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# Louisiana Housing Finance Agency



## Legal Department

Terri Ricks, General Counsel

May 11, 2011

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## **MEMORANDUM**

**To:** Commissioner Frank H. Thaxton, III, Chairman  
Commissioner Neal P. Miller  
Commissioner Guy T. Williams  
Commissioner Katie Anderson  
Commissioner Adena R. Boris  
Commissioner Tyrone A. Wilson

**From:** Terri Porche Ricks, General Counsel, Legal Department

**Date:** April 29, 2011

**Re:** Legal Committee Meeting

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A regular meeting of the Louisiana Housing Finance Agency Legal Committee will be held on Wednesday, May 11, 2011 at 9:00 a.m., Louisiana Housing Finance Agency, in Committee Room 2 located at 2415 Quail Drive, Baton Rouge, Louisiana, by order of the Chairman.

If you have any questions or concerns, please contact us.

May 11, 2011

### **LEGAL COMMITTEE MEETING**

Notice is hereby given that a regular meeting of the Louisiana Housing Finance Agency Legal Committee will be held on **Wednesday, May 11, at 9:00 a.m.**, Louisiana Housing Finance Agency, in Committee Room 2 located at 2415 Quail Drive, Baton Rouge, LA, by order of the Chairman.

#### **Final Agenda**

1. Call to order, roll call and introduction of guests.
2. Approval of the minutes of March 16, 2011 Committee Meeting.
3. Motion to enter into Executive Session pursuant to LA R.S. 42:6.1 to discuss strategy concerning pending litigation:
  - **Bridgette Taylor, et al vs. Ronnie Hutson, et al 6<sup>th</sup> Judicial District Court Docket No. 21047**
  - **Materials Management Group, Inc. vs. ComNet, L.L.C. and Louisiana Housing Finance Agency, Civil District Court for the Parish of Orleans, Docket No. 2011-2364**
4. Decision regarding:
  - **Bridgette Taylor, et al vs. Ronnie Hutson, et al 6<sup>th</sup> Judicial District Court Docket No. 21047**
5. Other Business
6. Adjournment

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Alesia Y. Wilkins-Braxton  
Vice President

**If you require special services or accommodations, please contact Barry E. Brooks at (225) 763 8773, or via email [bbrooks@lhfa.state.la.us](mailto:bbrooks@lhfa.state.la.us)**

Pursuant to the provisions of LSA-R.S. 42:6.1, upon two-thirds vote of the members present, the Board of Commissioners of the Louisiana Housing Finance Agency may choose to enter executive session, and by this notice, the Agency reserves its right to go into executive session as provided by law.

# **Privileged and Confidential Memo to LHFA Officers and Commissioners**

Regarding

Bridgette Taylor, et al vs. Ronnie Hutson, et al

6<sup>th</sup> Judicial District Court Docket No. 21047

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## **Background and Procedural History**

Ms. Taylor was a participant in the Tri-Delta SHARE Program. She received home rehabilitation work under the original Program. Because of problems with the contractor's work in many of the homes, the LHFA hired Hutson Construction to do additional work to properly complete the homes, including Ms. Taylor's. The Hutson repair work on Ms. Taylor's home was completed in September, 2006. In March, 2007, a fire started in one of the bedrooms in the home, and the structure sustained significant fire damage. Ms. Taylor complained to the LHFA that the fire was caused by some aspect of the previous repair work.

The LHFA hired a fire reconstruction expert and an electrical engineer to evaluate the premises and the source and cause of the fire. They determined the fire started because an electric cord was pinched under a metal bed leg and sparked, igniting bed clothes or carpeting. Certainly, then, it appeared that the fire started, several months after the Program work was completed, due to a condition created by the residents.

After we notified Ms. Taylor's counsel of the results of our inspection, counsel filed suit against the LHFA, Helene Brown, Hutson Construction and the East Carroll Parish Police Jury. The Police Jury was involved in the original phase of the Tri-Delta SHARE Program, in determining eligibility of participants and the scope of work for the homeowners. The Police Jury was not involved in the later work done by Hutson to remedy problems with the original contractor.

Plaintiffs' claims include negligence, failure to follow established construction standards and codes, failure to utilize recognized safety devices and procedures, failure to adequately supervise the repair work, etc. The gist is that, regardless of the immediate cause of the fire, had proper safety devices been utilized, the ignition source would have been interrupted and the fire avoided. Plaintiffs also claim that the fire may have started, at least in part, in an improperly installed circuit breaker box, or because improperly-sized breakers were utilized in the box.

Hutson Construction filed a third party demand against its electrical contractor, asserting that the contractor was responsible for following applicable electrical code standards, and for properly installing all electrical components. That subcontractor claims that it never did any work in the Taylors' home.

Plaintiffs also sued Helene Brown, the LHFA's consultant for the second phase of the work done on the subject properties, due to the first contractor's substandard work. The LHFA agreed that the Long Law Firm would represent Ms. Brown in conjunction with the defense of the Agency. On behalf of both Ms. Brown and the Agency, LHFA filed a cross-claim against

Hutson Construction, on the basis that, if the electrical work was not done properly or up to standards, this was the fault of the contractor hired by the LHFA, and the contractor owes the LHFA an obligation of indemnity.

### **Potential Exposure to LHFA/Consideration for Mediation**

A five (5) day jury trial of this matter is scheduled for September 2011. Considerable additional case preparation remains to be completed, including several depositions of expert witnesses, before trial. The Agency would need to consider costs of trial, including the costs of appeal.

Counsel for Hutson Construction and for Hutson's electrical contractor proposed mediation of the claims in this lawsuit in an effort to avoid significant further legal expenses moving toward trial.

A discussion of whether LHFA should participate in the mediation was made with Legal Committee Chair and Board Chair. They decided that LHFA should participate in the mediation with the understanding that the Board must provide any settlement authority beyond administrative costs. Specifically, Legal Chair Thaxton stated, "The expense of attending the mediation is more than justified in light of the potential defense costs that could be saved if this case settles. Additionally, our counsel has what we believe to be the only authoritative expert report on causation, which we believe will reduce our liability and that of our co-defendant. Delivery and discussion of this information in person with Judge Bleich, the mediator, is a key element in attempting to resolve this claim."

Mediation was conducted on April 20, 2011, in Monroe, Louisiana. Though plaintiffs remained steadfast in their substantial damages amount claimed against Hutson Construction, such that Hutson was not able to negotiate a settlement, an opportunity developed for the LHFA to reach a separate settlement with the plaintiffs. The LHFA's representatives negotiated a settlement contingent on Board approval, to preserve the opportunity to resolve the case until the matter could be discussed with the Legal Committee and the Board.

### **Decision Needed Regarding Mediated Settlement**

The conditioned settlement will be discussed during executive session at the Legal Committee meeting and the Full Board meeting on May 11, 2011. If the Board is in favor of the conditioned settlement as discussed in executive session, the Committee and Board will be asked to approve payment of the settlement by motion after returning to the public meeting from executive session.

## **Privileged and Confidential Memo to LHFA Officers and Commissioners**

Regarding

Materials Management Group, Inc. versus ComNet, L.L.C. and Louisiana Housing Finance Agency  
Civil District Court for the Parish of Orleans, Docket No. 2011-2364, Div. I-14

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Material's Management Group, Inc. ("MMG") filed suit against ComNet, L.L.C. ("ComNet") and Louisiana Housing Finance Agency ("LHFA") on March 4, 2011 in Orleans Parish Civil District Court. LHFA was served via the Louisiana Attorney's General's office on March 15, 2011. LHFA received a copy of the petition on March 21, 2011. The case has been assigned to Division I of Orleans Parish CDC under Judge Piper Griffin.

### **Background**

LHFA contracted with ComNet, LLC to perform lead-based paint, termite, and asbestos inspections and assessments under the Non-Profit Rebuilding Pilot Program. ComNet was selected as a vendor through a Request for Qualifications. The terms of the contracts for the inspections allow the vendor to sub-contract the work to be performed to other vendors.

MMG's petition alleges that it was engaged by ComNet as a subcontractor to perform lead-based paint, asbestos, and termite inspections on nineteen properties that LHFA authorized ComNet to commence services on. MMG alleges that all work has been performed, and despite demands on ComNet for payment, \$18,206 has yet to be paid by ComNet.

NRPP program and accounting staff have determined that there are no outstanding invoices from ComNet to LHFA for any services authorized to be commenced. To date, ComNet has been paid a total of \$84,050 under its professional services agreements with LHFA. NRPP program and accounting staff have also reviewed several MMG invoices that were forwarded to LHFA by Richard and Laura Mary, counsel for ComNet, and found that all of the services presented in those invoices have been paid by LHFA to ComNet as well.

### **Procedural History**

A Motion for Extension of Time to File Responsive Pleadings was filed on by Richard Mary, counsel for ComNet, on March 30, 2011, requesting an additional time in which to file an answer to the pleadings. As of May 2, 2011, Judge Griffin had not yet signed to order granting the extension of time to file responsive pleadings. Once signed, the Order will provide the new deadline by which an answer or other response must be filed.

### **Potential Exposure to LHFA**

As this case is a suit on an open account, exposure to the Agency should be minimal. The contract between LHFA and ComNet contains an indemnification provision requiring the Contractor to "protect, defend, indemnify, save and hold harmless the Agency" from and against all loss, liability, claim, demand, suit, expense arising out any claims. The provision also requires that the Contractor

provide a defense for any defend any such claim and bear all costs and expenses associated with the claim.

We spoke with Richard Murray, counsel for ComNet, who acknowledged that he is aware of the indemnification and duty to defend provision of the agreement, and has agreed that any action taken in the defense of the litigation on behalf of both ComNet and LHFA. He also confirmed that he is working with ComNet and counsel for MMG, Mr. Robert Lehman, on reconciling the outstanding payments that may be due to MMG. Mr. Mary has agreed to copy LHFA on all correspondence and pleadings exchanged or filed by the parties.

We look forward to being able to update you soon on the status of the resolution of this matter.

CONFIDENTIAL



**Louisiana Housing Finance Agency  
Legal Committee Meeting Minutes  
Wednesday, March 16, 2011  
2415 Quail Drive  
Committee Room 2  
Baton Rouge, LA 70808  
9:30 A.M.**

**Committee Members Present**

Frank H. Thaxton, III, Chairman  
Katie Anderson  
Adena R. Boris  
Tyrone A. Wilson

**Committee Members Absent**

Neal P. Miller  
Guy T. Williams

**Other Commissioners Present**

Mayson H. Foster  
Donald B. Vallee  
Michael L. Airhart  
Allison A. Jones

**Staff Present**

Alesia Y. Wilkins-Braxton  
Keith Cunningham  
Terri Ricks  
Milton J. Bailey  
Christine Bratkowski  
Melanie Brocato  
Leslie Strahan  
Jessica Guinn  
Annie Clark  
Jeff DeGraff  
Brenda Evans  
Terry Holden

**Visitors Present**

Tim Rittenhouse

Buck Landry

1. **Call to order, roll call and introduction of guests.** Commissioner Frank H. Thaxton, III, Chairman, called the meeting to order at 9:42 a.m. and asked for a roll call. A quorum was established.
2. **Approval of the minutes.** A motion was made by Commissioner Katie Anderson with a second by Commissioner Tyrone Wilson to approve the minutes of the February 9, 2011 committee meeting. The minutes were approved.
3. **Report of lawsuit filed: Sedeana Hausey vs. Willowbrook Management, Inc. and Louisiana Housing Finance Agency, Number 11-556 Div. M Sec. 13.** Commissioner Thaxton asked Terri Ricks, General Counsel of the Agency to report on this lawsuit. Ms. Ricks reported the matter as a slip and fall at the Willowbrook Apartments, which is covered by insurance. She stated the matter has been turned over to Risk Management and the Attorney General's Office.
4. **Discussion and Decision regarding Proposals to quorums and voting at committee meetings.** Commissioner Thaxton introduced the matter as a matter that had been sent to the legal committee to provide options to change the By-Laws or provide a rule to functionally preserve the historical practice of the committees, which would allow a greater chance of reaching quorums in the committees and allow interested commissioners to have greater participation. There was a statement that without any change, in Committee meetings only the members of that committee could be counted to form a quorum and only committee members' votes could be counted regarding action by the committee.

Commissioner Thaxton indicated that three options of By-Laws changes had been sent to the committee for consideration, and that the Committee also could consider the option not to make a change. Commissioner Thaxton asked Ms. Ricks to present the options. Ms. Ricks presented the options, and commissioners asked questions regarding the options. A lengthy discussion ensued about the various options, even the consideration of not using committees at all, as well as the purpose of the committees relative to the Commissioners, the Board and the public.

After discussion, Commissioner Wilson made a motion, which Commissioner Anderson seconded, to not change the By-Laws and in reporting the matter to the Board to reiterate that not changing the By-Laws means that in committee meetings only the members of that committee could be counted to form a quorum, that only committee members' votes could be counted regarding action by the committee, that all commissioners' could participate in the discussion at the committee meetings.

There was then a discussion as to whether the committee meetings should be held on days other than the Board meeting day, when committee meetings can be called, what matters are best taken up at committee meetings versus non-public meetings, and when teleconferencing can be used in keeping with the Open Meetings Law. After this

meeting, Commissioners Donald B. Vallee, Michael L. Airhart and Mayson H. Foster exited the meeting to attend a different committee meeting.

5. **Discussion of protocol for requesting legal opinions.** Commissioner Thaxton introduced this matter as a matter in need of an expressed protocol for requesting legal opinions, as legal opinions have been requested recently. Discussion ensued by the members present regarding whether a written legal opinion could be requested by a commissioner or by the Board.

Commissioner Thaxton asked General Counsel if there were any rules about the matter. Discussion continued regarding legal counsel being counsel to the Agency, not individuals of the Agency. Also the Kutak Rock training underscored this issue. There was further discussion about a requested opinion becoming public record and about the difference between requesting legal advice versus a legal opinion. It was stated that the best way to have a written opinion on a matter would be to have the matter flow through the legal committee meeting and to full board. There was also discussion that the Vice-President should not be requested to provide legal opinions, as she is not employed as an attorney for the agency, even though she is an attorney.

Commissioner Thaxton stated the Committee was going to report out that the matter was discussed, only, and would provide a synopsis of the discussion.

6. **Discussion regarding the validity and propriety of entering into contracts with the President and Vice President.** After a short discussion about the best way to approach the matter, General Counsel provided the information that was provided to an individual by phone on the same issues. Within the information presented, she reported that it is legally allowable to enter into contracts with unclassified employees, and that the Agency's By-Laws also are triggered as the President and Vice-President are Agency officers, which affects election and removal. There was further discussion regarding salaries. There was no action taken on the matter.
7. **Other Business.** No other business.
8. **Adjournment.** A motion to adjourn was made by Commissioner Wilson and seconded by Commissioner Anderson. The motion passed unanimously, and the committee adjourned at 10:33 a.m.