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## M A P E R S

### RECENT LEGAL ISSUES AND DECISIONS

#### SPRING 2006 CONFERENCE

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

#### DISABILITY

**Spencer v. State Employees Retirement Board**

*Michigan Court of Appeals - Decided: October 13, 2005.*

*2005 Mich. App. Lexis 2503*

The Appellate Court upheld the State Employees Retirement Board's decision to deny a correction officer's application for non-duty disability retirement benefits. The Court reversed the trial court's decision because the trial court was not merely reviewing the Board's decision to determine if it was supported by substantial evidence in the record, but was improperly weighing the medical evidence and the credibility of the medical witnesses.

#### RETIREE MEDICAL

**Studier, et al. v. Michigan Public School Employees' Retirement Board, et al.**

*Michigan Supreme Court - Decided: June 28, 2005.*

*272 Mich. 642*

The Michigan Supreme Court decided that an increase in the co-pays and deductibles of a health care plan provided to public school retirees did not violate the state constitution's protection (MI Const 1963, Art. 9, Sect. 24) against the diminishment or impairment of "accrued financial benefits". The Court found that the term "accrued financial benefits" refers to pension benefits, not health care benefits, and that the statute creating the health care benefits did not create a contractual right in those benefits such that alteration of those benefits would violate the federal and state constitutional prohibitions (MI Const 1963, Art 1, Sect. 10 and US Const, Art I, Sect. 10) against impairment of a contractual obligation.

**Borchers v. Crawford County**

*Michigan Court of Appeals - Decided: August 23, 2005.*

*2005 Mich. App. Lexis 2074*

The Court upheld the County's determination that the rescission of post-retirement health insurance benefits for elected officials terminated Plaintiff's entitlement to post-retirement health insurance benefits.

**Stokan v. Huron County**

*Supreme Court of Michigan - Decided: November 10, 2005.*

*474 Mich. 919*

Where an individual ended his employment with the county and received health care coverage through another employer (Michigan Sheriffs' Association), the Michigan Supreme Court found that the individual could not later elect coverage under the county employee health care benefit plan.

**Sloan v. City of Madison Heights**

*Michigan Supreme Court - Decided: March 22, 2006.*

*2006 Mich. Lexis 437*

The MI Supreme Court found that the City of Madison Heights breached its collective bargaining agreement when it refused to pay health insurance premiums for retiree's new wife. The plain language of the collective bargaining agreement that provided health insurance to "retirees and spouses" did not limit spousal coverage to the person who was retiree's spouse at the time of retirement or at the time of the agreement's expiration.

**Police Officers Ass'n of Michigan, et al. v. County of Sanilac, et al.**

*Michigan Court of Appeals - Decided: April 18, 2006.*

*2006 Mich. App. Lexis 1215*

Even though police officer last actively worked for County in 1979 and had been drawing workers' compensation benefits since that time, an arbitrator properly found that police officer was still a County employee in 2003, and as such, County could not terminate his contractual health care benefits.

**ADMINISTRATION**

**Board of Trustees of the General Retirement System of the City of Detroit v. City of Detroit, et al.**

*Michigan Court of Appeals - Decided: May 24, 2005.*

*2005 Mich. App. Lexis 1355*

The Court of Appeals reversed the decision of the trial court and prevented the trial court from issuing a permanent restraining order regarding the board members' interstate travel.

**Police and Fire Retirement System of the City of Detroit v. City of Detroit, et al.**

*Michigan Court of Appeals - Decided: June 2, 2005*

*2005 Mich. App. Lexis 1387*

The Court found that the applicable city code and charter provisions, which predated the effective date of MCL 38.1140m, governed how the City's contributions to the retirement system are to be determined and that the pension board has the authority to make such determinations, based on actuarial data and reports, including the recognition of any funding credit.

*Michigan Supreme Court Denied Leave to Appeal - February 27, 2006. 2006 Mich. Lexis 328*

**Police and Fire Retirement System of the City of Detroit v. City of Detroit.**

*Michigan Court of Appeals - Decided: February 28, 2006.*

*2006 Mich. App. Lexis 517*

Under MCL 38.1140m, the Board of Trustees of the Policemen and Firemen Retirement System of the City of Detroit, and not the City of Detroit, has the authority to set an amortization period in which the City must contribute funds to meet unfunded accrued liabilities.

**Garcia v. Saginaw Police and Fire Retirement System**

*Michigan Court of Appeals - Decided: April 6, 2006.*

*2006 Mich. App. Lexis 1084*

Where a firefighter accepted a promotion to the non-union position of assistant fire chief, his retirement was properly calculated based upon the formula applicable to fire chiefs and assistant fire chiefs. The Court rejected the individual's claim that his pension benefit be calculated using both the formula applicable to firefighters and the formula applicable to assistant fire chiefs, each in proportion to his years of service in those respective positions.

**Germond v. Lenawee County Board of Commr's Retirement Plan, et al.**

*Michigan Court of Appeals - Decided: April 19, 2005.*

*2005 Mich. App. Lexis 986*

Where a county employee also operated a food service business for the county jail, the Court upheld the retirement board's decision to deny the individual's request to include the food service payments as "compensation" for purposes of determining the amount of his retirement benefit.

**Hempstead v. Charter Twp. of Waterford, et al.**

*Michigan Court of Appeals - Decided: April 20, 2006.*

*2006 Mich. App. Lexis 1272*

The Court upheld the pension board's ability to correct the error in the calculation of a judge's pension benefit for compliance with the Judges Retirement Act and the determination to reduce his local pension benefit to reflect the salary standardization payment being considered for purposes of calculating the judge's state retirement pension.

**Buchholz v. City of Livonia, et al.**

*Michigan Court of Appeals - Decided: October 13, 2005.*

*2005 Mich. App. Lexis 2524*

The Court found that a retired firefighter was not entitled to summary disposition regarding the retirement system's decision to offset from his retirement pension certain medical insurance benefits which were erroneously paid on retiree's behalf.

**Detroit CFO, et al. v. City of Detroit Police and Fire Retirement System Board of Trustees, et al.**

*Michigan Court of Appeals - Decided: January 12, 2006.*

*2006 Mich. App. 387*

Where an arbitration award concluded that the composition of the eleven member pension board would be altered by the replacement of two board members and the addition of a twelfth member position, the Court found that the City could not seek enforcement of an arbitration award against other unions that did not participate in the arbitration proceedings.

**Wayne County v. Wayne County Retirement Comm'n, et al.**

*Michigan Court of Appeals - Decided: June 28, 2005.*

*2005 Mich. App. 230*

The Court determined that the Wayne County employees who worked at Detroit Metro and Willow Run airports and transferred their employment to a statutorily created Airport Authority were not eligible to vote for, and be elected as, trustees of the Wayne County Retirement Commission.

**Whitwood, Inc. v. South Boulevard Property Management Co., et al.**

*Michigan Court of Appeals - Decided: April 12, 2005.*

*265 Mich. App. 651*

The Court found that the Public Employee Retirement Benefit Protection Act did not prevent the garnishment of public school retirement benefits once the benefits were distributed and deposited into the individual's bank account.

**In re Quinn**

*U.S. Bankruptcy Court, WD of Michigan - Decided: July 15, 2005.*

*2005 U.S. Dist. Lexis 16404*

A debtor-teacher's interest in a Michigan State University annuity fund cannot be included in the teacher's bankruptcy estate. The Court noted that protecting state employees' retirement benefits is consistent with Congress' policy concerns for protecting the retirement benefits of employees, whether public or private.

**Ernst, et al. v. Rising, et al.**

*U.S. Supreme Court - Decided: March 20, 2006 (cert. denied)*

The US Supreme Court upheld the 6<sup>th</sup> U.S. Circuit Court of Appeal's determination that the 36<sup>th</sup> District Court judges' (judges in Detroit and surrounding Wayne County) receipt of retirement benefits which were more favorable than other state court judges did not violate the Equal Protection Clauses of the U.S. and Michigan Constitutions.

**Municipal Employees Retirement Systems of Michigan v. Charter Twp. of Delta**

*Michigan Court of Appeals - Decided: May 24, 2005.*

*2005 Mich. App. 510*

Vacant real property purchased by a public employees' retirement administrator for investment purposes to benefit the public employees' pension funds is exempt from ad valorem property taxes.

This decision is currently being reviewed by the Michigan Supreme Court.

*Michigan Supreme Court Granted Leave for Appeal: January 31, 2006 2006 Mich. Lexis 205*

**DOMESTIC RELATIONS**

**Sweebe v. Sweebe**

*Michigan Supreme Court - Decided: April 26, 2006.*

*2006 Mich. Lexis 690*

Where a participant failed to change his designated beneficiary after a divorce, the Court found that while a plan administrator is bound to pay insurance benefits to the named beneficiary, the beneficiary waived the rights to retain the distributed proceeds in the divorce judgement and was required to pay such amounts to the decedent's estate.

**Baker v. Baker**

*Michigan Court of Appeals - Decided: November 3, 2005.*

*268 Mich. App. 578*

A member who contracted with his employer to retire earlier than the "30 and out" retirement contemplated in the parties' divorce agreement is not entitled to have his former spouse return the benefits she had received as a result of the early retirement agreement. The Court found that pursuant to the terms of the divorce judgment, the EDRO, and the EDRO Act, when the member met the requirements of retirement and began to receive pension benefits, his former spouse was entitled to fifty percent of those benefits. The fact that member contracted to receive these pension benefits 2.2 years earlier than his expected retirement date does not render the payments to his former spouse outside the scope of the judgment of divorce and the EDRO.

*Michigan Supreme Court Denied Leave to Appeal - March 27, 2006.*

*2006 Mich. Lexis 553*

**FREEDOM OF INFORMATION ACT/ OPEN MEETINGS ACT**

**Detroit Free Press v. City of Southfield, et al.**

*Michigan Court of Appeals - Decided: November 16, 2005.*

*269 Mich. App. 275*

In response to the newspapers request under the Freedom of Information Act for the names and amounts of those individuals receiving the 20 largest pensions from the retirement system, the Court determined that the disclosure of a retiree's name and pension income does not constitute an unwarranted invasion of the retiree's privacy and that the retirement system is required to disclose both the names and pension amounts.

**Heath v. City of Montrose, et al.**

*Michigan Court of Appeals - Decided: September 29, 2005.*

*2006 Mich. App. Lexis 2400*

Where the City violated the Open Meetings Act by adjourning the meeting before providing an opportunity for public comment, the Court found that the violation was not intentional and that violation was corrected by providing plaintiff the opportunity at a subsequent meeting to comment on the topics raised during the previous meeting.

*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.*