



City's insurer won't pay for impact fee lawsuit

By Angela Daughtry, News-Leader

The city's insurer, Preferred Government Insurance Trust, has denied coverage so the city may have to pay legal fees and possibly more than \$1.6 million for so-called illegal impact fees if it loses a class-action lawsuit filed last year.

According to a city document, its insurer has denied coverage since the complaint was brought against the city last September. The company, in correspondence with the city, pointed out several exclusions in its coverage, including claims "attributable to the return or improper assessment of taxes, assessments, penalties, fines, fees" or those alleging "any profit or financial advantage to which the covered party was not legally entitled."

City Attorney Tammi Bach said the city has filed a motion to dismiss the case, which will be heard in court on Aug. 16.

"The city does not have (insurance) coverage to pay for damages," Bach said in a phone interview Monday. "We have asked (PGIT) for coverage of defense costs." Bach said the city could also ask for damages to be covered if the other party prevails. "Hopefully, the court will dismiss the case," Bach said. "We think the case has no merit."

The lawsuit, filed by lead attorney Michael Tanner and local attorney Clinch Kavanaugh, asks for recovery of alleged illegal impact fees totaling at least \$1.6 million. Joanne Conlon, a local homeowner, is named as the lead plaintiff and there are approximately 700 additional plaintiffs that are residents of Fernandina Beach.

The city hired attorney Anna G. Upton last October to work with Bach in the city's objection to the insurance coverage denial. City commissioners agreed July 17 to hire an insurance litigation law firm that will seek \$100,000 in defense funds from the insurance company. Bach said at the meeting the insurance litigation would cost the city about \$4,000.

The complaint against the city alleges it illegally collected the impact fees because it concealed the fact that the fees would not be used to expand utilities for new customers, but rather for other purposes.

The lawsuit is seeking monetary damages in the form of the return of "unlawfully collected impact fees, with interest thereon, into a common fund."

The city purchased Florida Public Utility's water assets in 2002 for \$18 million and agreed to pay an additional \$7.5 million for "futures" payments over seven years for new water utility customers added after the sale, according to the lawsuit.

According to the lawsuit, the city "knowingly and intentionally excluded all references to the 'futures' payments in its public notices in order to conceal the payments to the public."

The city had not paid the entire "futures" payment by 2009, the complaint states, so took out a bond for \$5.1 million in 2010, which was paid to FPU in full satisfaction of the "futures" payment, according to the complaint.

City representatives disclosed in 2010 that the "futures" payments and impact fees "were to pay for existing indebtedness and not to expand or improve the capacity of the water utility to accommodate new customers," according to the complaint.

The water utility could accommodate new customers "without the need to construct additional infrastructure or facilities because the utility had excess capacity at the time of the contract," the complaint contends.

Bach said it could take Circuit Judge Brian Davis up to several weeks to make a ruling on the city's motion to dismiss.

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