PLAQUEMINES PARISH GOVERNMENT	*	**NO. 2001-CA-2222**
	*	**COURT OF APPEAL**
VERSUS		
	*	**FOURTH CIRCUIT**
RIVER/ROAD CONSTRUCTION, INC., AND UNITED STATES FIDELITY AND GUARANTY INSURANCE COMPANY	*	**STATE OF LOUISIANA**
	*	
	*	

*** * * * * * ***

PLOTKIN, J., DISSENTING IN PART.

For the reasons that follow I concur with the majority on the division of liability; however, I dissent on the issue of stipulated damages. In a case of stipulated damages, such as the instant case, it is unambiguous as to what the parties agreed. As the majority notes, "stipulated damages may not be modified by the court unless they are so manifestly unreasonable as to be contrary to public policy." Lombardo v. Deshotel, 94-1172 (La. 11/30/94), 647 So.2d 1086, 1090. The majority claims that the stipulated damage award in this case is contrary to public policy. There is nothing in the majority's opinion to indicate that the $252,000 stipulated damages were unreasonable at the time that it was agreed upon. The majority argues that the damages should be greater than the stipulated amount since it would cost

more than $252,000 to fill the pit today. This argument is flawed given the language of C.C. Art. 2007, which states, “an obligee may demand either the stipulated damages or performance of the principal obligation, but he may not demand both unless the damages have been stipulated for mere delay.” In this case, the parties have contractually agreed on stipulated damages so they cannot now request specific performance. The majority’s analysis would allow the Parish to recover damages in an amount equal to that required for specific performance. Both parties are bound by the amount that was set as part of the contractual stipulation. Thus, neither party can now receive specific performance or an amount equal to that type of indemnity. Therefore, it is unnecessary to remand this case to the trial court. The entire case, including the damage award, should be affirmed.