

**LISA PLAIA AND PETER
PLAIA, INDIVIDUALLY AND
ON BEHALF OF THEIR
MINOR CHILDREN PETRA
PLAIA AND CAROLINA
PLAIA**

VERSUS

**STEWART ENTERPRISES,
INC., GREENWOOD
FUNERAL HOME, FIREMEN'S
CHARITABLE &
BENEVOLENT
ASSOCIATION, LAFAYETTE
INSURANCE COMPANY,
UNITED FIRE GROUP, FIRST
BAPTIST CHURCH OF NEW
ORLEANS, CHURCH
MUTUAL INSURANCE
COMPANY**

CONSOLIDATED WITH:

**LISA PLAIA AND PETER PLAIA,
INDIVIDUALLY AND ON
BEHALF OF THEIR MINOR
CHILDREN PETERA AND
CAROLINA PLAIA**

VERSUS

**STEWART ENTERPRISES, INC.,
GREENWOOD FUNERAL HOME,
FIREMEN'S CHARITABLE &
BENEVOLENT ASSOCIATION,
LAFAYETTE INSURANCE
COMPANY, UNITED FIRE
GROUP, FIRST BAPTIST
CHURCH OF NEW ORLEANS,
CHURCH MUTUAL INSURANCE
COMPANY**

CONSOLIDATED WITH:

**LISA PLAIA AND PETER PLAIA,
INDIVIDUALLY AND ON
BEHALF OF THEIR MINOR
CHILDREN PETRA PLAIA AND
CAROLINA PLAIA**

VERSUS

*** NO. 2014-CA-0159
* COURT OF APPEAL
* FOURTH CIRCUIT
* STATE OF LOUISIANA**

CONSOLIDATED WITH:

NO. 2014-CA-0746

CONSOLIDATED WITH:

NO. 2015-CA-1176

**STEWART ENTERPRISES, INC.,
GREENWOOD FUNERAL HOME,
FIREMAN'S CHARITABLE &
BENEVOLENT ASSOCIATION,
LAFAYETTE INSURANCE
COMPANY, UNITED FIRE
GROUP, FIRST BAPTIST
CHURCH OF NEW ORLEANS,
CHURCH MUTUAL INSURANCE
COMPANY**

CONSOLIDATED WITH:

LISA PLAIA, ET AL.

VERSUS

**STEWART ENTERPRISES, INC.,
ET AL.**

CONSOLIDATED WITH:

NO. 2014-CM-0632

**BONIN, J., CONCURS IN PART AND DISSENTS IN PART WITH
REASONS.**

I respectfully dissent from the majority opinion with respect to the issue of costs of defense owed to S. E. Funeral Homes of Louisiana, L.L.C. because I find that the trial judge was not clearly wrong and was reasonable in her factual determination that the Sublease governed the rights of the parties under it and is applicable.¹ Under the Sublease, S. E. Funeral Homes of Louisiana, L.L.C., which has been found free from any fault or liability to the plaintiffs, was entitled to full cost of defense, including its attorney's fees.

I concur in the remainder of the majority's decision. First, I too, like JUDGE LOVE in her concurring opinion, am of the view that the majority's discussion of apportionment of fault among the defendants in this case is wholly *dicta*. No party raised the issue. While our authority to review trial court judgments is not limited by assignments of error, *see* La. C.C.P. art. 2128, and we may raise issues on our own, *see Merrill v. Greyhound Lines, Inc.*, 10-2827 (La. 4/29/11), 60 So. 3d 600,

here the panel raised an issue but became wholly satisfied that a “just, legal, and proper” decision could be made without deciding the issue raised by us but not by the parties. La. C.C.P. art. 2164. *See also Nicholas v. Allstate Ins. Co.*, 99-2522, p. 7 (La. 8/31/00), 765 So. 2d 1017, 1022-1023. Second, I concur in the results with respect to majority’s decision as it pertains to Fireman’s Charitable and Benevolent Association. The insurance policy provided coverage and defense to the Association. In all other respects, I fully join the majority opinion.

¹ I am not persuaded that the application of the Sublease and the Cherry Street Lease are necessarily mutually excluded.