MITCHEL P. HOUSE, JR.
ED S. SELL, III
JOHN A. DRAUGHON, SR.
R. CHIX MILLER
JEFFREY B. HANSON
JON R. HAWK
JULIA H. MAGDA
BLAKE EDWIN LISENBY
AIMEE J. HALL
M. DEVLIN COOPER
CHRIS E. MIRANDA
LAUREN N. HARRIS
BEAU T. SHRABLE

SELL & MELTON, L.L.P.

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP
FOURTEENTH FLOOR
577 MULBERRY STREET
MACON, GEORGIA 31201

M. DEVLIN COOPER
MDC@SELL-MELTON.COM
DIRECT LINE (478) 464-5316

E. S. SELL, JR.
1917-2007
ANDREW W. MCKENNA
1918-1981
DOYE E. GREEN, SR.
1932-2007

OF COUNSEL
JOHN D. COMER
BUCKNER F. MELTON
JOSEPH W. POPPER, JR.

MAILING ADDRESS:
POST OFFICE BOX 229
MACON, GEORGIA 31202-0229

TELEPHONE (478) 746-8521
FAX (478) 745-6426
WEBSITE: WWW.SELL-MELTON.COM

March 28, 2013

Mr. Lindsay D. Holliday
c/o Robert J. Waddell, Jr.
McGuire Woods LLP
Promenade
1230 Peachtree Street, NE
Suite 2100
Atlanta, Georgia 30309-3534

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED NO. 7012 3460 0000 7580 8115
Also via e-mail: rwaddell@mcguirewoods.com

RE: *Lindsay D. Holliday v. Georgia Department of Transportation and Project Engineer Clinton Ford, P.E.*
Superior Court of Bibb County, Civil Action No. 12-CV-58472
Sell & Melton File No. 11.2465.2434

Gentlemen:

On December 14, 2012, Mr. Holliday filed his Complaint for Injunction and Temporary Restraining Order in the above-styled case. In his Complaint, Mr. Holliday sought a temporary restraining order, interlocutory injunction, and permanent injunction against the Department of Transportation (herein, "DOT") and Clinton Ford. Subsequently, Defendants filed a Special Appearance Brief in Opposition to Complaint for Injunction and Temporary Restraining Order on or about January 18, 2013, and at the same time, Defendants filed a Special Appearance Answer and Special Appearance Motion to Dismiss Pursuant to O.C.G.A. § 9-11-12(b)(6) and O.C.G.A. § 9-11-12(b)(1). As you know, the Defendants' Motion to Dismiss remains pending, while the parties engage in approximately 21 days of limited discovery on the issues presented by said motion.

According to Mr. Holliday's Complaint, the upcoming construction project on Forest Hill Road will "result in an Unsafe road (hazard to public safety), negative impact to a U.S. waterway (several perennial streams flow across the FHR right of way. Unrestrained and unfiltered storm water runoff/oils/silt/etc [*sic*] will negatively impact these streams." Mr. Holliday further alleges that he can establish "an expertly produced alternative plan for this road project and EXPERT [*sic*] opinion of the safety and environmental consequences of GDOT's highly controversial plan." Mr. Holliday also argues that there are safety and environmental issues present in Moreland Altobelli's plans that would violate

state and federal laws, as well as best management practices of a variety of governmental agencies; Mr. Holliday further contends that experts from the Macon-Bibb Tree Commission produced several years of letters to "roads officials" warning of extreme harm to Macon-Bibb County if "the canopy is unnecessarily dissipated by GDOT." Finally, Mr. Holliday alleges that current design standards favor revisions to intersection designs along Forest Hill Road.

Please consider this letter notice that, pursuant O.C.G.A. § 9-15-14, Defendants intend to seek attorney's fees and litigation costs against Mr. Holliday for pursuing a frivolous action, lacking substantial justification. O.C.G.A. § 9-15-14 provides that:

> (b) The court may assess reasonable and necessary attorney's fees and expenses of litigation in any civil action in any court of record, if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under Chapter 11 of this title, the "Georgia Civil Practice Act." As used in this Code section, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

Additionally, to the extent that contractors and sub-contractors file any claims against DOT for delays in the Forest Hill Road project caused by this litigation, we intend to seek to recover the same from Mr. Holliday and all other individuals who took and/or take an active part in the initiation, continuation, or procurement of the current civil proceedings. O.C.G.A. § 51-7-81 allows for such recovery, providing that:

> Any person[1] who takes an active part in the initiation, continuation, or procurement of civil proceedings against another shall be liable for abusive litigation if such person acts:
>
> (1) With malice; and
>
> (2) Without substantial justification.

By way of illustration, we are enclosing a letter herewith from R.J. Haynie & Associates, Inc. providing notice to DOT of a Potential Claim arising from the restraining order already entered in this case. As set forth in that letter, "Crews were scheduled to start working this week including clearing &

---

[1] O.C.G.A. § 51-7-80(6) defines "person" as "an individual, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity, including any governmental entity or unincorporated association of persons with capacity to sue or be sued."

grubbing; sewer installation, and wall installation. Material Escalation clauses are linked to the original completion date as is the Asphalt and Fuel Indexing. Traffic control has been placed throughout the project and will also have to be maintained during this [restraining order]." R.J. Haynie & Associates is the prime contractor on the Forest Hill Road project at issue in this litigation. Its contract with DOT is in the amount of some $8,400,000.00, although its potential claims against DOT could exceed that amount.[2]

We intend to hold Mr. Holliday legally responsible for all such claims eventually filed against DOT and all resulting cost overruns. In fact, in addition to the statutes cited above, Georgia law is clear that, "a party who is wrongfully restrained has the right to recover actual damages resulting from that wrongful restraint." *Hogan Mgmt. Svcs. v. Martino*, 242 Ga. App. 791, 793(1), 530 S.E.2d 508 (2000); *see also Cox v. Altus Healthcare and Hospice, Inc.*, 308 Ga. App. 28, 30, 706 S.E.2d 660 (2011).

Mr. Holliday's Complaint lacks substantial justification for several reasons. First, pursuant to 5 U.S.C.S. § 706, Plaintiff's claims that his alternative plan was not sufficiently reviewed by DOT, as well as his claims that the current plans for the Forest Hill Road Project have not been created pursuant to generally accepted engineering standards, are precluded as a matter of law. Mr. Holliday is essentially challenging the National Environmental Protection Act (herein, "NEPA") process under which the Federal Highway Administration approved the Forest Hill Road Project. Since NEPA does not provide a private right of action, any challenge to the NEPA process must be brought under the Federal Administrative Procedure Act, 5 U.S.C. § 706, *et seq.*[3] Such an action must be brought against the Federal

---

[2] Pursuant to DOT's Standard Specification Section 105.13, which is part of every construction contract, the following items may be recoverable by the Contractor as damages: additional direct hourly rates paid to employees for job site labor, including payroll taxes, welfare, insurance, benefits and all other labor burdens, additional costs for materials, additional equipment costs, costs of extended job-site overhead, an additional 15 percent of the total of these damages for home office overhead and profit, bond costs and subcontractor costs. In the alternative, should DOT terminate the Contract as a result of an injunction, the Contractor shall be eligible to receive, in addition to payment for the actual number of Items of Work completed, reimbursement for organization of the project and moving equipment to and from the job, materials obtained by the Contractor for the project, and payment adjustments to afford the Contractor a reasonable profit on work performed.

[3] The Administrative Procedure Act authorizes an action for review of final agency action in the district courts to the extent that other statutory procedures for review are inadequate. Fed. R. App. P. 20; *F.C.C. v. ITT World Communications, Inc.*, 466 U.S. 463, 104 S. Ct. 1936, 80 L. Ed. 2d 480 (1984). NEPA, *42 U.S.C. § 4321 et seq.,* is essentially a procedural statute that requires federal agencies to inform themselves of the environmental effects of proposed federal actions. *See Sierra Club v. United States Army Corps of Eng'rs*, 295 F.3d 1209, 1214 (11th Cir. 2002) ("[NEPA] is not a substantive environmental statute which dictates a particular outcome if certain consequences exist."). If there is a question as to whether a proposed action will significantly affect the quality of the human environment, 42 U.S.C. § 4332(2)(C), NEPA requires an environmental assessment (herein, "EA") to be prepared. An EA is a brief and concise document containing

Highway Administration in a United States District Court. Indeed, Mr. Holliday's failure to exhaust his administrative remedies preclude the Superior Court's consideration of his claims on the merits. *Chattooga Conservancy v. Jacobs*, 373 F. Supp. 2d 1353, 1369 (N.D. Ga. 2005). Of course, these deficiencies under federal law only underscore DOT's protection under the doctrine of sovereign immunity, which may be the greatest flaw in Mr. Holliday's claims.

Based on the foregoing, it is clear that this action is without a basis in law and fact. Therefore, on behalf of Defendants, I hereby request that the action be dismissed with prejudice immediately. If you decide to proceed with the lawsuit, please be aware that Defendants intend to seek full attorney's fees, expenses of litigation, and costs, as well as damages for any successful claims brought against Defendants by contractors and sub-contractors on the Forest Hill project caused by delays due to this litigation, against Mr. Holliday.

PLEASE BE GOVERNED ACCORDINGLY.

Sincerely yours,

M. DEVLIN COOPER

MDC\agm

enclosure

cc: Mary Jo Volkert, Esq.
John A. Draughon, Sr., Esq.

I:\TX.11\2000\24652434.L03.Holliday.wpd

---

sufficient evidence and analysis for the agency to determine whether to prepare a more extensive Environmental Impact Statement or a finding of no significant impact. 40 C.F.R. 1508.9(a)(1); *River Rd. Alliance, Inc. v Corps of Eng'rs of United States Army*, 764 F.2d 445, 449 (7th Cir. 1985). An EA details only "brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted." 40 C.F.R. § 1508.9(b).

R. J. HAYNIE & ASSOCIATES, INC.
ELECTRICAL CONTRACTORS

P.O. BOX 1767
FOREST PARK, GEORGIA 30298-1767
TELEPHONE 404-361-0672
FAX 404-366-9750

March 25, 2013

Mr. Kraig Collins
Georgia Department of Transportation
4499 Riverside Drive
Macon, Georgia 30298-1767

RE: BRMLB-3213-00(005) & STP00-3213-00(003)
Notice of Potential Claim

Dear Mr. Collins:

I am in receipt of your letter of March 21, 2013 stating there has been a Temporary Injunction Order (TIO) placed on any land disturbing activity on the project for the next thirty days.

Please let this letter serve as notice of a Potential Claim for the above referenced project due to there already being a Notice to Proceed issued on the project. Crews were scheduled to start working this week including clearing & grubbing; sewer installation, and wall installation. Material Escalation clauses are linked to the original completion date as is the Asphalt and Fuel Indexing. Traffic control has been placed throughout the project and will also have to be maintained during this TIO.

Sincerely,

Mark A. Spence

Enclosures
C: Danny E. Miller Jr.