

NON-FLOOD ASSET PROTECTION MANAGEMENT AUTHORITY
LEGAL COMMITTEE MEETING MINUTES
NOVEMBER 4, 2010 – 4:00 P.M.

The regular monthly meeting of the Legal Committee of the Non-Flood Asset Protection Management Authority was held on Thursday, November 4, 2010 at 4:00 P.M., in the Lake Vista Community Center, 2nd Floor, 6500 Spanish Fort Blvd., New Orleans, Louisiana after due legal notice of the meeting was sent to each Board member, the news media, and a copy of the call was posted.

Commissioner Ernst called the meeting to order at 4:00 p.m. and led in the Pledge of Allegiance.

PRESENT:

Chairman Greg Ernst
Commissioner Joe Hassinger
Commissioner Michael Bridges
Commissioner Wilma Heaton – Arrived late

STAFF:

Vince Caire, OLD
Sharon Martiny, OLD
Dawn Wagener, OLD

ALSO PRESENT:

Robert E. Smith Lupo
Gerard Metzger
Charles Curtis
Albert Pappalardo

OPENING COMMENTS

Chairman Ernst noted that this was the first meeting of Legal Committee and welcomed the opportunity to Chair this committee.

APPROVAL OF AGENDA

Chairman Ernst offered a motion to adopt the agenda, seconded by Commissioner Hassinger and unanimously adopted.

PRESENTATION ON CURRENT LEGAL ISSUES

Mr. Capo informed the Committee that on November 15th, he is to appear in Plaquemines Parish Courthouse at 9:00 a.m. to give trial testimony as a witness in the Bohemia Spillway case. Mr. Capo stated that the case is not handled by Non-Flood; but it is handled by the Flood Division and is part of the Bohemia claimants. He will be meeting with attorneys from Gordon Arata next Wednesday at 11:00 to go over his deposition and to prepare for upcoming trial the following Monday.

Mr. Metzger noted that the litigation is being handled on the Flood side and the expense is being paid by the Flood side. Gordon Arato has been representing the Levee District since 2007 and will be assisted by Mike Botnick and Sara Moledeaux, who are the lead attorneys. The trial is in Plaquemine Parish, Division B, 25th Judicial District Court and is captioned Isabelle Connor vs. Orleans Levee District. There is a \$26 or \$28 million Judgment right now.

Commissioner Bridges inquired as to the exposure the Non-Flood side may have from an adverse Judgment. Mr. Metzger commented that there was a Consent Judgment entered to protract the litigation and at the tail end of it the Board approved, pre-Katrina, a Judgment for about \$25-\$26 million. There were two Judgments. There was a smaller Judgment in the amount of \$3 million that the Board paid off. On the larger Judgment there was a pay out agreement negotiated pre-Katrina and after Katrina the District could not handle the payments. It went into default and counsel for plaintiffs attempted to seize assets of the Orleans Levee District. More litigation ensued and the issue was resolved by a decision of the 5th Circuit of Appeals which held that the Levee District's property is exempt under Louisiana Constitution and the basis for the Judgment was not a civil rights violation so they could not seize under the 14th Amendment. The risk of seizure or adverse consequences on the finances of the District, either Flood or Non-Flood, are less than remote, they are zero. That is a definitive Judgment by the 5th Circuit.

Commissioner Heaton put the dollar amount in perspective stating that in July of 2005 the old Board went before the State Bond Commission for authority to sell bonds to fulfill their requirement on the negotiated settlement of some \$11 million. The District did get the authorization from the State Bond Commission but then Katrina came.

Chairman Ernst commented about a clause inserted in the legislation regarding the sale of Non-Flood assets, whether that included money from the lease of property and whether that would be subject to the litigants having a right to those proceeds. I know that was an issue that was inserted in there that we were not thrilled about it, but we were hopeful that could be undone next legislative session.

Mr. Metzger commented on language in Act 1014 regarding assets sold with that money going towards paying debts (Judgments), which means Bohemia. The language is in Section 2 of Act 1014 and states "*Provided that any sale or transfer*". As lawyers we know the lease is not a form of a transfer. It is Mr.

Metzger's belief that the intent was upon sale because otherwise, all of the rental income from the District would be going to pay the Bohemia Judgment.

Commissioner Heaton advised she was asked about that during session and told them that they were shutting us down from being able to lease properties. We could not get the whole provision out, but we did get the provision out about leases.

Chairman Ernst referenced the boathouses and the sale of the property and improvements.

Mr. Pappalardo added the boathouses we own don't have a lot of value. Our value is in leasing it because we are going to get more money for the lease of the ground and water bottom. It would be more beneficial for us to sell and send that money to Bohemia and get that 30 year lease going. What we own is an old garage which we have had listed on the market for a year with no offers. We should not be concerned about holding up the transmission of the fee that we get because the underlying water bottom lease is where we make our money. It is Mr. Pappalardo's understanding that the language goes away January 1, 2012.

A Motion was offered by Chairman Ernst, seconded by Commissioner Hassinger and unanimously adopted, for the Board to convene in Executive Session to discuss the items listed on the Agenda.

EXECUTIVE SESSION:

1. Jean Lafourge, wife of/and Jay Napolitano v. State of Louisiana, et al.
CDC No. Civil District Court for the Parish of Orleans
Case No: 07-4529, Sect. J-13
2. Cedric Richmond v. Board of Commissioners of the Orleans Levee District and the Orleans Levee District
Civil District Court for the Parish of Orleans
Case No: 2006-14319, Section L-6
3. William Wilson v. Orleans Levee District Police, et al.
Civil District Court for the Parish of Orleans
Case No: 03-18762, Sect. H-12
4. Board of Commissioners of the Orleans Levee District v. American Airports Lakefront, L.L.C.
Civil District Court for the Parish of Orleans
Case No: 04-16652, Sect. L-6
5. Palms at Lake Marina, v. Board of Commissioners of the Orleans Levee District
Civil District Court for the Parish of Orleans
Case No: 04-1390, Sect. B-15
6. Orleans Levee District, by and through the State of Louisiana, Division of Administration v. Hartford Fire Insurance Company and RSUI Indemnity Company, United States District Court, Eastern District of Louisiana
Civil Action No. 2:07-CV-5608
7. Orleans Levee District v. Lakefront Play Palace, L.L.C., Janell St. Martin and Steven St. Martin
First City Court for the City of New Orleans
Case No. 08-51827, Sect. A
8. Orleans Levee District v. Karen J. Fernandes and Dianne M. Lohfink
Civil District Court for the Parish of Orleans
Case No: 07-6609, Section L-6

9. Orleans Levee District, Division of Non-Flood Assets v. Natal Builders, L.L.C. and Frank B. Natal, III
First City Court for the City of New Orleans
Case No. 09-52413; Sect. B
10. Orleans Levee District v. Angelina Uddo wife of/and Louis O. Lenfant, Jr.
Civil District Court for the Parish of Orleans
Case No. 08-7880; Sect. E-7
11. Aeropremier Jet Center, L.L.C. v. Orleans Levee District
Civil District Court for the Parish of Orleans
Case No. 09-8632; Sect. I
12. Dieter Hugel v. Southeast Louisiana Flood Protection Authority-East, et al
United States District Court, Eastern District of Louisiana
Civil Action No. 09-4215; Sect. B
13. Lester Cook v. Board of Commissioners of the Orleans Levee District and/or Southeast Louisiana Flood Protection Authority-East
Civil District Court for the Parish of Orleans
Case No. 09-5567; Sect. C-10
14. Regal Construction, L.L.C. v. Jason IV Aviation, Inc. d/b/a Million Air New Orleans and/or Odyssey Aviation of New Orleans, II International, Inc. d/b/a Million Air Cincinnati, Travelers Indemnity Company, The Standard Fire Insurance Company, Bankers Insurance Company, The Orleans Levee District
Civil District Court for the Parish of Orleans
Case No. 10-5624; Sect. M-13
15. Orleans Levee District v. Six by the Sea, L.L.C.
First City Court for the City of New Orleans
Case No. 10-52049; Sect. A
16. Mark Golay v. Board of Commissioners of the Orleans Levee District, Southeast Louisiana Flood Protection Authority-East and ABC Insurance Company
Civil District Court for the Parish of Orleans
Case No. 10-7854; Sect. K-5
17. Orleans Levee District, Division of Non-Flood Assets v. Jason IV Aviation, Inc. d/b/a Million Air New Orleans and/or d/b/a Odyssey Aviation of New Orleans
Civil District Court for the Parish of Orleans
Case No. 10-10030; Sect. G-11
18. Landry v. Orleans Levee District
4th Cir. No. 2010-CA-1052
19. West End Tennis Club v. Orleans Levee District
20. New Orleans Iron Works v. Orleans Levee District

Chairman Ernst concluded the Executive Session and noted for the record that no votes were taken and no action was taken.

NEW BUSINESS

1. Extension of Contract for Legal Services

Mr. Metzger addressed the Extension of Contract for Legal Services and provided a signed contract dated July 30, 2010 which is effective from January 1, 2010 and will expire December 31, 2010. Mr. Metzger stated that the budget of \$150,000 was almost exhausted and he requested an increase of \$70,000 due to the fact that through October the budget was exceeded by approximately \$39,000. Mr. Metzger is requesting approval to cover those expenditures over the budget of \$150,000 and make money available for the next two months.

Commissioner Hassinger moved for consideration by the full Board, seconded by Commissioner Bridges and unanimously adopted.

ANNOUNCEMENT OF NEXT LEGAL COMMITTEE MEETING

Chairman Ernst announced the next Legal Committee meeting will be held on Thursday, December 2 at 4:00 in this room.

ADJOURNMENT

Commissioner Hassinger moved for a motion to adjourn, seconded by Commissioner Heaton and unanimously adopted.