

VANOVERBEKE
MICHAUD &
TIMMONY, P.C.
ATTORNEYS AND COUNSELORS

MICHAEL J. VANOVERBEKE
THOMAS C. MICHAUD
JACK TIMMONY
FRANCIS E. JUDD
AARON L. CASTLE

79 ALFRED STREET
DETROIT, MICHIGAN 48201
TEL: (313) 578-1200
FAX: (313) 578-1201
WWW.VMTLAW.COM

M A P E R S

RECENT LEGAL ISSUES AND DECISIONS

SPRING 2013 CONFERENCE

This summary is presented to provide a general reference to recent legal decisions of interest to Michigan public retirement and healthcare plans.

BENEFITS ADMINISTRATION

Balowski v. Pontiac General Employees Retirement System

U.S. District Ct. E.D. Michigan – Decided September 14, 2012

2012 U.S. District LEXIS 131293

An employee of the City sued the Retirement System under the Family Medical Leave Act (FMLA) for refusing to acknowledge that an FMLA approved leave be treated as continuing service under the pension plan. The Court dismissed the employee's FMLA claim against the Retirement System, recognizing that the FMLA only provides civil remedies against an individual's employer and acknowledging that the Retirement System was not the member's employer.

Davis v. Public School Employees Retirement System

Michigan Ct. of Appeals – Decided July 17, 2012

2012 Mich. App. LEXIS 1350

A member of the Public School Employees Retirement System challenged the calculation of her Final Average Compensation (FAC). The Retirement Board found that a 25.07 % salary increase, which was received for fiscal year 2004-2005, could not be included in the member's FAC because the Public School Employees Retirement Act (PSERA) limits the amount of salary increases that may be included under the definition of compensation for retirement. The member disagreed and claimed that the full amount of the increase should have been included under the Retirement System's Reporting Instruction Manual (RIM). The Court of Appeals agreed with the Retirement Board, concluding that where the plain language of PSERA conflicts with respondent's administrative rules and the RIM, the provisions of PSERA govern.

Magen v. Department of Treasury

Michigan Ct. of Appeals – Decided February 21, 2013

2013 Mich. App. LEXIS 360

While employed by Michigan State University, the member contributed to a 403(b) retirement account. Upon retirement, the monies were rolled into a private IRA. When distributions were subsequently paid from the IRA, the payments were deducted from the taxpayer's state income tax pursuant to the Michigan Income Tax Act which allows taxpayers to deduct retirement or pension benefits received from a federal public retirement system or from a public retirement system of this state or a political subdivision of this state. The Michigan Department of Treasury claimed that the sums were not deductible as they were paid from a private IRA and issued an intent to assess the taxpayer for the income tax deficiency. The Court of Appeals disagreed and held that the income placed into the IRA was state non-taxable income. The Court stated: "Obtaining deferral on applicable taxes by rolling those monies over into an IRA does not create a deferred obligation to pay Michigan income tax on monies that were not subject to state income tax to begin with."

Fields v. Detroit Police & Fire Retirement System

Michigan Ct. of Appeals – Decided February 5, 2013

2013 Mich. App. LEXIS 215

A deputy police chief, initially elected to retire effective November 30, 2009, and subsequently elected to roll 25% of his accrued sick time into his pension. It is alleged that the City's payroll department agreed to allow the individual to use accrued vacation time to push his effective retirement date back to February 11, 2010. On January 15, 2010, a provision was adopted which allowed non-union police personnel to roll up to 25% of accrued sick time into their pension. It is further alleged that the member continued to receive regular paychecks from the City up until January 15, 2010. However, they were stopped, and upon inquiry, the member was advised that there was no agreement to extend his retirement date, his retirement was effective November 30, 2009, and that he was not eligible to roll any of his accrued sick time into his pension. The member sued the City claiming a breach of an implied modification of his contract to extend his retirement date to February 11, 2010, thus depriving him the ability to roll 25% of his accrued sick time into his pension. The Court of Appeals found that the member had presented evidence that his contract was modified because he continued to receive regular payroll checks after his alleged retirement date despite the requirement that the City was required to make a lump-sum payment of accrued vacation upon retirement. The matter was returned to the trial court for further proceedings.

McDole v. City of Saginaw Police & Fire Pension Board

Michigan Ct. of Appeals – Decided May 15, 2012

2012 Mich. App. LEXIS 947

A City of Saginaw police officer was termination from employment in February 2006 and subsequently withdrew his contributions from the Retirement System. Later, the individual was successful in a lawsuit against the City for wrongful termination. Thereafter, the individual applied for duty disability retirement from the Retirement System. The Retirement Board refused the application because the individual was not a member of the Retirement System and thus ineligible to apply for pension benefits. As a result, the individual filed a law suit against the City and Retirement Board. The Court of Appeals upheld the trial court's dismissal of the individual's claims finding that the Retirement Board's determination was supported by competent, material and substantial evidence on the record; namely, that the individual was not a member of the Retirement System at the time of his application for a duty disability retirement.

Wayne County Employees' Ret. System v. Charter County of Wayne

Michigan Court of Appeals – Decided May 9, 2013

Slip Opinion No. 308096

This case involved the enactment of an ordinance which placed a cap on assets and distribution limitations from the Inflation Equity Fund ("IEF"), the Wayne County Employees' Retirement System's ("WCERS") reserve account for the payment of 13th checks to retirees. Furthermore, the ordinance also required that the assets held in the IEF in excess of the new cap be credited to the defined benefit plan assets, effectively reducing the County's annual required contribution thereto. WCERS challenged the constitutionality of the ordinance under Article IX, Section 24 of the Michigan Constitution, and the Public Employee Retirement System Investment Act, Public Act 314 of 1965, as amended ("Act 314"). The Court of Appeals held that the County's enactment of the challenged ordinance violated the exclusive benefit rule of Act 314, and stated:

There can be no dispute that, before the 2010 ordinance went into effect, the IEF assets were held and used for the exclusive benefit of participants and their beneficiaries. With the enactment of the 2010 ordinance, the "excess" IEF assets in the amount of \$32 million, as created by the newly-imposed \$12 million IEF cap on a preexisting \$44 million IEF balance, absolutely had to retain their status as assets "for the exclusive benefit of the participants and their beneficiaries" to comply with [Act 314]. We find, however, that as a result of the 2010 ordinance, the County obtained the authority to use the excess IEF assets advantageously and for its own financial good and benefit. . . . Accordingly, it cannot be said that the assets of the system were held or used "for the *exclusive* benefit of the participants and their beneficiaries."

Additionally, the Court of Appeals also found that the challenged ordinance violated Act 314's prohibited transaction rule, concluding:

We conclude that, in violation of [Act 314], the 2010 ordinance effectively forced the Retirement Commission to knowingly cause the Retirement System to engage in a transaction that directly or indirectly permitted or authorized the County to use or benefit from the use of assets in the IEF absent any consideration. Stated otherwise, the 2010 ordinance required the Retirement Commission to breach a fiduciary duty, engaging the Retirement System in a prohibited transaction.

It is noted that although the Court of Appeals determined it unnecessary to address the constitutionality of the challenged ordinance under Article IX, Section 24 of the Michigan Constitution, the opinion did acknowledge as follows:

The IEF, in and of itself, can be accurately characterized as a vested reserve belonging and in relationship to the Retirement System's participants as a whole, outside the reach of [the County], to be used to assist retirees and survivor beneficiaries in fighting the devaluing of the dollar by inflation.

Indeed, from a broad perspective, taking into consideration not individual retirees or survivor beneficiaries but all of them together as a group, the 13th check program itself could arguably be viewed as an accrued financial benefit for purposes of the first clause contained in Const 1963, art 9, § 24, which benefit was diminished and impaired by the transfer of \$32 million out of the IEF.

In accordance with the foregoing conclusions, the Court of Appeals invalidated and struck down the specific provisions of the challenged ordinance which were applied retroactively and resulted in the transfer/reallocation of \$32 million of IEF assets, the \$32 million offset to the County's annual required contribution, the amortization caps, and the annual required contribution formula. The remaining provisions of the ordinance were prospectively upheld, including the provisions regarding the IEF funding and disbursement caps.

COLLECTIVE BARGAINING

AFT Michigan, et al. v. State of Michigan

Michigan Ct. of Appeals – Decided August 16, 2012

297 Mich. App. 597

AFT and its membership challenged the constitutionality of an amendment to the Public School Employees Retirement Act which required that public school districts withhold 3% of each employee's wages as "employer contributions" to the retirement system's trust that funds retiree health care benefits. The Court of Appeals agreed with the Union and found that the legislation amending the Act violated multiple constitutional rights, and was therefore invalid. The Court concluded that the statute violated federal and state constitutional protections against the impairment of contracts by the state because the statute required school employees be paid 3% less than the amount they and their employers freely negotiated in contracts. The prohibition against the taking of private property was also violated because the statute directs that unique and definable monies be confiscated by governmental employers for the payment of statutorily mandated employers' contributions to a state trust fund. Finally, the Court held that the statute violated the employees' due process rights by requiring current employees to fund for health care benefits to current retirees without any vested right themselves to receipt of healthcare benefits upon their own retirement.

Detroit Police Lieutenants & Sergeants Ass'n v. City of Detroit Police Dept

U.S. District Ct. E.D. Michigan – Decided February 11, 2013

2013 U.S. District LEXIS 17935

Pursuant to an arbitration award concerning the provisions of a collectively bargained Deferred Retirement Option Program (DROP), Union members currently participating in the DROP were given a one-time sixty day window period to make an election concerning the payment and roll-in of accumulated bank and sick time that the individual had at the time of DROP participation. Upon the expiration of the sixty-day window, the options granted under the arbitration award were eliminated from the DROP application form. The Union filed a grievance and unfair labor practice charge contending that the options extended under the previous arbitration award had been incorporated into the collective bargaining agreement through past practice. The Union also sought a preliminary injunction from the Court, requesting the Court to restore the status quo under the arbitration award and past practice.

The Court refused to grant the Union's request and held that the Union failed to provide any evidence suggesting that the DROP options extended under the window period had become mutually accepted by the parties. The Court pointed to evidence showing that the DROP options in question were temporary remedies under the arbitration award and that there was no evidence indicating that the options were extended beyond the one-time sixty-day window. The Court concluded that there was a lack of evidence supporting the Union's position, and instead, the evidence pointed to the contrary conclusion.

Mich State Employees Ass'n v. Dep't of Natural Resources

Michigan Ct. of Appeals – Decided September 13, 2012

2012 Mich. App. LEXIS 1762

Following an arbitration award reinstating the employment of a conservation officer with the Department of Natural Resources (DNR) with seniority, but without back pay or benefits for the period he was not employed, issues arose with regard to the interpretation of the arbitration award. The Union claimed that his entitlement to retain his seniority also entitled him to retirement service credit for the period of time he was out of work. The DNR disagreed and claimed that it didn't have the authority to grant the employee retirement service credit for the period he was not working. The Court of Appeals sided with the DNR and held that nothing in the arbitration award expressed the intent that the employee be awarded retirement service credits from the date of his termination until the date he returned to work. Awarding such service credits "would bestow a benefit upon him in contradiction of the arbitrator's decision that [he] receive 'no back pay or benefits for the period he has been off work until the time that he may return to work.'"

RETIREE HEALTH CARE

City of Pontiac Retired Employees v. City of Pontiac

U.S. District Ct. E.D. Michigan – Decided July 17, 2012

2012 U.S. District LEXIS 98858

The City's Emergency Manager (EM) modified the terms of collective bargaining agreements, shifting the costs of prescription drugs and other co-payments to current union retirees, and repealed a portion of the City's Code of Ordinances which established non-union retirees' rights to retiree health benefits. The retirees sued and sought a temporary restraining order enjoining the City from implementing the proposed changes to retiree health care benefits. The Court denied the retirees request for a temporary restraining order and held that the retirees were unlikely to succeed on the merits of the federal claims under the contracts clause, due process clause, and the bankruptcy code. The Court noted that a claim under the contracts clause must rest on an exercise of legislative power, and the EM's actions are not an exercise of legislative power. The Court also noted that the retirees did not establish a constitutionally protected property interest to lifetime health care benefits under the due process clause; there being no provision in the applicable collective bargaining agreements forever entitling the retirees to the exact same health care benefits that existed prior to the EM's orders.

Hardaway v. Wayne County

Michigan Ct. of Appeals – Decided October 30, 2012

298 Mich. App 282

A former appointed employee of the County sought lifetime retiree health care benefits pursuant to a resolution of the County Commission which provided for retiree health care benefits to “an appointee other than a member of a board or commission who is confirmed by the County Commission.” The County denied benefits because the individual’s appointment was never confirmed by the County Commission. However, the Court of Appeals determined that the individual was entitled to benefits because the resolution was ambiguous and the County’s interpretation was inconsistent with rules of statutory construction. Accordingly, the Court concluded that retiree health care benefits are available to all appointees, so long as they were not confirmed by the County Commission to membership on a board or commission.

Loftis, et al. v. City of Oak Park

Michigan Ct. of Appeals – Decided July 24, 2012

2012 Mich. App. LEXIS 1410

Plaintiffs, retired Oak Park public safety officers, retired under a collective bargaining agreement that provided retiree health care coverage at the same level that was provided at the time of retirement. Subsequent to their retirements, the City sought to change the level of Plaintiff’s medical and prescription coverage commensurate with levels provided to active employees of the City. Plaintiff’s sued alleging a breach of the applicable collective bargaining agreement. The Court of Appeals agreed with Plaintiff’s finding the collective bargaining agreement to be plain and unambiguous and held that plaintiffs were entitled to retiree healthcare coverage consistent with the coverage levels in existence at the time of their respective retirements.

Loose, et al. v. City of Dearborn Heights

Michigan Ct. of Appeals – Decided November 29, 2012

2012 Mich. App. LEXIS 2385

Retired police officers and fire fighters sued to determine the City’s liability for their retiree healthcare costs, and, in particular, reimbursement for Medicare Part B premiums upon attainment of age 65. The Court held that under the applicable collective bargaining agreements, the City was not required to pay for Medicare Part B premiums. The Court reasoned that the contracts were unambiguous and that the City’s responsibility for Medicare Part B coverage depended on an eligible retiree’s enrollment in the Medicare program and was subject to a coordination of benefits provision. Accordingly, the Court concluded that Medicare Part B was not an integral part of the City’s obligation to provide retiree healthcare coverage under the contracts and that reimbursement for Medicare Part B premiums was not required.

Menosky, et al. v. City of Flint

U.S. District Ct. E.D. Michigan – Decided October 18, 2012

2012 U.S. Dist. LEXIS 167342

Surviving spouses of deceased retirees sued the City after the City terminated their healthcare benefits. The plaintiffs claimed they were third party beneficiaries of the collective bargaining agreements between the City and their late spouses, entitled to lifetime healthcare coverage under the contracts. The City claimed that the collective bargaining agreements contained no language extending lifetime healthcare benefits to surviving spouses and sought dismissal of the case. The Court found that there was evidence of a past practice of the City extending lifetime healthcare coverage to surviving spouses of retirees. Accordingly, the Court denied the City’s request for dismissal concluding that there was enough evidence for a factfinder to find that the City’s representations and practices constituted express or implied promises to provide lifetime healthcare benefits to surviving spouses.

Schreiber, et al. v. Philips Display Components Co, et al.

6th Circuit Court of Appeals – Decided October 31, 2012

2012 U.S. App. LEXIS 22603

Retirees sued their former employers for breach of fiduciary duties under ERISA, when they refused to provide lifetime retiree healthcare coverage to former employees. Finding in favor of the employer, the Court concluded that the former employees' collective bargaining agreements contained language providing "lifetime," "vested," "non-forfeitable" pension benefits, but similar language was absent regarding welfare benefits. Furthermore, the Summary Plan Descriptions (SPD) did not contain language that could be interpreted to create a right to vested healthcare benefits. Rather, the SPDs provided a disclaimer that retiree healthcare coverage was subject to change in the sole discretion of the employers.

Sloan, et al. v. City of Madison Heights

Michigan Ct. of Appeals – Decided March 21, 2013

2013 Mich. App. LEXIS 533

Plaintiffs, retired police command officers, retired from employment with the City under a collective bargaining agreements providing lifetime retiree healthcare benefits. The collective bargaining agreements also provided the City with the right to change insurance carriers, provided that benefit levels are not reduced. A 2006 change in insurance carriers resulted in a number of grievances against the City, including a claim on behalf of retirees that the City's ability to change insurance carriers was only applicable to active employees and not retirees. The grievances proceeded to arbitration and the arbitrator determined that pension terms and benefits for a retiree shall remain as defined by the collective bargaining agreement in effect at the time of his/her retirement. The arbitrator then explained that the contracts in question permitted the City to change insurance carriers in its sole discretion. The Court dismissed the retirees' subsequent lawsuit, holding that the question had already been considered and determined by the arbitrator.

Smith, et al. v. Royal Oak Township

Michigan Ct. of Appeals – Decided August 28, 2012

2012 Mich. App. LEXIS 1680

Retired police officers' supplemental Medicare benefits were paid by the Township. Subsequently, the retirees were informed that the Township would no longer pay for such supplemental benefits. The retirees challenged the Township's decision and filed suit. The Court determined that the applicable collective bargaining agreement did not specify any particular level of healthcare coverage and ruled that the Township was authorized to change coverage levels. Non-union retirees were also not entitled to continued retiree healthcare coverage at continuous levels because there was no contractual evidence in support of such a conclusion. However, one particular non-union retiree presented a memorandum and affidavit from the Township indicating that his current medical coverage will be maintained and would not be subject to reduction or elimination after retirement. With regard to that particular individual retiree, the Court refused to dismiss the claims.

Teamsters Local 214 v. Genesee Community Mental Health Services

Michigan Ct. of Appeals – Decided July 24, 2012

2012 Mich. App. LEXIS 1432

The Union filed suit against the employer on behalf of current employees and retirees concerning the distribution of retiree healthcare benefits under applicable collective bargaining agreements dating back to 1982. The employer challenged the Union's standing to file the lawsuit on behalf of retirees. The Court held that absent the retirees' consent, the Union lacked standing to pursue the claims on their behalf. The Court reasoned that because retirees are not employees, a union does not have a statutory duty to represent them. It was noted that the retirees were free to appoint the Union as their representative.

DISABILITY

Flanagan v. Macomb County Employees Retirement System

Michigan Ct. of Appeals – Decided October 25, 2012

2012 Mich. App. LEXIS 2170

A disability retiree subject to periodic re-examination, was determined capable of resuming her employment with the County. The individual refused the County's offer of re-employment and commenced a lawsuit against the Retirement System alleging breach of contract and constitutional violations. The trial court refused to dismiss the case and the Retirement System appealed. The Court of Appeals concluded that the trial court failed to apply the proper standard of review because the Retirement System is a quasi-judicial agency entitled to judicial review of its decisions under the substantial evidence test. The Court returned the matter to the trial court for proceedings as a complaint for superintending control and judicial review under the substantial evidence test.

Polania v. State Employees Retirement Board

Michigan Ct. of Appeals – Decided January 29, 2013

2013 Mich. App. LEXIS 183

The Retirement Board denied a member's application for a non-duty disability retirement based on the opinions of two medical advisors who concluded that the individual did not have a total and permanent disability. The individual appealed and the Board again denied her application, this time based on the decision of the administrative law judge who heard the individual's appeal. The individual sued and the trial court determined that the Retirement Board's decision was not supported by competent, substantial, and material evidence on the whole record. The Court of Appeals disagreed and concluded that the State Employees Retirement Act required the individual to be certified as totally and permanently disabled before the Retirement Board could grant her a disability retirement. Accordingly, the Court of Appeals held that the Retirement Board did not have the authority to grant the individual's application for non-duty disability retirement. Furthermore, the Court of Appeals noted that based on the two medical advisors' opinions, there was competent, material and substantial evidence to support the Retirement Board's decision.

INVESTMENT

Estes, et al. v. Anderson, et al.

Michigan Ct. of Appeals – Decided November 15, 2012

2012 Mich. App. LEXIS 2236

Participants, retirees and beneficiaries of the City of Detroit Retirement Systems alleged that the respective Retirement Boards violated their fiduciary duties under Michigan Public Act 314 of 1965, as amended ("Act 314"), as a result of bad investments made by the Boards. The Court of Appeals found that the plaintiffs lacked standing to challenge the investment decisions of the Boards under the governmental tort liability act which provides that a governmental agency is immune from tort liability if engaged in the exercise or discharge of a governmental function. The Boards' acts in administering the City's retirement plans is a governmental function, and Act 314 does not authorize a private cause of action in avoidance of governmental immunity. The Plaintiff's actions against the Boards' investment advisors were valid because the advisors are not entitled to governmental immunity.

Detroit Retirement Systems v. UBS

U.S. District Ct. E.D. Michigan – Decided July 10, 2012

2012 U.S. District LEXIS 95187

Contractual letter agreements between UBS and the Retirement Systems contained a "Waiver of Jury Trial" provision. A subsequent amendment did not contain such a waiver provision. Upon commencement of litigation, the Retirement Systems sought a jury trial. UBS moved to strike the jury demand under the contract. The Court granted UBS's request finding that under the totality of the circumstances, the letter agreements were the result of arms-length negotiations between sophisticated parties represented by experienced counsel. The Court noted that the letter agreements not only contained the jury waivers, but also agreed that the agreement sets forth the entire understanding of the parties and shall control in the event of any inconsistency with any prior communications, understandings, and agreements between the parties.

Police & Fire Retirement System of the City of Detroit, et al. v. Donald V. Watkins, et al.
U.S. District Ct. E.D. Michigan – Decided March 5, 2013 *2013 U.S. District LEXIS 29506*

The contracts between the parties contained jury waiver provisions. The Retirement System commenced suit under the contracts on June 17, 2008, and in response to the complaint the defendants demanded a jury trial. The Retirement System sought to strike that jury demand. The defendants argued that the Retirement System’s request to strike the jury demand was untimely because it was made almost five years after the demand for jury trial was made and the Retirement System waived its right to seek to strike the jury demand. The Court agreed noting that the Retirement System not only waited years to seek to enforce the jury waiver, but also failed to object at the August 16, 2012 Scheduling Order setting the case for a jury trial, and relied on the jury demand to exclude purported expert testimony that could have been “particularly confusing to the jury.”

SEC v. Onyx Capital Advisors, LLC, Roy Dixon, Jr., et al.
U.S. District Ct. E.D. Michigan – Decided October 11, 2012 *2012 U.S. District LEXIS 146388*

The SEC sought summary judgment against Onyx Capital and Dixon for violations of the Anti-Fraud provisions of the Federal Securities Laws. The Court found that the SEC sufficiently supported its claim that Dixon and Onyx Capital made material misrepresentations to three Michigan public pension funds regarding the management of Onyx Capital Advisory Fund I, and the issuance of capital calls to the pension funds. The Court also found that the SEC sufficiently proved that Dixon and Onyx misappropriated funds in violation of the Investment Advisers Act, withdrawing more than \$5 million from the Onyx Fund’s bank accounts between 2007 and 2009. The Court noted that Dixon withdrew at least \$920,000 from the Onyx Fund’s bank accounts and deposited the funds directly into his personal bank accounts or to accounts in the names of his other businesses. Further, the Court recognized that Dixon and Onyx Capital commingled the Onyx Fund’s investment money with Onyx Capital’s own funds and used the Onyx Fund’s investment money for their own purposes.

SEC v. Kilpatrick, et al.
U.S. District Ct. E.D. Michigan – Decided October 11, 2012 *2012 U.S. District LEXIS 146465*

The SEC filed an action alleging five counts of securities fraud against defendants in connection with the Detroit Retirement Systems’ investment with Mayfield Gentry Realty Advisors, LLC. Mayfield sought to dismiss the SEC’s charges. The Court refused to dismiss the charges and found that the allegations were sufficient to plead that Mayfield engaged in a scheme to provide Kilpatrick and Beasley with secret gifts to secure the Retirement Systems’ purchase of \$115 million shares from them.

FOIA/OPEN MEETINGS ACT

Filas v. Dearborn Heights School District 7, et al.
Michigan Ct. of Appeals – Decided April 16, 2013 *2013 Mich. App. LEXIS 657*

An individual sued the school board for violations of the Open Meetings Act (“OMA”) after the school board conducted closed session discussions regarding the individual’s medical condition and alleged disability. The school board contended that the closed session discussions were proper because the individual’s medical information was exempt from disclosure under the Americans With Disabilities Act, the Health Insurance Portability and Accountability Act, and the Michigan Freedom of Information Act. The Court of Appeals agreed with the school board and held that the individual’s medical information was protected material exempt from disclosure and thus, the school board was authorized to discuss such matters in closed session under the OMA.

DOMESTIC RELATIONS

Williams v. Williams

Michigan Ct. of Appeals – Decided March 28, 2013

2013 Mich. App. LEXIS 585

A plan participant was divorced and his former spouse was assigned a portion of the participant's pension under a valid Qualified Domestic Relations Order (QDRO). The QDRO designated the former spouse as the surviving spouse for purposes of the Plan's survivor benefits. The Plan Administrator accepted the QDRO and informed the parties that survivor benefits would not be payable to a subsequent spouse unless the terms of the QDRO were modified. The participant subsequently remarried without modifying the terms of the QDRO. Upon the participant's death survivor benefits under the Plan were paid entirely to his former spouse pursuant to the provisions of the QDRO. The widow thereafter sought to amend the QDRO to provide her with a portion of the participant's survivor benefits from the Plan. The Court of Appeals held that the QDRO could not be amended more than 13 years after its entry because it affected the former spouse's substantial rights, and relief from any mistake in the terms of the QDRO was required to be corrected within one year from the entry of the QDRO.

THE FOREGOING SUMMARIES ARE PRESENTED FOR GENERAL INFORMATION PURPOSES ONLY AND ARE NOT TO BE CONSIDERED LEGAL ADVICE. PLEASE REFER TO THE TEXT OF THE FULL OPINION OR CONTACT VANOVERBEKE, MICHAUD & TIMMONY, P.C., AT THE ABOVE ADDRESS IF YOU HAVE ANY QUESTIONS OR COMMENTS CONCERNING THIS MATERIAL.