other rescue services similarly situated in Orange County.

THIRD CAUSE OF ACTION

State Due Process Violation (State Constitution, N.C. Const., Art. I, §§ 1, 19)

44. All prior paragraphs are incorporated by reference.

45. To the extent, if at all, that the Court finds that OC and Colonel Montes de Oca is entitled to immunity from the state law claims of breach of contract, breach of implied contract, state constitutional violations, or these claims fail, the Rescue Squad will not have an adequate remedy at law against these defendants.

46. Thus, the Rescue Squad brings a claim, in the alternative, under the North Carolina Constitution against OC and Colonel Montes de Oca.

47. Under Article I, §§ 1, 19, of the state constitution, the Rescue Squad has a property interest in the following:

- a. The franchise agreement entered into with OC;
- b. Being included and using the OC's Computer Aided Dispatch system;
and/or
- c. The dispatch protocol in use prior to June 27, 2008.

48. That property interest can only be taken from someone situated like the Rescue Squad upon written notice of the charges and the opportunity to request a full hearing on those charges.

49. On March 6, 2009, the undersigned counsel sent a letter to all of Orange County Board of Commissioners and the Orange County Manager requesting a hearing on the matter of the "stand-down" order.

50. In the response to the undersigned counsel's letter the Orange County Staff Attorney ignored the request for a hearing.

51. Acting under color of state law and in violation of the Due Process Clause under Article I, §§ 1, 19, of the state constitution, the defendants violated the Rescue Squad's constitutional rights by refusing to have any hearing on the issue of the "stand-down" order.

52. Defendants' actions were and are being undertaken under color of State law and have deprived and continue to deprive the Rescue Squad of its state rights, privileges and/or immunities.

53. Defendants' actions are unlawful and done for the purpose of interfering with Plaintiff Rescue Squads' rights.

54. Defendants' action represented official policy of OC.

55. By reason of Defendants' actions, Plaintiff Rescue Squad seeks recovery in damages from OC in an amount of \$400,000.

56. In addition, the Rescue Squad seeks injunctive and declaratory relief rescinding the "stand-down" order until such time as a full hearing is convened by the Orange County Board of Commissioners.

FOURTH CAUSE OF ACTION

State Common Law Breach of Contract

57. All prior paragraphs are incorporated by reference.

58. On or about January 2005, the Orange EMS & Rescue Squad, Inc. a legal predecessor to the Rescue Squad and OC entered into a written contract entitled

EMS Services Franchise (hereinafter known as “Agreement”), an unexecuted copy of which is attached hereto as Exhibit A.

59. As a result of entering into said Agreement OC has waived sovereign immunity.

60. As a result of OC waiving sovereign immunity it occupies the same position as any other private citizen litigant.

61. The Rescue Squad at all times has performed its obligations under the contract.

62. On page 12, Section 9(d) of the Agreement states “[The Rescue Squad’s] EMS services shall be dispatched from the Orange County Emergency Communications Center.”

63. OC through the actions of its employees namely Colonel Montes de Oca has breached said contract by removing the Rescue Squad from the computer aided dispatch (CAD) system contained in the OC Emergency Communications Center and prohibiting the Rescue Squad from performing any rescue services and/or emergency transport service on par with other ambulance services.

64. Removal from CAD eliminates the ability of Orange County Emergency Management’s communicator to accurately assign and dispatch the Rescue Squad’s resources to emergency calls for service.

65. In effect, this removal operates as a breach of the contract between OC and the Rescue Squad by preventing the exercise of contractual rights for providing rescue and emergency transport services within Orange County.

66. As a result of said breach by OC, Plaintiff Rescue Squad has been damaged in the amount of \$400,000.

67. Additionally, because the breach was a intentional and malicious act the Rescue Squad prays for punitive damages from OC in the sum of \$800,000.

FIFTH CAUSE OF ACTION

Orange County Ordinance Violates Federal and State Constitutions

68. All prior paragraphs are incorporated by reference.

69. OC has enacted the following three ordinances governing Emergency Services in Orange County:

- a. An ordinance Regulating Emergency Medical, First Responder, and Rescue Services and Granting Franchise and Contracts to the Operators in the County of Orange adopted April 20, 1993;
- b. The Emergency Management Ordinance adopted September 18, 1990; and
- c. An Ordinance Authorizing the Proclamation of a State of Emergency and Imposition of Prohibitions and Restrictions During a State of Emergency adopted September 18, 1990.

70. That upon the authority granted by The Emergency Management Ordinance adopted September 18, 1990 (hereinafter known as “EM Ordinance”), Colonel Montes de Oca issued a “Stand-Down” order to the Rescue Squad.

71. This “Stand-Down” order prohibits the Rescue Squad to perform rescue services and answer emergency transport calls on par with other ambulances services in Orange County and works to frustrate the ability of the Rescue Squad to perform its obligations under the Agreement.
72. The EM Ordinance does not have any due process requirements or allow the Rescue Squad to challenge the “Stand-Down” order of Colonel Montes de Oca administratively or request for full hearing before the Orange County Board of Commissioners.
73. The lack of any ability to challenge any orders administratively or through full hearing before the Orange County Board of Commission issued pursuant to the EM Ordinance should be deemed unconstitutional.
74. For the reasons above that the court find and declare the EM Ordinance as unconstitutional.

SIXTH CAUSE OF ACTION

State Common Law Breach of Implied Contract

75. All prior paragraphs are incorporated by reference.
76. Heavy rescue has required standards that must be met in order to be certified and operate.
77. In order for the Rescue Squad to comply with the standards, it had to purchase a large list of equipment and a new apparatus to be able to power and haul it all.

78. This was explained by senior members of the Rescue Squad to then OC Emergency Services Director Jack Ball (hereinafter “Director Ball”)
79. Director Ball requested that the Rescue Squad take on these duties to continue to provide these services to the citizens of Orange County.
80. In 2006, an order was placed by the Rescue Squad for a new heavy rescue apparatus for approximately \$550,000 of which approximately \$550,000 was financed.
81. In October of 2007, the Rescue Squad took delivery of the apparatus and it was put in operation as a certified rescue vehicle in accordance with NCRS EMS standards until the June 27, 2008 stand-down order by Colonel Montes de Oca.
82. Now that considerable costs have been incurred by the Rescue Squad to its detriment, Colonel Montes de Oca and several area Fire Department Chiefs have suggested that the rescue services provided by the Rescue Squad is redundant to the services by these Fire Departments.
83. The Rescue Squad states that an implied contract exists between it and the county for the continued use of its rescue services as a result it relying on statements of Director Ball and entering into considerable debt to purchase the needed equipment and apparatus.
84. As a result of entering into said Implied Contract OC has waived sovereign immunity.

85. As a result of OC waiving sovereign immunity it occupies the same position as any other private citizen litigant.

86. That the refusal of OC and Colonel Montes de Oca to allow the Rescue Squad to perform the duties as a result of its franchise agreement is a breach of this implied contract.

87. That OC has waived Sovereign Immunity via entering into a implied contract

88. As a result, if OC and Colonel Montes de Oca continue to refuse to allow the Rescue Squad to perform rescue services then it will be forced to sell said equipment and apparatus at a loss.

89. The Rescue Squad seeks and is entitled to compensatory damages of any deficiency that is the result of any sale of the equipment and apparatus as a result of the breach.

90. This amount will be determined at trial.

SEVENTH CAUSE OF ACTION

Class Action for Violation of Federal Due Process to Provide

Adequate Rescue and Emergency Transport Services

Introduction

91. Emergency Medical Services (EMS) experienced dramatic technological change over the last several decades.

92. In the 1960's and 1970's, ambulance services primarily offered basic transportation to medical care.

93. Frequently, funeral home directors doubled as emergency-services providers, using their hearses to haul patients.
94. These volunteers typically had little, if any, knowledge of first aid.
95. Since the 1980s, though, ambulances have become sophisticated mobile intensive-care units that are staffed by licensed and trained professional paramedics and emergency medical technicians.
96. Technological advances, such as computer-aided dispatch services and mobile Geographic Information System (GIS) units on ambulances, allowed ambulances to reach patients far more quickly.
97. The push to reduce response times is predicated on the widely-held belief that faster responses will improve health outcomes.
98. Post trauma there are three periods in which death occurs: immediate, early, and late.
99. The “golden hour,” from a medical emergencies perspective, is the second peak that occurs within a few minutes to several hours following injury.
100. It is well established that the victim's chances of survival are greatest if they receive care within a short period of time after a severe injury.
101. The “golden hour” is not a rigidly defined time frame.
102. Rather it is the core principle of rapid intervention in trauma cases.
103. In cases of severe trauma, especially internal bleeding, nothing can replace surgery.

104. Complications such as shock may occur if the patient is not managed appropriately and expeditiously.
105. It is therefore necessary to transport victims as fast as possible to specialists who are most often found at a hospital trauma center.
106. Because some injuries can cause a trauma victim to decompensate extremely rapidly, the lag time between injury and treatment should ideally be kept to a bare minimum; over time, this lag time was further clarified to a now-standard time frame of no more than 60 minutes, after which time the survival rate for traumatic patients is alleged to fall off dramatically.
107. The late Dr. R Adams Cowley is credited with promoting this concept first as a military surgeon and later as head of the University of Maryland Shock Trauma Center.
108. Dr. R Adams Cowley is quoted as saying, "There is a golden hour between life and death. If you are critically injured you have less than 60 minutes to survive. You might not die right then; it may be three days or two weeks later -- but something has happened in your body that is irreparable."
109. Thus, response time is a commonly-used measure of EMS quality.
110. One of the goals of Healthy People 2010, a broad federal initiative aimed at alleviating the major preventable threats to Americans' health, is to "increase the proportion of people who can be reached by EMS within 5 minutes in urban areas and within 10 minutes in rural areas."

111. The National Fire Protection Association (NFPA) recommends that, for at least 90 percent of EMS calls, Basic Life Support (BLS) services should get to the scene of a medical incident within four minutes.
112. The NFPA says that Advanced Life Support (ALS) providers should arrive within eight minutes for all EMS calls.
113. Recent research has shown that the impact of distance on mortality show that incidents that occur farther from agencies are more likely to result in deaths.
114. The research concludes that for every extra one-tenth of a mile it is estimated to increase the probability of mortality by more than two-tenths of a percentage point.
115. The research shows the marginal impact of a response-time increase of one minute on mortality at 365 days is approximately 1.26 percentage points.
116. This impact is observed for almost all major complaint categories and demographic groups.
117. In addition, response time of EMS personnel is driven to a large degree by the number of available ambulances in an area.
118. Recent research shows that ambulances are underprovided relative to the socially optimal amount.
119. The research suggests that one explanation for this under provision is that local agencies must make their ambulances available to neighboring localities through so-called "mutual aid agreements."

120. That is, if an agency runs out of ambulance units and receives a call requesting medical service, that agency contacts a neighboring agency, according to a previously defined mutual aid agreement.
121. If the contacted agency has resources available, it is obligated to provide a staffed ambulance unit to the agency requesting mutual aid, sometimes at no cost to the agency requesting mutual aid.
122. The mutual aid agreement induces a free-rider problem, and therefore an underprovision of services.
123. Given the institution of mutual aid, communities systematically underprovide ambulances.
124. Each agency weighs the costs of relying upon their neighbor's resources which include higher average response times, against the benefits of purchasing fewer ambulances and lower total ambulance costs.

Class Action Allegations

125. The Rescue Squad is the proper "person" to bring an action for a violation of due process duty to provide adequate rescue and emergency transport service as the prohibition of the Rescue Squad to provide its rescue and emergency transport services is the reason for the breach.
126. Gary Clark is a proper person to bring an action for a violation of due process duty to provide adequate rescue and emergency transport service as he is a

citizen of Orange County and is a qualified North Carolina paramedic. As a citizen of OC he is a potential patient of OC EMS.

127. The Rescue Squad brings this action on its own behalf and on behalf of all other persons similarly situated pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.
128. The class which the Rescue Squad seeks to represent in this action includes all the citizens of Orange County and those people who transit through Orange County through its streets, roads, state routes, interstates, and railroads.
129. Approximately 127,000 people reside in Orange County.
130. Approximately 90,000 vehicles travel east and west on I-40 and I-85 through Orange County on a daily basis.
131. Approximately 30,000 vehicles enter and exit Orange County on a daily basis other than on I-40 and I-85.
132. This class is so numerous that joinder of all members of the class is impractical; there are questions of law and fact common to the class; the claims and defenses of the Plaintiffs are typical of the claims and defenses of the class and the Plaintiffs will adequately represent and protect the interest of the class.
133. OC and Colonel Montes de Oca has acted or refused to act and will continue to act or refuse to act on grounds generally applicable to the class thereby making appropriate injunctive or declaratory relief with respect to the class as a whole.

134. Separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which would establish incompatible standards of conduct for OC.
135. Questions of law and fact common to the members of the class predominate over any question affecting only an individual member or members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.
136. The question of law and fact that is common to the class is the following:
- a. Whether pursuant to N.C.G.S. §143-517, which states in part that “[e]ach county shall ensure that emergency medical services are provided to its citizens...,” whether OC must provide an adequate EMS system to its citizens and those people traveling through it?
 - b. Whether the adequacy of the EMS system is a political question or a question of constitutional law?
 - c. If adequacy of the EMS system is a question of constitutional law, whether the measure is one of response time?

Orange County Emergency Services Background

137. Upon information and belief, OC EMS started the IRV Paramedic program in 1995.
138. Upon information and belief, that program consisted in 1995 of three paramedic units and four ambulances.

139. The four ambulances were provided through a contract agreement with a non-profit corporation which split into the current configuration of the Rescue Squad and South Orange.
140. In 1999, Orange County contracted with the Orange County Rescue Service, Inc., the predecessor of the two Orange County rescue squads, while the county provided ALS service through the process of the IRV system.
141. In 2003, Orange County ended the contract with Orange County Rescue Service because of costs of the contract.
142. Upon information and belief, on May 1, 2009, Col. Montes de Oca ended the IRV paramedic program.
143. At its termination the IRV program consisted of five paramedics units available for dispatch independently.
144. This was in addition to the four ambulances that OC EMS continues to staff on a daily basis.
145. This lead prior to May 1, 2009 the availability of nine units available for dispatch
146. After May 1, 2009, the paramedics were reassigned to the four ambulances that were staffed on a daily basis.
147. That decision led to the reduction of total units available for dispatch to four from nine.

148. Since May 1, 2009, OC EMS currently runs out of EMS resources almost daily.
149. After the May 1, 2009, mutual aid requests for out of county EMS assistance by OC EMS have increased considerably.
150. Upon information and belief, the need for mutual aid request substantially raises the average response time for ambulances by 20 minutes.

Efland Incident

151. On or about May 2006, a call was dispatched to Efland, Orange County for a reported 12 year old male having severe breathing difficulty.
152. The call was dispatched to IRV medic and fire department only as there was no ambulance available.
153. IRV medic at the time was a single paramedic in a vehicle without patient transport capability.
154. The on-duty EMS supervisor requested Alamance County mutual aid.
155. Alamance County EMS responded with an ambulance from either Burlington or Graham, North Carolina.
156. The unit that responded carries two paramedics and had patient transport capability.
157. A senior member of the Rescue Squad contacted the on duty Orange County EMS supervisor and requested that the Rescue Squad be notified to send an ambulance to the call.

158. The request was denied citing Alamance County had already been notified.
159. Had the Rescue Squad ambulance been dispatched the unit would have arrived on scene within ten minutes.
160. However, the Alamance County ambulance response time was longer than necessary due to the mileage from its station and confusion by the crew over two roads with same name.
161. Due to many circumstance the scene time was extended.
162. While enroute to UNC Hospital, the Alamance County ambulance pulled over prior to arriving at the hospital and radioed for assistance for a full respiratory arrest.
163. An Orange County EMS ambulance returning to their base from UNC Hospital stopped to render assistance.
164. One of the members of the Orange County EMS ambulance became the Alamance County ambulance driver to complete the journey to the UNC Hospital.
165. Unfortunately, the patient died at the hospital.
166. The Rescue Squad believes that a shortened on scene time could have greatly reduced the risk of mortality.
167. The Rescue Squad believes that the shortage of ambulances and the unwillingness to use an in county resource played a major role in the patient outcome.

Incidents of August 12, 2008

168. OC EMS received 11 calls between 5 PM and 7 PM on August 12, 2008.
169. Two incidents illustrate that the underprovision of EMS service occurred.
170. One of those calls came from East Chapel Hill School, where Carrboro High School sophomore DeMarcus Powell (“Powell”), 16, had a dislocated his knee on a play during a football game in which no other player struck him.
171. Powell twisted his knee and suffered an open femur fracture when he stepped in a hole when he planted his left foot.
172. Powell lay on the field for at least 23 minutes before an OC EMS IRV Paramedic arrived.
173. After the paramedic arrived it was another 20 minutes before an ambulance arrived.
174. The paramedic who responded to Powell’s injury was one of five on duty at the time.
175. The paramedic wasn’t dispatched to the school until approximately six minutes after the initial 911 call.
176. The ambulance was not dispatched until 6:50 pm, 10 minutes after the paramedic got here.
177. The ambulance arrived at 7:01 PM from the South Orange.
178. The operations manager for OC EMS was quoted in the local press saying that personnel could not respond faster because they were tied up on other calls.

179. Those included a two-vehicle accident that injured four people in western Orange County and the death of Chapel Hill High School senior Atlas Fraley.
180. Atlas Fraley (“Fraley”) called OC EMS on August 12, 2008, complaining of dehydration and the need for an IV line to expedite hydration.
181. An OC EMS IRV Paramedic responded and only spent 22 minutes with him before leaving for other calls.
182. Fraley was later found deceased by his parents when they arrived home.
183. The operations manager for OC EMS was further quoted in local press saying “[OC] resources were taxed. We are consistently asking for more resources. We are talking with the county to increase the number of units we have on the road.”

Entrapment Incident on August 21, 2008

184. Upon information and belief, on August 21, 2008, Caitlynn Tilly (“Tilly”), a 16 year old female who lived in Roxoboro, Person County, was involved in a fatal car accident.
185. Upon information and belief, Tilly could not receive cell phone reception at her house and proceeded to drive to another location where she could receive cell phone reception.
186. Upon information and belief, Tilly suffered a high speed impact with an unknown object and became pinned in her car.

187. Upon information and belief, Caldwell Fire Department (“Caldwell FD”) was the first agency to respond and they arrived approximately 15 minutes after the accident.
188. Upon information and belief, upon arrival the Incident Commander from Caldwell FD immediately called for mutual aid and Orange Rural Fire Department also known as Hillsborough Fire Department (“Hillsborough FD”) responded since Caldwell FD did not have sufficient capability of extricating the female from the wreckage of her car.
189. Upon information and belief, Hillsborough FD arrived after another 15 minutes, in other words 30 minutes into the call.
190. Upon information and belief, with the combined efforts of Caldwell FD and Hillsborough FD the extrication took another 45 minutes, in other words 1 hour and 15 minutes into the call.
191. Upon information and belief, Tilly died either at the hospital or enroute to the hospital.
192. Upon information and belief, Hillsborough FD at the time has one portable hydraulic pump capable of powering one hydraulic tool.
193. Upon information and belief, Hillsborough FD had only four hydraulic tools available to use on the wreck.

194. The Rescue Squad has a vehicle with two stationary hydraulic pumps mounted permanently in the apparatus that is capable of powering three tools simultaneously each or six tools in total.
195. In addition, the Rescue Squad has a portable pump capable of powering one hydraulic tool. In other words, the Rescue Squad could operate seven tool simultaneously to attempt extrication.
196. The Rescue Squad has a complement of thirteen different hydraulic tools to choose from and experienced rescue technicians to utilize the tools.
197. Had the Rescue Squad been dispatched at the same time as Caldwell FD, they would have arrived on scene within 20 minutes and started extrication.
198. Rescue Squad can complete most extrications within 20 minutes.
199. Although the severity of Tilly's injuries are not known at this time, 35 minutes less time on-scene trapped in the wreckage might have greatly improved her chances of survival.
200. However the Rescue Squad could not respond because OC and Col. Montes de Oca intentionally idled the Rescue Squad with the Stand-down order without sufficient assets to take its place.

Incident of March 20, 2009

201. On March 20, 2009, at approximately 11:10 PM, while westbound on I-40 between Exit 263 and Exit 261, a box truck struck the rear of a large tractor-trailer.

202. Both trucks overturned and the box truck crushed a car traveling next to the box truck.
203. All the vehicles departed the roadway to the right, went through a guardrail, and down an embankment where the box truck wreckage came to rest on top of the car.
204. The driver of the box truck was killed after being ejected from the cab from the force of the accident.
205. Hillsborough FD was the first unit on the scene and put a mutual aid call out.
206. New Hope Fire Department and Chapel Hill Fire Department responded to the mutual aid call.
207. Upon information and belief, a low pressure air bag was necessary to lift the box truck off the car to extricate the occupant.
208. Upon information and belief, the only agency in OC with that capability was the Rescue Squad.
209. The Rescue Squad was not called to the incident even though it being located within 2 miles of the accident scene.

Presentation of Col. Montes de Oca to OC Commissioners

210. Col. Montes de Oca caused a powerpoint presentation to be entered as Action Agenda Item No. 7-b for the March 17, 2009, OC Board of Commissioners Meeting.

211. In that presentation, Col. Montes de Oca calls for six paramedic-level transport units to be available for county use.
212. Col Montes de Oca states that in 2001 the OC Emergency Management set a goal of 12 minutes for a paramedic to reach every patient for every person in OC.
213. The presentation states that the response time has risen to 17 minutes and is rising.
214. The presentation states that from 1990 – 2000 there was a 26% growth in population, that the population is aging, there is an increase in chronic disease, and more growth in traditionally rural areas.
215. The presentation states that there were 143,948 incidents requiring 911 dispatch in OC in 2000, 160,014 in 2004, and 165,400 in 2008.
216. The presentation stated a 76% growth in EMS response from 2000 to 2008.
217. The presentation stated that an ambulance was not available 235 times in 2008 when a community member called 911.
218. Col. Montes de Oca asks the OC Board of Commissioners for \$2,315,000 to implement these improvements.
219. That number includes \$1,040,000 a year for additional personnel and a capital infusion of \$1,275,000 in facilities, fleet and support.

220. Upon information and belief, the OC Commissioners approved a FY 2009 - 2010 budget for the EM department that did not include most or any of the request.

Cause of Action

221. Under the Fourteenth Amendment to the federal Constitution the citizens of OC and those who transit its streets, roads, state routes, interstates, and railroads have a due process "life" interest and/or the county has a due process duty to protect in having adequate rescue and emergency transport protection.

222. OC has the statutory duty pursuant to North Carolina General Statute to provide adequate rescue and emergency transport service to the citizens of Orange County and those who transit its streets, roads, state routes, interstates, and railroads pursuant to state law and Orange County Ordinances.

223. As a result of decisions made by Colonel Montes de Oca to "Stand-Down" the Rescue Squad and terminate the IRV paramedic system, OC has breached that public duty of protection and thus has not afforded due process to its citizens and those transiting through the county.

224. As a result of the "Stand-Down" order and the termination of the IRV paramedic program, OC has had inadequate resources to provide proper rescue and emergency transport service to the citizen of Orange County and others evidenced by a number of incidents and accidents since resulting in injuries, some fatalities, and dramatically increased response times.

225. The “Stand-Down” order, OC unwillingness to fund the Emergency Management system sufficiently to provide adequate service, and the termination of the IRV paramedic system is the proximate cause of these injuries
226. The Rescue Squad could have responded to certain emergencies that may have prevented further injury and/or fatalities.
227. Defendants mentioned “Stand-Down” order, OC unwillingness to fund the emergency management system sufficiently to provide adequate service have caused and continue to cause irreparable injury to Plaintiffs and the class represented by Plaintiffs, for the reason set forth previously. Plaintiffs and the class have no state or federal remedies, judicial or administrative, other than this action.
228. This action is the exclusive means by which Plaintiffs can secure redress of their grievances as previously alleged.
229. The Plaintiffs seek on behalf of the class to have the court declare a public health emergency due to OC having insufficient EMS and rescue assets to keep response times to below 10 minutes for 90% of the dispatches.
230. The Plaintiffs also seeks on behalf of the class a permanent mandatory injunction ordering OC to fund emergency services sufficiently to obtain a response time for the entire county of 10 minutes for 90% of the dispatches without regard to mutual aid availability in surrounding counties.

WHEREFORE, the Rescue Squad, on behalf of itself and others similarly situated respectfully pray that the court:

1. For a preliminary and permanent mandatory injunction ordering OC to rescind the “Stand-Down” Order and allow the Rescue Squad to respond to emergencies as was the standard operating practices prior June 27, 2008;
2. The issuance of a preliminary and permanent injunction restraining defendants from interfering with the Rescue Squad’s ability to receive emergency assignments from OC 911 System;
3. For a preliminary and permanent injunction ordering OC to treat the Rescue Squad the same as other volunteer rescue squads in the county with respect to operating ambulances to primary calls;
4. For a permanent mandatory injunction ordering OC to spend funds sufficient to lower response rates to an average of 10 minutes in 90% of dispatches anywhere in the county without regard to the availability of mutual aid from surrounding counties.
5. A declaration that rescue and ambulance assets serving Orange County is insufficient and that a public health emergency exists;
6. A declaration that the EM Ordinance be declared unconstitutional and unenforceable;
7. For a Judgment awarding damages to the Rescue Squad for general damages for a sum of \$400,000 from Defendant Orange County;

8. For a Judgment awarding punitive and exemplary damages from Orange County in the sum of \$800,000.
9. Determine this action to be a valid class action pursuant to Rule 23 of the Federal Rule of Civil Procedure.
10. Costs, interest, and attorneys fees pursuant to 42 U.S.C. § 1988; and
11. Any other and further relief as the Court deems just and proper.

This 14th Day of June, 2009

Respectfully Submitted,

/s/Jeremy Todd Browner

Jeremy Todd Browner, Esq., (0038941)

Attorney for Plaintiffs Orange County Rescue Squad, Inc.

and putative class action Plaintiffs Orange County Rescue Squad
and Gary Clark

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Plaintiffs' Jury Trial Demand

The Rescue Squad demands a jury trial on all issues of fact so triable.

/s/Jeremy Todd Browner

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and putative class action Plaintiffs Orange County Rescue Squad
and Gary Clark