

v. Contingency Fee  
Agreement and  
Authority to  
Represent



## Contingency Fee Agreement and Authority to Represent

*Southeast Louisiana Flood Protection Authority - East*, the undersigned client (hereinafter referred to as "Client"), hereby retains and employs the law firm of Jones, Swanson, Huddell & Garrison, LLC (hereinafter referred to as "JSHG" and extending to JSHG's transferees and assigns), as Client's Attorneys to represent Client, together with the Orleans Levee District, the East Jefferson Levee District, and the Lake Borgne Levee District ("Levee Districts"), in connection with Client's and the Levee Districts' claims for damages, including but not limited to increased costs and property damages, sustained as a consequence of the ongoing land loss and erosion ("Claims"). Client acknowledges that the objective of the representation is to obtain monetary or remedial compensation for damages related to Claims ("Objective").

Client specifically authorizes JSHG to undertake negotiations and/or file suit or institute legal proceedings necessary on Client's and the Levee Districts' behalf. Client further authorizes JSHG to retain and employ, at Client's expense, the services of any experts, as well as the services of other outside contractors, as JSHG reasonably deems necessary or expedient in representing Client's and the Levee Districts' interests. Client also authorizes JSHG to retain and employ and to share the fee with other attorneys not associated with JSHG with Client's prior knowledge and written consent; however, the combined fee of JSHG and all other attorneys shall be limited as set forth herein.

JSHG agrees to diligently institute and prosecute the Claims to determination in the appropriate court, and make all reasonable and necessary efforts to collect any judgment that may be rendered therein in Client's and/or the Levee Districts' favor. In the event of a judgment unfavorable to Client or the Levee Districts in said court, JSHG will, in consultation with client, and if in JSHG's sole opinion good grounds exist, appeal said cause to the appropriate court of appeals and prosecute same to a final determination therein.

1. **ATTORNEYS' FEES.** As compensation for legal services, Client agrees to pay JSHG a fee as follows:

**Contingency Fee** – JSHG shall receive the following percentages of any gross recovery ("Fee") before the deduction of costs and expenses as set forth in Section 2 herein:

- a) Thirty-two and a half percent (32.5%) on any gross recovery totaling up to and including one hundred million dollars (\$100,000,000);
- b) Twenty-seven and a half percent (27.5%) on any gross recovery totaling more than one hundred million dollars (\$100,000,000) up to and including three hundred million dollars (\$300,000,000); and
- c) Twenty-two and a half percent (22.5%) on any gross recovery totaling more than three hundred million dollars (\$300,000,000).

As used in this agreement "gross recovery" means principal, interest, penalties, litigation costs and expenses, and all other amounts recovered or to be recovered, including the value of any structured settlement, future payments, remediation, restoration, or non-pecuniary benefits, whether by suit, settlement, judgment or otherwise. With regard to any structured settlement or future payments, JSHG's receipt of attorneys' fees and cost reimbursement thereon shall be upon receipt of such recovery by Client.

It is understood and agreed that this employment is based upon a contingency fee and, if no recovery is made, Client will not be indebted to JSHG for any sum whatsoever as JSHG's Fee or costs and expenses. Except as otherwise agreed below, in the event of a successful recovery, however, Client agrees to pay all costs and expenses as set forth in Section 2 herein, which shall be deducted from Client's share of that recovery. Neither JSHG nor Client shall have the right, without the written consent of the other, to settle, compromise, release, discontinue or otherwise dispose of the Claims. In the event of a settlement with one of several defendants, JSHG will withhold a reasonable amount of the settlement funds to cover estimated future costs associated with prosecuting the claims against remaining defendants.

In the event that there is a settlement that includes restoration and/or remediation and/or any non-pecuniary benefit, JSHG shall be entitled to negotiate a reasonable attorney's fee with the settling defendant(s) for the value of services related to obtaining such restoration and/or remediation. It is understood that the attorney's fee associated with the value of services related to obtaining such restoration and/or remediation is separate and in addition to the contingency fee due JSHG as a result of the obtainment of a cash component paid to client as part of the settlement.

2. **COSTS AND EXPENSES.** In addition to paying JSHG's Fee, in the event of a successful recovery, Client agrees to pay all costs and expenses in connection with JSHG's handling of this matter. JSHG shall have the right and authority, without prior approval of Client, to incur such litigation costs and expenses as may be necessary and/or advisable in furtherance of the Claims. In the event of a successful recovery, Client agrees to bear responsibility for those litigation costs and expenses, which shall be billed to Client's file as they are incurred, and Client hereby agrees to reimburse JSHG immediately upon receipt of any settlement funds or collected judgment. Litigation costs and expenses may include (but are not limited to) the following: filing fees; deposition costs; expert witness fees; transcript costs; witness fees; subpoena costs; sheriff's and service of process fees; trial consultant fees; mock trial costs; shadow jury fees; mediation fees; court costs; trial exhibit costs; copy costs; photographic, electronic or digital evidence production; investigation fees; reasonable travel expenses; and any other case-specific expenses directly related to the representation undertaken. Additionally, Client specifically authorizes JSHG to charge as recoverable costs such items such as computer legal research charges (e.g. Westlaw and/or Lexis); long distance telephone expenses; cellular telephone charges; postage charges; Federal Express, UPS and other delivery service charges; internal photocopying at a rate of \$ .10 per page;; and mileage at the Louisiana State Attorney General's approved rate and outside courier charges, all of which must be incurred solely for the purposes of the representation undertaken. Finally, Client understands that Client will not be charged costs and expenses for any overhead costs of JSHG's practice, including office rent, utility

costs, charges for local telephone service, office supplies, fixed asset expenses and ordinary or overtime secretarial and staff services. It is further understood that Client's responsibility for fees, costs and expenses under this section shall be limited to, and not exceed, gross recovery.

3. **SCOPE OF REPRESENTATION.** Client acknowledges that this representation is limited to achieving the stated Objective. Accordingly, consideration of matters unrelated to the Objective, such as ill-feelings toward, or the desire to burden, one or more defendants or third parties is not within the scope of the representation. Therefore, while it is Client's decision whether or not to accept a settlement offer, matters beyond achieving the Objective, generally, should not be considered in making such a decision.

Accordingly, it is understood and agreed that in the event JSHG recommends a settlement to Client for monetary or remedial compensation in an amount that is clearly consistent with the Objective, and which has been offered by any defendant before a verdict or judgment is reached, and Client rejects JSHG's recommendation to settle and ultimately receives less than the offered and recommended compromise amount, Client agrees to pay all litigation costs and expenses incurred after the rejection of the offer despite the language in Section 1 above that says no costs will be owed unless there is a recovery. In addition, to the extent any costs are taxed against Client pursuant to a subsequent adverse verdict or judgment, Client agrees to pay said costs whether ordinary costs or costs assessed as a result of an offer of judgment.

4. **NO GUARANTEE.** Client acknowledges that JSHG has made no promise or guarantee regarding the outcome of the Claims. In fact, JSHG has advised Client that litigation in general is risky, can take a long time, can be very costly and can be very frustrating. Client further acknowledges that JSHG shall have the right to cancel this agreement and withdraw from this representation if, in JSHG's professional opinion, the matter does not have merit, Client and/or the Levee Districts do not have a reasonably good possibility of recovery, Client refuses to follow the recommendations of JSHG, Client fails to abide by the terms of this agreement, and/or if JSHG's continued representation would result in a violation of the Rules of Professional Conduct, or at any other time as or if permitted under the Louisiana Rules of Professional Conduct. No guarantee or representation has been made to Client as to what type or amount of recovery, if any, may be expected on the Claims.

Client understands that JSHG's lawyers are not tax, bankruptcy or estate legal experts, however, if these services are requested or required by or on behalf of Client, and JSHG agrees to provide said supplemental legal services, then any resulting attorney fees and expenses will be discussed and charged separately and in addition to the attorney fees and costs and expenses set out hereinabove. JSHG is given the right to withdraw from this supplemental representation also after giving reasonable notice.

5. **STATUTORY ATTORNEY'S FEES.** In the event of recovery under the provisions of any laws which specify attorney's fees to be paid, JSHG is entitled to the whole of the statutory fee awarded regardless of whether there is an award of damages. JSHG shall be entitled to receive this court-awarded fee or the contingency fee as defined above, whichever is greater.

6. **PRIVILEGE.** Client agrees and understands that this contract is intended to and does hereby assign, transfer, set over and deliver unto JSHG as its fee for representation of Client and the Levee Districts in this matter an interest in the Claims, the proceeds or any recovery therefrom under the terms and conditions aforesaid, in accordance with the provisions of Louisiana Revised Statute § 37:218, and that JSHG shall have the privilege afforded by Louisiana Revised Statute § 9:5001.

7. **ALTERNATIVE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning this agreement, Client agrees to submit to arbitration.

**NOTICE:** By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the "Alternative Dispute Resolution" provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law; and you are giving up your right to have the dispute decided in a court and/or by jury trial. By initialing in the space below, you are also giving up your rights to discovery and appeal. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Louisiana Arbitration Law.

I have read and understand the foregoing and agree to submit to neutral binding arbitration disputes arising out of the matters included in the "Alternative Dispute Resolution" provision.

Client Representative's Initials

JB

Attorney's Initials

[Signature]

8. **LOUISIANA LAW.** This contract shall be governed by Louisiana law. It contains the entire and complete understanding between the parties and can only be modified by written amendment signed by all parties.

9. **TERMINATION OF REPRESENTATION PRIOR TO FULL AND FINAL RECOVERY.** Client understands that Client has the right to terminate the representation upon written notice to that effect, and Client understands that JSHG's representation under this agreement could be contested by third parties, meaning persons or entities not party to this agreement. Client understands that, in the event that JSHG's representation under this agreement is terminated prior to full and final recovery and payment of the attorney's fees, costs and expenses owed to JSHG under this agreement, Client will be responsible for any attorney fees or costs incurred prior to such discharge or termination, whether such discharge or termination is at Client's impetus or that of third parties. In such circumstances, fees shall be based on all of the facts and circumstances deemed relevant by Louisiana statutory law and/or jurisprudence, including JSHG's prevailing standard hourly rates and the risk taken by JSHG in accepting Client's and the Levee Districts' legal representation on a contingency fee basis.

Client agrees to cooperate with JSHG at all times and to comply with all reasonable requests of JSHG. Client agrees to provide JSHG with any changes of address and/or phone number. Client warrants and represents to JSHG that all information Client has provided to and/or will in the future

provide to JSHG in connection with the Claim is true and correct to the best of Client's knowledge, information and belief. It is understood that JSHG has induced Client to enter into this agreement by assuming the cost of all initial studies and investigation to determine whether Client has a viable claim for damages. In the event it is determined that Client and/or the Levee Districts do not have such a viable claim for damages, no reimbursement for the initial studies and investigation will be made or due by Client to anyone. This agreement shall be binding on the heirs, successors, and assigns of the parties hereto.

10. **FILE RETENTION POLICY.** Client understands that JSHG treats all materials related to Client's file as confidential. Client acknowledges that under JSHG's Records Retention Policy, the firm's practice is to destroy files related to a matter five (5) years after that matter is closed unless other arrangements are made. At the time that Client's case is closed, Client will have the right to have the file materials turned over to Client if Client so chooses. After the retention period is met (five (5) years after Client's case is closed), JSHG will dispose of Client's files by confidential shredding. JSHG may also choose to store Client's file in an electronic medium and destroy the hard version within the five (5) year period after offering such hard version to Client in writing

11. **ENTIRE AGREEMENT.** Client has read this agreement, a copy of which Client has received, in its entirety and Client agrees to and understands the terms and conditions set forth herein. Client acknowledges that there are no other terms or oral agreements existing between JSHG and Client. This agreement may not be amended or modified in any way without the prior written consent of JSHG and Client.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK**

This agreement is executed by Client, on this 17 day of July, 2013.

CLIENT REPRESENTATIVE: [Signature]  
Printed Name of representative: John M. Barry  
Southeast Louisiana Flood Protection Authority - East

WITNESSES:  
[Signature]  
Printed Name: Mary Kay Cojrene

[Signature]  
Printed Name: EMMA ELIZABETH HATT AND ASCHHOACH

The foregoing agreement is hereby accepted on this 17<sup>th</sup> day of July, 2013.

ATTORNEY: [Signature]  
Printed Name: Bradstone Jones, III

ATTORNEY: [Signature]  
Printed Name: Lynn E. Swanson