

The School Board of Escambia County
215 West Garden Street
Pensacola, Florida 32502
Telephone: (850)469-6362 / Facsimile (850)469-6303

Jeff Bergosh, Vice Chair
District 1

Gerald Boone, Chair
District 2

Linda Moultrie
District 3

Patricia Hightower
District 4


Bill Slayton
District 5

Donna Sessions Waters
General Counsel

MEMORANDUM

DATE: 9/28/10

TO: Norm Ross 

FROM: Donna Waters, General Counsel 

RE: Agenda Item

Please place the attached item on the September 30, 2010 Agenda under Items From General Counsel as follows:

Attorney Employment Contract Contingent Fee Agreement


Thank you for your attention to this matter.

cc: Holley DeWees, Recording Secretary

RECEIVED

SEP 28 2010

SUPERINTENDENT'S OFFICE
ESCAMBIA COUNTY SCHOOL DISTRICT


9-28-10

09-28-10A11:32 RCVD

**ATTORNEY EMPLOYMENT CONTRACT
CONTINGENT FEE AGREEMENT**

Scope of Service

School Board of Escambia County ("Escambia Co. Schools") agrees to retain and employ Nix, Patterson & Roach, LLP ("NPR"); Harrison, Sale, McCloy, Duncan & Jackson, Chtd. ("Harrison Sale"); Harrison Rivard, Chtd. ("Harrison Rivard"); and Fowler White Boggs ("Fowler White") (collectively "Counsel"); to represent Escambia Co. Schools in connection with its claim(s) against BP, BP America Production Company, BP Exploration & Production, Inc., Transocean Ltd., Transocean Holdings, LLC, Halliburton Energy Services, Inc., Cameron International Corporation, and all others, their related affiliates and subcontractors, with respect to the explosion of the Deepwater Horizon offshore drilling rig and subsequent oil spill, and possible related litigation and settlement negotiations.

Staffing

Given the complexity and magnitude of the matters encompassed by this Agreement, Counsel will necessarily staff these matters with a number of attorneys and support personnel. The attorneys, and support personnel who work on the matter as encompassed by this Agreement may change from time to time. Should Escambia Co. Schools have concerns about the counsel or staff working on the case, they will notify Counsel, and all efforts shall be made to satisfy client's preference.

Notices

Any notice, request, demand, or other written communication in connection with this Agreement shall be deemed to have been given or made when received by the party to whom directed. All such notices and other communications shall be in writing (including email) unless otherwise provided herein and shall be directed as follows:

If to Escambia Co. Schools,

School Board of Escambia County
215 West Garden Street
Pensacola, FL 32502
Attn: Malcolm Thomas
Superintendent
Email: mthomas@escambia.k12.fl.us

If to NPR, Waters, Harrison Sale, Harrison Rivard, or Fowler White,

C. Cary Patterson
Nix, Patterson & Roach, LLP
2900 St. Michael Drive, Suite 500
Texarkana, TX 75503
Email: ccp@nixlawfirm.com

Franklin R. Harrison
Harrison, Sale, McCloy, Duncan & Jackson
304 Magnolia Avenue
Panama City, FL 32401
Email: fharrison@harrisonsale.com

William G. Harrison, Jr.
Harrison Rivard
101 Harrison Avenue
Panama City, FL 32401
Email: wharrison@harrisonrivard.com

Carl R. Nelson
Fowler White Boggs
501 E. Kennedy Boulevard
Suite 1700
Tampa, FL 33602
Email: cnelson@fowlerwhite.com

Responsibilities

Counsel will rely upon information and guidance provided by Escambia Co. Schools throughout this representation. To enable Counsel to effectively represent Escambia Co. Schools, Escambia Co. Schools agrees to cooperate fully with Counsel in all matters relating to the preparation and presentation of the case. Escambia Co. Schools agrees to fully and accurately disclose to Counsel all facts that may be relevant to the matter or that Counsel requests. Escambia Co. Schools also agrees to keep Counsel apprised of developments relating to this matter.

Escambia Co. Schools also will make its authorized representative reasonably available to attend meetings, discovery proceedings and conferences, hearings, mediations, trial and other proceedings. Escambia Co. Schools is also responsible for approving negotiations, discovery and litigation strategy; approving causes of action and defenses and adding or dismissing parties to any litigation; and determining acceptable terms of any compromise, settlement, or agreement.

In addition, Escambia Co. Schools will be responsible for advising Counsel whether any document they have prepared or received and sent to Escambia Co. Schools for approval or review reflects the principal terms of Escambia Co. Schools' proposed agreement, general litigation strategy, or other expectations, as the case may be.

Escambia Co. Schools agrees that Counsel shall communicate on a regular basis with Malcolm Thomas or such other person[s] as may be designated in writing to Counsel.

Either at the beginning or during the course of Counsel's representation, Counsel may express opinions or beliefs concerning the matter, various courses of action, or the possible results. Any such statement made by any shareholder or employee of Counsel

is intended to be an expression of opinion only, based on information available to Counsel at the time, and must not be construed by Escambia Co. Schools as a statement of fact, promise or guarantee of any particular result. **No guarantees are possible in matters such as this.**

Complexity of Undertaking

Escambia Co. Schools acknowledges and understands that asserting the claim(s) involves extremely difficult issues and may require significant time and expenses to conclude, resolve, settle, or fully litigate through trial and appeal. Escambia Co. Schools further acknowledges and understands that, while NPR, Harrison Sale, Harrison Rivard and Fowler White will endeavor to complete the undertaking of the claim(s) in an efficient and cost-effective manner consistent with their customary practices, the expenses to complete the claim(s) are not currently subject to estimation and could amount to several million dollars due to the complexity, nature, and subject matter of the claim(s).

Fees, Disbursements, and Other Charges

The fee arrangement in this case is as follows:

1. NPR shall receive a contingency fee of 20% of the gross recovery¹ received by Escambia Co. Schools for its interim claim(s), claim(s) and damages in this litigation or any appeals thereof, by judgment or settlement. Harrison Sale, Harrison Rivard and Fowler White shall share in these fees. Harrison Sale and Harrison Rivard each shall receive 10% of the attorney's fees awarded to NPR. Fowler White shall receive 7.5% of the attorney's fees awarded to NPR. The contingency fee is calculated on the gross settlement or the total judgment before the deduction of costs as discussed herein, expenses and liens. The fees are apportioned based upon the anticipated proportionate involvement and responsibilities assumed by each law firm in their representation of the interests of Escambia Co. Schools.

2. The parties are entering into this Agreement on the understanding that NPR will outlay (either personally or through third-party funding), according to an agreement among themselves, the usual and customary expenses of litigation to cover costs and disbursements. Such expenses of litigation shall be reimbursed to NPR from any amount recovered, after any contingency fee is deducted. Expenses will be consistent with normal practices for Counsel. All expenses related to the litigation shall be advanced by NPR. Costs attributable to multiple clients will be shared pro-rata among those clients. Any costs incurred by NPR that are not related to Escambia Co. Schools' claim shall not be charge to Escambia Co. Schools.

¹ The term "gross recovery" means the total amount paid by the opposing party or parties or the total amount of consideration received by Escambia Co. Schools (whichever is higher), whether it be a sum of money, a benefit, a barter or exchange of service, or any other type of consideration. This amount shall not be offset.

Escambia Co. Schools further agrees that in addition to the above attorney fees, all court costs, subpoena costs, photos, depositions, court reporter costs, reports, witness statements, investigation expenses, long distance telephone calls, copies, reasonable travel and transportation costs, faxes, messenger fees, e-discovery and other vendor services, expert witness fees, expert consulting fees, record retrieval and sorting fees, appellate counsel fees, legal research counsel fees, document recovery specialist fees, mock trial or focus group services, consultant fees, translator and translation fees and expenses, Special Master fees and expenses, mediator fees and expenses, jury fees, trial graphics, including video animation, and computer related exhibit expenses, travel, lodging, meals, and all other out-of-pocket expenses incurred in investigating or litigating the claim(s) will be reimbursed by Escambia Co. Schools from settlement funds. Escambia Co. Schools understands that NPR is a national law firm and that private air travel may be required to further Escambia Co. Schools' interests. NPR utilizes commercial air travel first and only travels via private air when absolutely necessary or when it is the more cost-effective means of travel. NPR has further represented to Escambia Co. Schools, and Escambia Co. Schools understands, that litigation is very expensive, that the costs and expense of litigation have been explained in great detail, that examples of typical costs have been explained by Counsel or their agents, and Escambia Co. Schools understands that all costs advanced to Escambia Co. Schools, including but not limited to those listed above, will be reimbursed by Escambia Co. Schools from settlement funds, should there be any recovery. Counsel shall provide Escambia Co. Schools a quarterly update of costs advanced until the conclusion of the litigation.

Termination

Escambia Co. Schools may terminate its engagement of Counsel at any time by providing written notice to Counsel of its decision. If suit has been filed Counsel shall remain of record until released of further responsibility by court order. In such an event, Escambia Co. Schools shall pay the reasonable value of the services provided by Counsel and reimburse expenses paid by Counsel. Such payment shall be due upon receipt by the Board's Head of settlement proceeds or other amount recovered in resolving the claim(s) either through verdict, settlement, or business relationship.

Counsel may terminate its representation of Escambia Co. Schools at any time, consistent with Counsel's obligations under the applicable code of professional conduct, by providing written notice to Escambia Co. Schools of its decision. If suit has been filed Counsel shall remain of record until released of further responsibility by court order. In the event of termination by Counsel without good cause, Escambia Co. Schools shall have no obligation for payment of any fees or expenses.

In the event of termination, Escambia Co. Schools and Counsel each agree to take all necessary steps to effectuate such a termination, including the execution of any necessary documents to complete Counsel's withdrawal or discharge.

Except as stated herein, termination by any party shall not relieve Escambia Co. Schools of the obligation to pay the reasonable value of all services provided by Counsel and any expenses incurred by Counsel in investigating the claim(s) and pursuing the litigation.

Approval Necessary for Settlement

Counsel will forward to Escambia Co. Schools all offers of settlement and will not settle any claim(s) without first notifying Escambia Co. Schools and obtaining its consent and approval. However, during the term of Counsel's representation of Escambia Co. Schools herein, Escambia Co. Schools will not make a settlement or offer of settlement without first notifying Counsel.

Moreover, Escambia Co. Schools appoints Counsel as Escambia Co. Schools' attorney in fact and grants Counsel the authority to prepare, sign, and file all legal instruments, pleadings, drafts, authorizations, and papers as shall be reasonably necessary to prosecute and/or conclude this representation including settlement and/or reducing to possession any and all monies or other things of value due to Escambia Co. Schools in connection with this representation as fully as Escambia Co. Schools could do in person. Escambia Co. Schools also authorizes and empowers Counsel to act as Escambia Co. Schools' negotiator in any and all settlement negotiations concerning the subject of this Agreement provided that Counsel will not sign settlement documents without the consent of Escambia Co. Schools' designated representative.

Limitations

Counsel shall not be obligated to file any suit, take any step or action in a suit, and/or take an appeal from any decision if Counsel, in their good faith, reasonable opinion, and sole discretion, determine that the filing of suit, taking of such step or action, or taking an appeal would violate Rule 11 of the Federal Rules of Civil Procedure (or analogous or corresponding rules or law in other courts) or Rule 38 of the Federal Rules of Appellate Procedure.

Severability

In case any of the provisions contained in this Agreement shall be held to be invalid or unenforceable, in any respect, such invalidity or unenforceability shall not affect any such other provisions hereof, but this Agreement shall be construed as if such invalid or unenforceable provisions had never been contained herein.

Advice Regarding This Agreement

Escambia Co. Schools may wish to seek independent legal advice concerning this Agreement. If it decides to discuss this Agreement with others, it should keep in mind that this Agreement is a privileged attorney-client communication that may lose its privileged status if it is shown to anyone other than its legal advisors.

Survival

The obligations in this Agreement that are intended to survive termination or conclusion of this Agreement, including the Section above regarding Fees, Disbursements and Other Charges, shall survive any such termination or conclusion.

Successors and Assigns

While NPR, Harrison Sale, Harrison Rivard, Fowler White and Escambia Co. Schools have entered into this Agreement, the parties intend this Agreement to be binding upon them and all of their successors and assigns.

Authority

Each party represents and warrants to the others that it has full right and authority to enter into this Agreement. Each of the undersigned representatives of each party hereby represents and warrants that he/she has been duly authorized and possesses actual authority to contract and bind the party on whose behalf he/she signs, documentary confirmation for which shall be provided to the other parties upon request. This Agreement shall be binding and effective upon each party when executed by that party's representative.

Attorney's Lien

Escambia Co. Schools hereby grants Counsel a lien on the claim(s) or cause(s) of action that are the subject of Counsel's representation under this Agreement. The lien granted herein encompasses any sums owed Counsel at the conclusion of its services, including the fees described above. The lien shall attach to any recovery Escambia Co. Schools may obtain, whether by agreement, arbitration award, settlement, judgment, or otherwise.

Settlement

It is understood and agreed that no settlement of this cause shall be entered into without the consent of Escambia Co. Schools. If a monetary judgment or award is made in Escambia Co. Schools' favor, Counsel shall have a lien on the proceeds of such monetary judgment or award, to the extent there are unpaid fees, advanced litigation costs, disbursements, or other charges due to Counsel.

Fees and Costs are Contingent on Recovery

NPR, Harrison Sale, Harrison Rivard and Fowler White agree, and Escambia Co. Schools understands, that if there is no recovery, Escambia Co. Schools will owe nothing to NPR, Harrison Sale, Harrison Rivard or Fowler White; provided,

however, that if Escambia Co. Schools should terminate the services of NPR, Harrison Sale, Harrison Rivard and/or Fowler White prior to the case being completed, Escambia Co. Schools agrees to immediately reimburse any of the aforementioned costs at time of termination and further agrees that NPR, Harrison Sale, Harrison Rivard and/or Fowler White shall be entitled to a quantum merit award for their services.

Escambia Co. Schools has, before signing this Agreement, received and read the statement of client's rights and understands each of the rights set forth therein. Escambia Co. Schools has signed the statement and received a signed copy to refer to while being represented by Counsel.

This Agreement may be cancelled by written notification to Counsel at any time within 3 (three) business days of the date the Agreement was signed, as shown below, and if cancelled Escambia Co. Schools shall not be obligated to pay any fees to Counsel for the work performed during that time. If Counsel has advanced funds to others in representation of Escambia Co. Schools, Counsel is entitled to be reimbursed for such amounts as Counsel has reasonably advanced on behalf of Escambia Co. Schools.

Dated this the 30th day of September, 2010.

SCHOOL BOARD OF ESCAMBIA COUNTY

By: _____
Gerald W. Boone, Chairman

Attest: _____
Malcolm Thomas, Superintendent

NIX, PATTERSON & ROACH, LLP (NPR)

C. Cary Patterson, Partner
Brady Paddock, Partner

**HARRISON, SALE, MCCLOY, DUNCAN,
& JACKSON, CHARTERED (Harrison Sale)**

Franklin R. Harrison, Partner

**HARRISON RIVARD, CHARTERED
(Harrison Rivard)**

William G. Harrison, Jr., Partner

**FOWLER WHITE BOGGS
(Fowler White)**

Carl R. Nelson, Partner

STATEMENT OF CLIENT'S RIGHTS FOR CONTINGENCY FEES

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights:

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with one lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have three (3) business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within three (3) business days of signing the contract. If you withdraw from the contract within the first three (3) business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the three (3) day period, you may have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least one lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interests and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money will be or has been spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount recovered or on the amount recovered minus the costs.

7. You, the client, have the right to be told by your lawyer about possible adverse consequences if you lose the case. Those adverse consequences might include money that you might have to pay to your lawyer for costs and liability you might have for attorney's fees, costs, and expenses to the other side.

8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement your lawyer cannot pay any money to anyone, including you, without an appropriate order of the court. You also have the right to have every lawyer or law firm working on your case sign this closing statement.

9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of your lawyer's ability.

10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

11. If at any time you, the client, believe that your lawyer has charged an excessive or illegal fee, you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar, call 850-561-5600, or contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration. You can request, but may not require, that a provision for arbitration (under Chapter 682, Florida Statutes, or under the fee arbitration rule of the Rules Regulating The Florida Bar) be included in your fee contract.

Dated the this the 30th day of September, 2010.

SCHOOL BOARD OF ESCAMBIA COUNTY

By: _____
Gerald W. Boone, Chairman

By: _____
Malcolm Thomas, Superintendent

NIX, PATTERSON & ROACH, LLP (NPR)

C. Cary Patterson, Partner
Brady Paddock, Partner

**HARRISON, SALE, MCCLOY, DUNCAN,
& JACKSON, CHARTERED (Harrison Sale)**

Franklin R. Harrison, Partner

**HARRISON RIVARD, CHARTERED
(Harrison Rivard)**

William G. Harrison, Jr., Partner

**FOWLER WHITE BOGGS
(Fowler White)**

Carl R. Nelson, Partner