

**MINUTES OF  
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY-EAST  
LEGAL COMMITTEE MEETING  
HELD ON JANUARY 20, 2022**

PRESENT: Richard G. Duplantier, Jr., Chair  
Herbert I. Miller, Committee Member  
Mark L. Morgan, President

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The Legal Committee of the Southeast Louisiana Flood Protection Authority-East (Authority or FPA) met on January 20, 2022, at the Joseph Yenni Building, 2<sup>nd</sup> Floor Council Chambers, 1221 Elmwood Park Blvd., Jefferson, Louisiana. Mr. Duplantier called the meeting to order at 10:08 a.m.

**Opening Comments:** None.

**Adoption of Agenda:** The Committee approved the agenda as presented.

**Approval of Minutes:** The Committee approved the minutes of the meeting held on October 21, 2021.

**Public Comments:** None.

**New Business:**

**1. Status of FPA litigation.**

Michelle White, Executive Counsel, advised that earlier this week she provided the first quarter litigation review report, which basically provided a summary of the new and pending litigation. A class certification hearing was scheduled to be held this month in the Joseph Robert matter, which pertains to the London Avenue Canal property owners; however, on the initiative of the court, and with no reason provided to the FPA, it was continued without date. She stated that when the date is set she would report on the trial preparation activities associated with the case.

Ms. White explained that the FPA had one new uninsured case in which a property owner along Bellaire Drive, adjacent to the 17<sup>th</sup> Street Canal, claimed damages as a result of inundation in their back yard during a rainstorm event and that an item is on the agenda to discuss retaining counsel for the FPA's defense. She advised that she would request that the Board retain Burglass and Tankersley to represent the FPA in this matter. The firm has represented the FPA in other cases pertaining to property damages along some of the FPA's flood protection structures.

Ms. White reported on developments in one of the four pending 1983 Civil Rights pending cases, in which the plaintiff is Deanna Thomas and two East Jefferson Levee District Police Officers were named individually as defendants. The suit was filed over a year ago and very recently the plaintiff's counsel moved to amend the petition to make a

number of new substantially different claims and add more defendants. The FPA's Counsel, Mark Hanna, objected to the amendment of the petition as not being timely since discovery deadlines were quickly approaching and a trial date set in less than two months. The magistrate granted the plaintiff's request to amend the petition and, after consulting with Mr. Hanna, a decision was made to object to the ruling and take it to Judge Guidry to find out whether he would reconsider not permitting the amendment to the petition. In the meantime, the FPA asked for some emergency relief to stay any further proceedings until a ruling is received from Judge Guidry.

Mr. Duplantier stated that he and Ms. White had a long conference about all of the cases, and that the Deanna Thomas case was one of the few that raised concerns on his part. The plaintiff is amending the petition to name the Flood Protection Authority as a direct defendant, which means that the FPA may need to retain another lawyer because of the potential conflict between the Officers and the FPA. The amendment raises department-wide issues for the Levee District Police Departments; therefore, close attention to this case is needed. He added that all cases in Federal Court have been sitting on the side due to COVID-19, and he thought that Judge Guidry would give the plaintiff permission for the amendment. The ACLU is pursuing this litigation against the Officers and now against various entities. He reiterated that close attention is needed and that this is something that Kelli Chandler, Regional Director, and the Police Captains need to keep on their radars. Of all of the pending cases that are insured, this is the only that raised any concern on his part.

Ms. White advised that Mark Hanna, who represents the FPA in all of the 1983 cases, always appraises the Officers to the extent that interests appear to diverge at any point in a case and alerts the Officers of any possible need for either the entity or the individuals to retain separate counsel. She noted that they did not see divergence in interests; however, they did see the much broader implications when it becomes policy, procedure and motivations of the entity at-large, as opposed to the conduct of individual Officers on particular day with regards to a particular incident.

## **2. Roberts v. OLD Class certification trial.**

Mr. Duplantier explained that the Roberts v. OLD litigation is a class action by the property owners on either side of the London Avenue Canal. The property owners are seeking compensation for a taking. When the statute was revised to allow the 15-foot zone of protection, the property owners, similar to prior litigation, are claiming that all of the property owners along the London Avenue Canal are entitled to compensation because it is a taking due to their inability to have full access to their property. This is uninsured litigation which, if successful, potentially has \$10 million implications to the FPA. Commissioner Arrigo will be testifying at the class certification hearing. Due to the implications, he stated that another FPA Commissioner needs to attend the trial; therefore, he would attend. Hopefully, the judge will deny class certification and the case can be closed.

Ms. White advised that the FPA had gone to the Appeals Court on two issues and that the Association of Levee Boards of Louisiana had joined as an amicus because of the broader implications statewide should it be determined that the 15-foot restricted zone

was a taking. Mr. Duplantier pointed out that everything is moving a little slowly in the judicial system due to COVID-19.

**3. Retention of Burglass and Tankersley for lawsuit Jennie Campbell and Stephen Campbell v. Cycle Construction Company, LLC, Southeast Louisiana Flood Protection Authority-East, and United States Fire Insurance Company, 24<sup>th</sup> Judicial District Court for the Parish of Jefferson.**

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Mr. Duplantier explained that Campbell v. Cycle Construction Company, LLC (Cycle Construction), and various other entities, including the FPA, is a case that arises from the November 2020 flood event. The plaintiff alleges that the work being done by Cycle Construction resulted in the flooding of their property. The case has a value of about \$500,000. Burglass and Tankersley has represented the FPA in similar cases; therefore, he thought the firm would be a good fit to represent the FPA in this case. He pointed out that the FPA should pay a little more attention to the case since it is uninsured litigation.

Ms. White advised that she suggested that Burglass and Tankersley be retained, not only because of their familiarity with the FPA's system and their experience with prior cases, but also in recognition of efficiencies because their familiarity, which means that the attorneys can dispense with some aspects of getting up to speed even for parts of the discovery. She explained that it is a fairly straight forward case. Part of Burglass and Tankersley's initial assessment, if they are retained, will also be to determine whether or not the FPA has the ability to tender to Cycle Construction, if they are at fault for some change. She pointed out that the FPA does not foresee that there actually had been a change.

Mr. Duplantier asked to be provided a copy of the contract for Cycle Construction and added that he was not sure about the tender because of Louisiana's anti-indemnity statute. He stated that the Legal Committee will recommend that the Board retain Burglass and Tankersley.

Mr. Morgan asked was \$500,000 the total value. Mr. Duplantier responded that it is the high end of the potential value of the claim. Ms. White added that the claim is for actual damages to landscaping, the pool area, irrigation system, and some intangibles, such as stress and inconvenience. Mr. Morgan inquired about the projected total expense for the FPA's defense. Ms. White responded that it was difficult to say, but basically the expenses for any lawsuit pertaining to property damages could potentially be \$100,000 from commencement to trial. Mr. Duplantier concurred that if the case goes to trial the FPA is looking at a maximum of about \$100,000 in legal fees. Ms. White pointed out that typically with a case like this, to the extent that the initial issues are hammered out in discovery, some resolution is reached and it does not go to trial. Mr. Duplantier advised that the FPA will encourage Cycle Construction, if they can, to resolve the case.

There was no further business; therefore, the meeting was adjourned at 10:20 a.m.