

**MINUTES OF
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY-EAST
LEGAL COMMITTEE MEETING
HELD ON AUGUST 17, 2023**

PRESENT: Derek N. Rabb, Chair
Thomas G. Fierke, Committee Member
William A. Settoon, Jr., Committee Member

The Legal Committee of the Southeast Louisiana Flood Protection Authority-East (Authority or FPA) met on August 17, 2023, in the Franklin Avenue Administrative Complex, Meeting Room 201, 6920 Franklin Avenue, New Orleans, La. Mr. Rabb called the meeting to order at 10:31 a.m.

Opening Comments: Mr. Rabb introduced himself as the Chair of the Legal Committee and Committee members Thomas G. Fierke and William A. Settoon, Jr. Deborah M. Settoon, who is also a member of the Committee, was absent.

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

Approval of Minutes: The Committee approved the minutes of the meeting held on June 15, 2023.

Public Comments: None.

Report of Executive Counsel:

Kirk Ordoyne, Executive Counsel, provided the following report:

- Mr. Ordoyne advised that since the last Board and Legal Committee meetings, he has been working with outside counsel to try to resolve some of the pending cases. Some settlement conferences were held; however, the cases had not yet been resolved. Pending dates are upcoming on some motions for summary judgement and employee appeals, as previously reported to the Board.
- The Board at its July 20th meeting discussed the proposed issuance of a Request for Qualifications (RFQ) for law firms, which had not been done in a very long time. Mr. Ordoyne clarified the difference between insured and uninsured litigation relative to retaining legal counsel. The FPA selects outside counsel for representation in uninsured cases. Currently, 30 cases are pending (four uninsured and 26 insured). The FPA is using one outside firm (Burglass & Tankersley, LLC) for three of the uninsured cases (Robert v. State of Louisiana, Louisiana Southport v. EJLD and Campbell v. Cycle Construction, et al). The FPA is represented by the Land and Natural Resources Division of the Attorney General's (AG) Office for the fourth uninsured case. Relative to insured cases, the insurer directly contracts with outside counsel. The FPA can request, based

on past performance, that a certain law firm be used; however, the decision lies with the insurer. Roughly 73 percent of the pending cases (22 of the 30) involve the police, and include seven Section 1983 Civil Rights cases, three cases pending in Federal court, and about three vehicle accident cases.

Two exhibits were distributed: (1) Sample Billable Rates and (2) the AG's Maximum Hourly Fee Scheduled approved on February 8, 2016. Mr. Ordoyne reached out to a legal recruiter who has been in business since 1989 and has placed a majority of the attorneys in the New Orleans area, which was the source of the Sample Billable Rates required by the law firms:

Insurance Defense - \$350 per hour for seasoned attorneys and \$250 per hour for attorneys with two years' experience.

Labor and Employment - \$350 to \$400 per hour

Real Estate - \$300 to \$400 per hour

Relative to Agenda Item A, the proposed rates for Fisher & Phillips, a labor and employment firm, are \$305 per hour for a Partner and \$270 per hour for Of Counsel, which are lower than the rates for attorneys being placed in the New Orleans area. Regarding insured litigation, most of the outside counsel contracts with the insurer utilize Mark Hanna whose rate is \$225 per hour. The AG's 2016 approved rates provide \$225 per hour for attorneys with ten+ years' experience.

Mr. Rabb noted that a number of the cases involve police and vehicle/traffic situations. He advised that he and Mr. Ordoyne discussed working with the FPA's Superintendent of Police and Levee District Police Department to get into a safety mode and consistently emphasize vehicle safety at safety meetings and on other occasions in order to prevent future cases. Mr. Ordoyne added that it also involves pointing out and addressing legal issues in the suits and providing information to the Superintendent of Police. Kelli Chandler, Regional Director, advised that the current Superintendent of Police has a different outlook on the risk of chases and pursuits than the prior Superintendents . The FPA is looking at technology and different means to attempt to accomplish the same results without putting officers at risk, such as using dash cameras to capture license plates in order to locate a vehicle.

Mr. Settoon asked had the FPA ever had a problem with representation dictated by an insurer. Mr. Ordoyne replied that, to his knowledge, the FPA had not had any problems.

Mr. Settoon asked the status of the Robert v. State of Louisiana (London Avenue) litigation. Mr. Ordoyne explained that the FPA is awaiting the ruling of the Louisiana Court of Appeals for the Fourth Circuit on the appeal of the lower court's ruling authorizing class action certification. The FPA retained Burglass & Tankersley, LLC, for this uninsured litigation with services to be provided at the AG's 2016 approved rates.

Mr. Rabb pointed out that the AG's 2016 approved rates are very low and that the Fisher & Phillips' rates of \$305 and \$270 per hour are reasonable in comparison to market rates.

New Business:

- A. To discuss a proposed resolution to amend and restate Resolutions Nos. 05-18-23-04 and 07-20-23-03 authorizing the retention of Fisher & Phillips LLP to provide legal counsel and representation for Louisiana Civil Service appeals and other labor and employment litigation and to provide the Committee's recommendation.**
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Mr. Rabb explained that the resolutions previously adopted by the Board were returned by the AG's Office with the requirement that additional information be included.

Mr. Ordoyne further explained that the AG's Office provided a template/sample resolution, which was used for the previous resolutions adopted by the Board. The resolutions and contracts were forwarded to the AG's Office and a different individual in the AG's Office reviewed the resolutions and contracts and advised that additional language would be required. The additional language required for both the Fisher & Phillips and Lane Law Group resolutions and/or contracts consisted of the maximum contract amount, a statement that vendors cannot boycott Israel because it could jeopardize Federal funding to the State, and the Louisiana Department of Revenue account number. The AG's Office also requires a justification letter for retaining Fisher & Phillips at rates that exceed the AG's 2016 approved rates. The Lane Law Group contract must include a provision that litigation cannot be filed in a court with jurisdiction outside of the State of Louisiana should the firm sue the FPA.

Mr. Settoon asked is AG approval required for all FPA legal services contracts. Mr. Ordoyne replied, yes; the AG's Office must approve the resolution and the contract.

Mr. Settoon inquired about attorneys' fees should the FPA win a case. Mr. Ordoyne explained that the FPA has a Self-Insured Retention (SIR) responsibility up to \$100,000 per case. If the FPA prevails and can prove that the lawsuit was frivolous, it can pursue court costs and attorneys' fees. In a borderline situation where the FPA cannot prove a suit was frivolous, it could attempt to pursue court costs.

Mr. Fierke offered a motion, which was seconded by Mr. Settoon and adopted, to recommend that the Board approve the resolution authorizing the retention of Fisher & Phillips LLP.

- B. To discuss a proposed resolution to amend and restate Resolution No. 07-20-23-03 authorizing the retention of Lane Law Group, LLC, to provide legal counsel for insurance coverage litigation and to provide the Committee's recommendation.**
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Mr. Fierke offered a motion, which was seconded by Mr. Settoon and adopted, to recommend that the Board approve the resolution authorizing the retention of the Lane Law Group, LLC.

There was no further business; therefore, the meeting was adjourned at 10:50 a.m.