

BROWN & CONNERY, LLP
By: Christine P. O'Hearn, Esquire
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 Westmont, New Jersey 08108
 (856) 854-8900
 Attorneys for Plaintiff

Ryan M. Asselta,

Plaintiff,

 vs.

City of Vineland, New Jersey; John
Does 1-10,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CUMBERLAND COUNTY

Docket No.:

Civil Action

**COMPLAINT AND DEMAND
 FOR JURY TRIAL**

Plaintiff, Ryan M. Asselta, hereby states and alleges by way of Complaint against defendant, City of Vineland, New Jersey, as follows:

FACTUAL BACKGROUND

1. Ryan Asselta is a male individual residing at 1826 Garwood Avenue, Vineland, NJ 08631.
2. Defendant, the City of Vineland, New Jersey (hereinafter referred to as defendant and/or "the City") is a municipal entity with a principal place of business located at 640 E. Wood Street, P.O. Box 1508, Vineland, New Jersey 08362-1508
3. Defendants John Does 1-10 are fictitious business entities or persons who operated and/or managed the City of Vineland and/or the Department of Electric Utilities and/or who supervised and/or managed plaintiff and/or who made the adverse employment decisions referenced herein, all of whose identities are not presently known to plaintiff.
4. Plaintiff became employed by the City, on or about August 1, 1988.

5. During his employment with the City, plaintiff held a variety of job titles within the Department of Electric Utilities including but not limited to Laborer, Groundhand, Line Worker-Helper and Line Worker.
6. During his employment, plaintiff suffered various job related injuries.
7. On or about March 2, 2005, plaintiff suffered a serious work related injury which required lumbar spinal fusion surgery and other medical treatment.
8. As a result of his injury, plaintiff was disabled and unable to work from approximately March 2005 until approximately February 2006.
9. As a result of his injury in March 2005, and as a result of prior work-related incidents, plaintiff filed one or more claims seeking workers compensation benefits.
10. At the time of his injury in March 2005, plaintiff was employed by the City as a Line Worker.
11. As a result of his injuries, plaintiff was subject to certain restrictions and/or limitations.
12. Plaintiff's injuries precluded him from returning to full duty as a Line Worker without an accommodation.
13. As a result, plaintiff so advised the City and actively sought and applied for other employment with the City beginning in or about February and/or March 2006.
14. The City made no effort and failed to engage in the interactive process with plaintiff or explore his abilities and/or disabilities, his restrictions and/or limitations, and what positions of employment he may be qualified to perform, with or without a reasonable accommodation.
15. Plaintiff was advised by the City there were no positions available for him.
16. Even though he was advised by the City there were no positions available for him and even though the City made no effort whatsoever to engage in the interactive process or

reasonably accommodate plaintiff, plaintiff inquired with the City about a position as a Electric Meter Reader which was open and vacant.

17. Plaintiff was at all times qualified and able to perform the essential functions of a Electric Meter Reader with or without a reasonable accommodation.
18. Nevertheless, Plaintiff was told by the City on numerous occasions that "the human body could only take so much" and that he "would not be able to do that job."
19. Despite being told "he would not be able to do that job" as a Electric Meter Reader, plaintiff formally applied for the Electric Meter Reader position on or about April 27, 2006. Plaintiff advised the City, "I would like to continue my employment with the City of Vineland and try to perform the duties of meter reader to the best of my ability..."
20. Plaintiff was required to formally interview and test for the position of Electric Meter Reader.
21. In addition, even though no offer of employment had been made, during the interview and application process plaintiff was required to present a medical certification from his physician as to his ability to perform the functions of an Electric Meter Reader.
22. During the interview, plaintiff was repeatedly told by John Boyle, the Superintendent, that "he would not be able to get in and out of a car"; that the "walking on the route would be too much for him"; that "you are too beat up to work any more"; and "that driving with your back injury would not be good for you."
23. The same or similar statements and comments regarding his injury, disabilities and/or medical condition were made by John Davenport during an interview for the Electric Meter Reader position.
24. The Electric Meter Reader Applicant Evaluation and Grading Form for plaintiff completed by Mr. Boyle specifically denotes a "?" under the item of "pass physical fitness screening."

25. The Electric Meter Reader Application Evaluation and Grading Form for plaintiff completed by Mr. Boyle further specifically denotes "trouble sitting, standing and walking"; "exhibits noticeable hunch from back pain" and "walks with unsteadiness."
26. The Electric Meter Reader Application Evaluation and Grading Form for plaintiff completed by Mr. Boyle further specifically denotes "Numerous Job and Non-Job related injuries".
27. All of these noted factors by Mr. Boyle were taken into consideration when grading plaintiff during the application and interview process for the Electric Meter Reader position.
28. Plaintiff was never requested to submit to a fitness for duty examination.
29. The City never requested plaintiff provide information related to his disabilities, abilities or limitations so as to determine whether he was physically able to perform the essential functions of the job of an Electric Meter Reader with or without a reasonable accommodation other than the physician's note he provided and which specifically stated he could work as an Electric Meter Reader.
30. Rather, the City simply presumed, without any factual basis and based upon preconceived notions regarding plaintiff's disabilities, that plaintiff was physically unable to perform the functions of an Electric Meter Reader.
31. Despite being qualified to perform the Electric Meter Reader position and, upon information and belief having had the most seniority of any applicant, plaintiff's application for that position was rejected on or about June 26, 2006.
32. Upon information and belief, there were other positions of employment for which plaintiff was qualified and for which he was never considered.

33. After exhausting all accrued sick time, vacation time, and unpaid leave under state and/or federal leave programs, plaintiff's employment was terminated by the City in or about the Fall of 2006.

COUNT I

**NEW JERSEY LAW AGAINST DISCRIMINATION, DISABILITY AND/OR
HANDICAP DISCRIMINATION**

34. Plaintiff hereby incorporates the allegations of the prior paragraphs of the Complaint as if set forth at length herein.

35. The conduct of defendant as detailed above constitutes discrimination against plaintiff because of a disability or handicap in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

36. As a proximate result of defendant's illegal discrimination against plaintiff, plaintiff has been caused to suffer and continues to suffer significant economic losses including but not limited to lost wages, health insurance benefits and other benefits of employment. Plaintiff has also been caused and continues to suffer significant emotional distress, humiliation, embarrassment, anxiety and similar damages.

WHEREFORE, plaintiff, Ryan M. Asselta, demands judgment for compensatory and punitive damages, costs and attorneys fees, and such other relief as the Court deems just from defendants, The City of Vineland, and John Does 1-10.

COUNT II

**NEW JERSEY LAW AGAINST DISCRIMINATION, FAILURE TO
ACCOMMODATE AND/OR ENGAGE IN INTERACTIVE PROCESS**

37. Plaintiff hereby incorporates the allegations of the prior paragraphs of the Complaint as if set forth at length herein.

38. The conduct of defendant as detailed above constitutes disability and/or handicap discrimination, specifically the failure to reasonably accommodate disabled and/or handicapped persons and the failure to engage in the interactive process, in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

39. As a proximate result of defendant's illegal discrimination against plaintiff, plaintiff has been caused to suffer and continues to suffer significant economic losses including but not limited to lost wages, health insurance benefits and other benefits of employment. Plaintiff has also been caused and continues to suffer significant emotional distress, humiliation, embarrassment, anxiety and similar damages.

WHEREFORE, plaintiff, Ryan M. Asselta, demands judgment for compensatory and punitive damages, costs and attorneys fees, and such other relief as the Court deems just from defendants, The City of Vineland, and John Does 1-10.

COUNT III

RETALIATION

40. Plaintiff hereby incorporates the allegations of the prior paragraphs of the Complaint as if set forth at length herein.

41. The conduct of defendant as detailed above constitutes illegal retaliation for his exercise of his legal and statutory rights to seek workers compensation benefits related to injuries suffered during the course of his employment.

42. As a proximate result of defendant's illegal discrimination against plaintiff, plaintiff has been caused to suffer and continues to suffer significant economic losses including but not limited to lost wages, health insurance benefits and other benefits of employment. Plaintiff has also been caused and continues to suffer significant emotional distress, humiliation, embarrassment, anxiety and similar damages.

WHEREFORE, plaintiff, Ryan M. Asselta, demands judgment for compensatory and punitive damages, costs and attorneys fees, and such other relief as the Court deems just from defendants, The City of Vineland, and John Does 1-10.

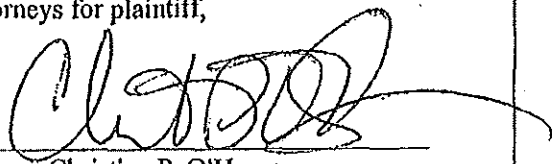
DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury as to all issues raised in this action.

BROWN & CONNERY, LLP

Attorneys for plaintiff,

By:



Christine P. O'Hearn

Dated: March 19, 2007

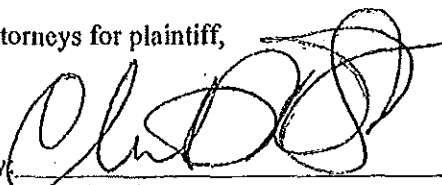
DESIGNATION OF TRIAL ATTORNEY

In accordance with R. 4:25-4, Christine P. O'Hearn, Esquire, is hereby designated as trial counsel for plaintiff in the above-captioned matter.

BROWN & CONNERY, LLP

Attorneys for plaintiff,

By:



Christine P. O'Hearn

Dated: March 19, 2007

CERTIFICATION PURSUANT TO R.4:5-1

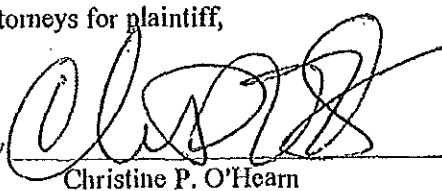
This is to certify that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding; nor is any other action or arbitration proceeding contemplated. Further, at this time, there are no known other parties who should be joined in this action.

BROWN & CONNERY, LLP

Attorneys for plaintiff,

Dated: March 19, 2007

By


Christine P. O'Hearn

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made this 16th day of March, 2011 by and between RYAN ASSELTA (hereinafter "Plaintiff") and THE CITY OF VINELAND, ST. PAUL FIRE AND MARINE INSURANCE COMPANY (hereinafter collectively referred to as "Defendants"), its officers, directors, officials, employees, and any and all other persons, firms, corporations, insurers, associations or other entities, their heirs, executors and administrators, successors and assigns.

WHEREAS, Plaintiff and Defendants are parties in a civil action captioned as Ryan Asselta v. The City of Vineland, Superior Court of New Jersey, Cumberland County, Docket No: L-294-07, in which Plaintiff sought damages under the New Jersey Law Against Discrimination for disability discrimination and related claims.

WHEREAS, the parties desire to settle and compromise their differences and terminate the lawsuit. Each party recognizes that the settlement is not an admission of liability, but is made for the sole purpose of terminating all proceedings.

NOW WHEREFORE, in consideration of covenants, agreements and representations contained herein, the parties hereto, subject to the terms and conditions hereof and intending to be legally bound, hereby, agree as follows:

1. Settlement Amount

Defendants shall pay the sum of Three Hundred Seventy-Five Thousand Dollars and no cents (\$375,000.00), in full and complete settlement of any and all claims Plaintiff may have, or in the case of withdrawn claims, had against Defendant, including but not limited to claims set forth in the Plaintiff's Complaint, including but not limited to claims for past and future lost wages, loss of earning capacity, employment benefits, compensatory damages, emotional distress, physical

manifestations of emotional distress and pain and suffering associated therewith, attorneys' fees, legal fees, and costs of suit associated with the Lawsuit. There shall be no other payment as a result of the dismissal of any and all claims. Said payment shall be made within seven (7) days of the full execution of this Agreement and delivery to all parties.

2. **Payment of Taxes on Settlement Amount**

Plaintiff agrees to be solely responsible for, and legally bound to make, payment of taxes, if any, which are determined to be owed (including penalties and interest related thereto) by any taxing authority. Other than stated above, Plaintiff agrees and understands that Defendant has not made any representations regarding the tax treatment of the sums paid pursuant to this Agreement, and Plaintiff agrees that he is responsible for determining the tax consequences of such payments and for paying taxes, if any, that may be owed with respect to such payments. In the event a claim for such taxes, and/or penalties and interest, is asserted by any taxing authority, however, Plaintiff agrees to, and does hereby indemnify and hold Defendant harmless against any and all tax liability, interest and/or penalties as due thereon from Defendant or Plaintiff.

3. **Stipulation of Dismissal with Prejudice**

Plaintiff agrees to stipulate to the dismissal of Plaintiff's lawsuit with prejudice.

4. **Releases**

In consideration of the above and the exchange of releases, Plaintiff does hereby remise, release and forever discharge Defendant, its officers, elected officials, directors and employees, and any and all other persons, firms, corporations, associations, insurers or other entities, their heirs, executors and administrators, successors and assigns, from all actions and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and

demands whatsoever in law or equity, whether known or unknown, including, but not limited to, the issues which are the subject of a lawsuit otherwise described as:

RYAN ASSELTA

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LAW DIVISION, CAMDEN COUNTY

v.

THE CITY OF VINELAND

NO.: L-294-07

which against Defendant, Plaintiff ever had, now has or which his heirs, executors, administrators, successors or assigns, or any of them, hereafter can, shall or may have for, or by reason of any cause, matter or thing whatsoever, from the beginning of the world to the date of the execution of this Agreement.

5. Extinguishing All Claims

Payment of said sum shall extinguish all Plaintiff's pending litigation and shall satisfy all claims underlying claims for all benefits accrued during employment that Plaintiff may have against Defendant. Payment of said sum shall also satisfy all claims for attorney's fees, expenses or costs by Plaintiff or his attorneys. Nothing in this paragraph shall affect Plaintiff's ongoing entitlement to any and all vested benefits, including, but not limited to, his disability pension and his workers compensation benefits.

6. Promises of Confidentiality

Plaintiff agrees to keep the fact and terms of the settlement of the above-referenced action and this Agreement confidential to the extent permitted by law. Plaintiff agrees that confidentiality regarding the terms of this Settlement Agreement including the manner and source of payment and amount of payment, is essential to this Agreement. This confidentiality provision shall survive, and be given full force and effect separately from any invalid, unenforceable or inoperative provision of this agreement. If asked by any third parties about any dispute with defendants,

including but not limited to the above-referenced civil action, Plaintiff shall state only that the matter was resolved and that he is not at liberty to discuss it further. Plaintiff represents and warrants that he has not disclosed or disseminated and will not disclose or disseminate to any person other than his spouse, counsel, accountant, income tax preparer and/or his financial advisor the terms or conditions of this settlement.

In the event Plaintiff should breach the promise and requirement of confidentiality, Defendants may take any action necessary to protect their rights. In the event of such a breach, all other provisions of this Release shall remain in full force and effect.

7. Agreement Not to Apply for Reemployment

Plaintiff hereby waives any and all rights to reinstatement or reemployment with Defendant or any of its agencies or departments. Plaintiff specifically promises not to apply for reemployment or future employment with Defendant City of Vineland or any agencies or departments of Defendant. Neither Defendant nor any agency or department of Defendant will be under any obligation to employ, reemploy or contract with Plaintiff.

8. Applicable Law

Any dispute about this agreement that cannot be resolved by agreement shall be decided under the terms of the general contract law of the State of New Jersey.

9. Subpoena of this Agreement

If any party is subpoenaed to produce a copy of this Agreement, that party shall give immediate notice and opportunity to contest such Subpoena to the other party. There shall be no production pursuant to said Subpoena until there has been a final adjudication by any court having competent jurisdiction.

10. **Entire Agreement**

Plaintiff hereby acknowledges that no promise or inducement which is not herein expressed has been made, and in executing this Agreement Plaintiff does not rely upon any statement or representation made by any person, firm or corporation hereby released, or any other person representing his concerning the nature, extent or duration of said damages or losses or the legal liability therefor.

This Agreement contains the sole and the entire agreement between the parties, and completely and fully supersedes and replaces any and all prior contracts, agreements, discussions, representations, negotiations, understandings and any other communications between the parties pertaining to the subject matter hereof. Plaintiff represents and acknowledges, in executing this Agreement, that he has not relied upon any representation or statement not set forth in this Agreement made by either party or their counsel or representatives with regard to the subject matter of this Agreement. No other promises or agreements shall be binding unless in writing, signed by the parties hereto, and expressly stated to represent an amendment to this Agreement.

11. **Accord and Satisfaction**

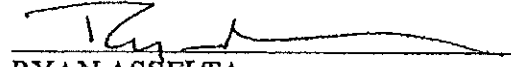
This agreement reflects a compromise and settlement of disputed claims in complete accord and satisfaction thereof. Neither the execution of the Agreement or performance of its terms and conditions shall be considered by any party or by any other person as an admission of liability or non-liability of any of the parties.

Plaintiff states that he has carefully read this release, that it has been fully explained to him by his attorney and that he fully understands that it is final and binding.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16th day of March, 2011.

SIGNED, SEALED AND DELIVERED in the presence of:


WITNESS


RYAN ASSELTA