

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

**WAYNE COUNTY RETIREMENT COMMISSION,**  
a public body corporate and **WAYNE COUNTY**  
**EMPLOYEES' RETIREMENT SYSTEM,** a public  
body corporate,  
Plaintiffs/Counter-Defendants.

10-013013-AW

vs.

**HON. LITA M. POPKE**  
**Case No.: 10-010013-AW**

**CHARTER COUNTY OF WAYNE,**  
a Michigan Municipal Corporation,  
and  
**WAYNE COUNTY BOARD OF COMMISSIONERS,**  
a public body,  
Defendants/Counter-Plaintiff.

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/s/ Korey Pearson

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**OPINION AND ORDER**

This matter is before the Court on Plaintiffs' Motion for Summary Disposition. The Motion pertains to the claims set forth in Count V of the Second Amended Complaint and is based on MCR 2.116(C)(9) and (10). For the reasons explained below, the Court will deny Plaintiffs' motion, and instead, grant summary disposition in favor of the Defendants pursuant to MCR 2.116(I)(2).<sup>1</sup>

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<sup>1</sup> MCR 2.116(I)(2) states, "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party."

## Procedural History

This case was commenced in 2010 by the Plaintiffs, Wayne County Retirement Commission and the Wayne County Employees' Retirement System (hereinafter referred to as "Plaintiffs"), against the Defendants, the Charter County of Wayne and the Wayne County Board of Commissioners (hereinafter referred to in the singular as the "County"). The claims asserted in the original four-count complaint<sup>2</sup> centered around the legality of a 2010 Wayne County ordinance that affected the County's contribution to the pension fund under the Public Employee Retirement System Investment Act (PERSIA), MCL 38.1132, *et seq.* In the mid- 1980s, the County created an Inflation Equity Fund (IEF) whose investment earnings were used to pay retirees their "13<sup>th</sup> check". The County adopted an Ordinance in 2010 that permitted amounts over \$12 million in the IEF to be debited from the IEF and then used to offset and/or reduce the County's defined benefit Annual Required Contribution ("ARC").<sup>3</sup> Following a trial court decision that favored the County, the Court of Appeals reversed, holding that this portion of the 2010 Ordinance violated certain provisions of PERSIA, *Wayne County Retirement System. v Wayne County*, 301 Mich App 1, 7; 836 NW2d 279, 284 (2013) *aff'd in part, vacated in part.*, 497 Mich 36, 859 NW2d 678 (2014).

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<sup>2</sup> The original complaint contained four counts: Count I (Mandamus); Count II (Declaratory Judgment); Count III (Injunctive Relief) and Count IV (Attorney Fees).

<sup>3</sup> The acronym "ARC" refers to a municipality's "annual required contribution," which is the amount that the municipality is required to pay to its retirement system on an annual basis as required by Const 1963, art 9, § 24 under the formula set forth in MCL 38.1140m. See, *Wayne County. Employees Retirement System, supra*, 497 Mich at 38.

The Supreme Court affirmed this holding of the Court of Appeals, stating, "[W]e affirm the portions of the Court of Appeals opinion holding that the transfer of \$32 million from the IEF to the retirement system's defined benefit plans and corresponding offset against the county's ARC obligation in this case violated PERSIA for the reasons stated in the Court of Appeals opinion," and that "the \$32 million that was offset against the county's ARC [must] be[ ] returned, restored, or credited to the IEF, with the county being required to satisfy its ARC obligations absent consideration of that \$32 million." *Wayne County Employees Retirement System, supra*, 497 Mich at 42. The Supreme Court further remanded the case "to the trial court for proceedings and entry of judgment not inconsistent with this opinion." *Id* at 44.

Once the case was remanded to this Court, the Plaintiffs sought leave to amend their Complaint to add a new count, Count V. Pursuant to the stipulation of the parties, the Court entered an order allowing the amendment of the Complaint.<sup>4</sup> Subsequently, pursuant to this Court's Scheduling Order, Plaintiffs filed the instant Motion for Summary Disposition on Count V of the Second Amended Complaint.<sup>5</sup>

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<sup>4</sup> The Court notes that the new Count V is an entirely new cause of action unrelated to the findings of the Court of Appeals and Supreme Court. Clearly, leave could have been denied in the discretion of the trial court and a new Complaint filed. In the interests of efficiency, however, the stipulation was filed and the Scheduling Order issued.

<sup>5</sup> Counts I – IV of the original Complaint were the subject matter of the remand order of the Supreme Court and will be addressed in a separate motion filed by the Plaintiffs.

## Count V Allegations

In Count V the Plaintiffs allege the County caused "a substantial and material Unfunded Actuarial Accrued Liability ("UAAL") through the practice of approving, implementing and granting" retirement benefits without properly addressing the County's legal obligations associated with those benefits" under MCL 38.1140h(5) and Const 1963, art 9, § 24. Second Amended Complaint, ¶ 144. These retirement benefits allegedly included granting certain retirement benefits to its executive employees under various separation agreements, various early retirement incentives to certain employees, and various benefit changes through collective bargaining. *Id.*, ¶¶ 145-147. These allegedly imposed further "substantial and financial obligations of the Retirement System that have not been properly funded by the County." *Id.*, ¶ 148. For relief the Plaintiffs seek the entry of a judgment "in the amount of the UAAL."<sup>6</sup> *Id.*

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<sup>6</sup> The UAAL will be defined and discussed *infra*. The amount of the UAAL is estimated by Plaintiffs to be between approximately \$910,067,000 and \$896,000,000. See, Plaintiffs' Motion for Summary Disposition, p 15, Exhibits C, pg A-5 and Exhibit I, pp 8-9. The County estimates the amount as approximately \$845,000,000. Wayne County's Response to Plaintiffs' Motion for Summary Disposition, p. 4. Due to the result reached in this Opinion it is unnecessary to ascertain the exact amount of the current UAAL.



## CONSTITUTIONAL ARGUMENTS

In their Motion,<sup>7</sup> Plaintiffs assert that Const 1963, art 9, § 24, requires that this Court enter a judgment in their favor in the amount of the UAAL. Plaintiffs contend that this section “expressly mandates local governments to fund all public employee pension systems to a level which includes unfunded accrued liabilities,” and that extends to funding a UAAL at 100%. Therefore, Plaintiffs contend that the Constitution requires the entry of a judgment for the amount of the UAAL.<sup>8</sup> For the reasons set forth below, the Court finds no such Constitutional obligation exists.

In order to analyze the Plaintiffs’ argument, it is important to describe what is commonly meant by a UAAL and how it functions in the context of Michigan pension systems.

As described in Statement No. 27 of the Governmental Accounting Standards Board, p 6, the UAAL refers to the difference between the actuarial values of assets and the actuarial accrued liabilities of a plan. See also, *Bandt v Bd of Ret, San Diego Cnty Employees Ret Ass'n*, 136 Cal App 4th 140, 147; 38 Cal Rptr 3d 544, 549 (2006) (“Unfunded accrued actuarial liability” is the difference between actuarial accrued liability and the valuation assets in a fund”). Put another way, “[e]ssentially, the UAAL is the amount of retirement that is owed to an employee in future years that exceed current assets and their projected growth . . . . A UAAL is an estimate based on many assumptions, including demographic, economic and financial

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<sup>7</sup> Part I of the Plaintiffs’ Brief, pp 9-10, entitled, “The County’s Violation of PERSIA Has Been Established as the Law of the Case” is largely irrelevant to the present motion. As conceded by the Plaintiffs, *Id*, at 10, Count V does not relate to the violations of PERSIA involved in appellate decisions. Count V of the Second Amended Complaint alleges different violations of PERSIA which are not subsumed in the Court of Appeals/Supreme Court decisions.

<sup>8</sup> On appeal of the trial court’s decision on Counts I-V of the Complaint, Plaintiffs raised Constitutional arguments which were addressed by the Court of Appeals. The Court of Appeals opinion on this issue, contained in a footnote, was vacated by the Supreme Court. Although Count V which is the subject of this Opinion was not involved in the appeal, nonetheless there is no appellate direction on the application of Const 1963, art 9, § 24 to the facts of this case.

projections that are subject to change. As a result, the UAAL is not an absolute number like the amount of a fixed rate bond but an estimate that is revised annually based upon the five most recent years of experience.” Houston Municipal Employees Pension System, “Unfunded Actuarial Accrued Liability - What Does It Really Mean?” [http://hmeps.org/assets/uaal---what-does-it-mean\\_updated-2-2012.pdf](http://hmeps.org/assets/uaal---what-does-it-mean_updated-2-2012.pdf) (last accessed, April 27, 2015).

Similarly, in *County of Orange v Ass'n of Orange Cnty. Deputy Sheriffs*, 192 Cal App 4th 21, 35; 121 Cal Rptr 3d 151, 159 (2011) described what comprises the UAAL as follows:

The UAAL . . . is an estimate based on a series of assumptions that operate on demographic data of OCERS' membership. This process is necessary to determine, as of the date of the calculation, how sufficient the assets in OCERS are to fund the accrued costs attributable to active, vested[,] terminated and retired employees. This determination of underfunding rests on actuarial assumptions regarding expected return on invested assets, the assumed future pay increases for current employees, assumed rates of disability, the assumed retirement ages of active employees, the assumed marital status at retirement, the post-employment life expectancies of retirees and beneficiaries, salary increases, contributions to OCERS, inflation, and other factors. Given the multiple assumptions about the future involved in calculating the OCERS UAAL (investment returns, pay increases, marital status at retirement, retiree and beneficiary life expectancies, salary increases, contribution rates, and inflation), *it is clear that the UAAL is a highly variable amount, which may or may not prove accurate depending upon actual future events and experience.*

(Emphasis added).

In the case at bar, the function of a UAAL can be found in an affidavit supplied by Judith Kermans, who was employed by the Plaintiffs' actuary as a senior consultant and regional director, and from which the Court of Appeals quoted in its opinion in its discussion of how the County's defined benefit plans are funded:

[S]he [Judith Kermans] averred that the County's defined benefit plans "are funded by member contributions, employer contributions[,] and investment income on Retirement System assets"; that members contribute a percentage of their pay; that Wayne County, the employer, "is charged with contributing the actuarially determined remaining amount needed to fund the Retirement System obligations to pay pension benefits currently in payment status and benefits that will be paid in the future"; that the actuary prepares the actuarial valuation for purposes of calculating the County's ARC; and that the "ARC is calculated as a percentage of member covered payroll." Kermans further averred that the "actuarial valuation is intended to produce [an ARC] which is sufficient (1) to cover the actuarial costs allocated to the current year by the actuarial cost method (the normal cost); and (2) *to finance over a period of future years, the actuarial costs not covered by present assets and anticipated future normal costs (i.e., the unfunded actuarial accrued liability).*" (Emphasis added).

*Wayne County Retirement System, supra*, at 301 Mich App 22-23.

In other words, as described by Ms. Kermans, the function of a UAAL is not so much to describe a fixed sum of money that creates an immediate obligation to pay, but instead is a figure used by a pension fund's actuary as part of the calculation of determining how much an employer must pay into a pension fund in any given year.

With this in mind, the Court turns to whether Const 1963, art 9, § 24 requires the immediate payment of the entire UAAL by the government employer. Const 1963, art 9, § 24 states,

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

*Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.* (Emphasis added).

Principles of construction are applied to the Michigan Constitution. As noted in *Wayne County Retirement System, supra*, 301 Mich App at 27,

In regard to construing the Michigan Constitution, “[o]ur goal ... is to discern the original meaning attributed to the words of a constitutional provision by its ratifier ... The rule of “common understanding” is applied in the analysis. In applying this principle of construction, the people are understood to have accepted the words employed in a constitutional provision in the sense most obvious to the common understanding and to have “ratified the instrument in the belief that was the sense designed to be conveyed ...”.

(Authorities omitted).

In the first paragraph of Const 1963, art 9, § 24, the Constitution mandates that when financial benefits are owed by a pension plan and retirement system, it becomes a contractual obligation which cannot be diminished or impaired. Prior to the 1963 Constitution, the obligation to pay pension benefits was not contractual or obligatory. *Shelby Twp Police & Fire Retirement Bd v Charter Twp of Shelby*, 438 Mich 247, 254; 475 NW2d 249 (1991)

While the first paragraph identifies the constitutional obligation that cannot be diminished or impaired, the second paragraph addresses funding of that obligation and is hence most relevant to the Plaintiffs’ arguments. With respect to the second paragraph, the key constitutional dictate is that certain financial benefits “shall be funded” and that such “funding shall not be used for financing unfunded accrued liabilities.”

In determining what this language means, the court will apply the concept of “common understanding” and general rules of construction. The paragraph can be easily divided into three phrases: (1) “Financial benefits arising on account of service rendered in each fiscal year”; (2)

“shall be funded during that year”; and (3) “such funding shall not be used for financing unfunded accrued liabilities.” The first phrase of the second paragraph (“Financial benefits arising on account of service rendered in each fiscal year”) identifies the benefits to which the funding obligation applies: benefits which arise on account of service rendered in each fiscal year. This language is clear in requiring the existence of a current benefit based on actual service rendered during a particular year. The language of the second phrase requires that the current benefit be funded during “that” year which refers to the fiscal year in which the service was rendered. Consistent with the requirement that current actually rendered service benefits be funded in that fiscal year, the third phrase of the paragraph clarifies that the current funding of benefits for current service rendered “shall not be used for financing unfunded liabilities.”

When analyzing “funding”, it is instructive to look at the definition of “fund” which can be found in the American Heritage Dictionary of the English Language (4<sup>th</sup> ed), 712: “n. ... a sum of money or other resources set aside for a specific purpose ... to provide money for paying off the interest and principal (of a debt).” Similarly, Black’s Law Dictionary (6<sup>th</sup> ed), p 673, defines the word “fund” to mean “... an asset ... set aside for a specific purpose. To fund a debt is to pledge a specific fund to keep down the interest and reduce the principal.”

These definitions when applied to the second paragraph of Const 1963, art 9, § 24 reflect that the constitutional command contained therein does not require present full funding of an accrued pension liability whose actual payment will occur sometime in the future, but that funding or financing for those accrued liabilities must be put into place in the year that such financial benefits are accrued. Therefore, the second paragraph of Const 1963, art 9, § 24 cannot

be read as requiring the present payment of the entire amount of a projection of a potential future liability such as a UAAL.

Moreover, as explained above, since a UAAL describes an actuarially determined estimate, it is not a fixed immutable figure that reflects a present liability to pay. *County of Orange, supra*, (concluding, “a UAAL such as the \$100 million cited by the County in this case is an actuarial estimate projecting the impact of a change in a benefit plan, rather than a legally enforceable obligation measured at the time of the County's 2001 resolution approving [the change]”). Accordingly, the plain meaning of the text of the Const 1963, art 9, § 24 fails to establish that the County must presently pay the entire UAAL.

In addition, as recognized by the Court in *Shelby Twp, supra*, at 255-256, a case relied on by both parties, while the second paragraph of Const 1963, art 9, § 24, “expressly mandates townships and municipalities to fund all public employee pension systems to a level which includes unfunded accrued liabilities,” nonetheless, “[w]e acknowledge that the Michigan Constitution does not provide the specifics for meeting the funding obligations upon a retirement plan's unfunded accrued liabilities.” Also see, *Kosa v Treasurer of State of Michigan*, 408 Mich 356, 370, n 21; 292 NW2d 452 (1980) (“In drafting Const 1963, art 9, § 24, the constitutional framers did not intend to make any particular funding system contractually enforceable”). Instead, the Legislature has plenary authority to enact legislation to provide adequate funding for retirement systems. *Shelby Twp, supra*, at 262. The Constitutional language does not establish the timing of the funding obligation, but merely its existence. Thus if there is any duty to fully fund the UAAL in any given year, it must be found in the various statutes that address this subject.

On this point, the Court notes that the Michigan Legislature has employed the phrase “unfunded actuarial accrued liability” in at least seventeen statutes,<sup>9</sup> the great majority of which are part of various statutes that dictate how pensions for various public employees are to be calculated and funded, including two sections of PERSIA: MCL 38.1133(3)(i)(ix)(L)<sup>10</sup> and MCL 38.1140m.<sup>11</sup> In these various statutes the Legislature recognized a UAAL as an accounting device used for estimating the annual funding of public pensions and addressed how a public employer might satisfy its constitutional funding obligations in light of the existence of a UAAL. Significantly, in the one statute under PERSIA that actually addresses a public employer’s duty to make contributions to its pension system and refers to a UAAL, MCL 38.1140m(1), the annual required contribution includes “a payment of at least the annual accrued amortized interest on any unfunded actuarial liability and the payment of the annual accrued amortized portion of the unfunded principal liability,” along with the payment of the “current service cost payment.” Significantly, there is no duty imposed on the public employer to pay the entire UAAL in a single year. The terms of MCL 38.1140m(1) reflect that there is simply no statutory duty, and in turn no Constitutional duty, for the County to pay the entire amount of a UAAL in any given year.

For these reasons, the Court finds that Const 1963, art 9, § 24 does not impose on the

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<sup>9</sup> See, MCL 38.38; MCL 38.52; MCL 38.1133; MCL 38.1336; MCL 38.1140m; MCL 38.1341; MCL 38.1341a; MCL 38.1343; MCL 38.1361; MCL 38.1393; MCL 38.1614; MCL 38.2301; MCL 206.671; MCL 208.1107; MCL 259.119; MCL 388.1747c; and MCL 388.1807b.

<sup>10</sup> MCL 38.1133(3)(i)(ix)(L) provides that the an investment fiduciary of a public pension system must publish an annual report that details, *inter alia*, “The amortization method and period utilized for funding the system's unfunded actuarial accrued liabilities, if any.”

<sup>11</sup> MCL 38.1140m(1) states in pertinent part, “For the Tier 1 retirement plan ... for the fiscal year beginning October 1, 2006, the contribution for the unfunded actuarial accrued liability shall be equal to the product of the assumed real rate of investment return times the unfunded actuarial accrued liability.”

County a duty to pay the entirety of the UAAL in a given year. In fact, under MCL 38.1140m(1), the only legal duty imposed on the County is to pay the ARC. The Plaintiffs are therefore not entitled to summary disposition on their theory. The County is, however, entitled to summary disposition on the basis that the Court finds no such legal duty exists.



## **VIOLATION OF MCL 38.1140h(5)**

Plaintiffs next contend that the County violated MCL 38.1140h(5) by failing to advise them that it had adopted certain changes to the existing retirement plan and had a supplemental actuarial analysis performed. Allegedly, the failure of the County to notify the Plaintiffs and request a supplemental analysis be conducted to ascertain the impact of these changes led to an under calculation of the ARC in prior years and, along with the failure of the County to pay \$32 million as part of its 2010 ARC, has led to the current UAAL. The remedy sought is the entry of a judgment for the entire amount of the UAAL. For the reasons set forth below, the Court finds no such duty on the part of the County exists in MCL 38.1140h(5).

MCL 38.1140h(5) provides,

A system shall provide a supplemental actuarial analysis before adoption of pension benefit changes. System assets shall not be used for any actuarial expenses related to the supplemental actuarial analysis under this subsection. The supplemental actuarial analysis shall be provided by the system's actuary and shall include an analysis of the long-term costs associated with any proposed pension benefit change. The supplemental actuarial analysis shall be provided to the board of the particular system and to the decision-making body that will approve the proposed pension benefit change at least 7 days before the proposed pension benefit change is adopted. For purposes of this subsection, "proposed pension benefit change" means a proposal to change the amount of pension benefits received by persons entitled to pension benefits under the system. Proposed pension benefit change does not include a proposed change to a health care plan or health benefits.

In construing this statute, this Court is guided by the usual rules for statutory interpretation. As summarized in *Wayne County v Wayne County Retirement Commission*, 267 Mich App 230, 244; 704 NW2d 117, 125 (2005), “In construing a statute, courts must give the words of the statute their common and ordinary meaning. Moreover, a court must ‘give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.’” A statutory provision cannot be interpreted apart from other sections of the statute without constant reference to the whole. *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 425; 565 NW2d 844 (1997). Generally, “when language is included in one section of a statute but omitted from another section, it is presumed that the drafters acted intentionally and purposely in their inclusion or exclusion ... Courts may not read into the statute a requirement that the Legislature has seen fit to omit.” *Book-Gilbert v Greenleaf*, 302 Mich App 538, 542; 840 NW2d 743(2013).

Consistent with these principles, this Court must construe MCL 38.1140h(5) in light of the other provisions of PERSIA, and effectively give a construction that harmonizes MCL 38.1140h(5) with the other provisions of PERSIA.

The fundamental flaw in the Plaintiffs’ argument is evident through a careful reading of MCL 38.1140h(5) which clearly illustrates that the duty to conduct the supplemental analysis is on the retirement system – not the employer. Further, MCL 38.1140h(5) does not provide for a monetary remedy for its violation. While the Plaintiffs may wish to impose such an obligation on the part of the County to notify the retirement system of agreements that would affect the pension, and be subject to monetary damages for the failure to do so, such a provision is not contained in the statute and the Court may not read it in. That is not to say that mandamus would not lie to compel the performance of supplemental actuarial analysis or the cooperation of the

public employer with such an analysis. But that remedy is not sought. What is sought, in contrast, is the entry of a judgment for the amount of the UAAL, a remedy which simply is not statutory authorized.

In fact, the obligations of the employer County are set forth not in MCL 38.1140h, but instead MCL 38.1140m(1). As discussed above, neither PERSIA, nor any other Michigan statute imposes on a public employer the duty to pay in any given year the entire amount of a UAAL. Instead, under MCL 38.1140m(1), a public employer's obligation to its pension system is to pay the ARC. Notably, as recounted above, the ARC does not consist of the UAAL, but instead the UAAL is used by a pension system as part of the formula for determining what the ARC should be in any given year. The supplemental analysis performed under MCL 38.1140h is relevant to setting the ARC. As described in the Affidavit of Charles Bonza III, ¶¶ 24-26, attached to Plaintiffs' Motion, Exhibit E, the results of a supplemental analysis would be figured into the computation of a given year's ARC and that without that analysis being performed, an ARC might be understated. Nonetheless, reading MCL 38.1140h(5) in connection with MCL 38.1140m(1), it follows that where a prior year's ARC has been understated because of a failure to conduct a supplemental analysis, the solution would be to correct that understatement in a subsequent year's ARC, computed under MCL 38.1140m(1) that takes into account information that was not previously available to the pension system's accountants. Any other result would impermissibly involve the Court in rewriting MCL 38.1140h(5) to provide for a remedy that could be possibly inconsistent with the provisions of MCL 38.1140m(1), which under the above stated principles of statutory construction, the Court is precluded from doing.

It should be recalled that under the express provisions of MCL 38.1140h(5), the duty to conduct a supplemental analysis lies with the Plaintiffs. It would appear therefore that having

learned of the existence of these enhanced pension plans, the duty created by MCL 38.1140h(5) is for the Plaintiffs to conduct a supplementary analysis (at the cost of Wayne County).

Presently, there is no indication that Plaintiffs have attempted to have such a supplemental analysis performed and that Wayne County would not otherwise cooperate and provide such details as required by the Plaintiffs to conduct such a study. Further, there is no allegation that the Plaintiffs have issued an ARC that currently takes into account the increased pensions alleged in the Complaint, or that the County has failed to pay an ARC (other than its obligation established in *Wayne County Retirement System, supra*, to pay an additional \$32 million as part of its 2010 ARC).

In short, at present, the facts of the case in light of the statutory scheme of PERSIA, do not reflect a present right by the Plaintiffs to a judgment in the amount of the UAAL for the reason that MCL 38.1140h(5) contains no specific duty which the County violated and there is no monetary damages under such provision in any event. Therefore, Plaintiffs' statutory claim fails to state a claim. The Motion for Summary Disposition is denied and summary disposition entered in favor of the County under MCR 2.116(I)(2).

## **CONCLUSION**

Count V of Plaintiffs' Second Amended Complaint alleges a contractual and legal duty to fund the retirement system pursuant to the Michigan Constitution, Article 9, § 24 and the Public Employee Retirement System Investment Act, MCL 38.1140(h)(5). Pursuant to these legal obligations, the Plaintiffs argue that the County is obligated to maintain complete funding of not only those amounts set forth in MCL 38.1140m(1) known as the annual retirement contribution or "ARC", but the unfunded actuarial accrued liabilities known as the "UAAL" which are an

estimate of future liabilities of the plan and are estimated to be between \$845 and \$910 million at the current time. While the Court acknowledges the existence of Constitutional and statutory obligations with respect to pension plans and retirement systems under the Constitution and PERSIA, there is no legal basis to support the Plaintiffs' arguments that they are entitled to a judgment against the County for the entire UAAL. For this reason, the Court must deny the Plaintiffs' Motion for Summary Disposition as to Count V, and in turn, grant Summary Disposition in favor of the County under MCR 2.116(I)(2) and determine as a matter of law that no such obligation exists.<sup>12</sup>

In light of the foregoing opinion,

**IT IS HEREBY ORDERED** that Plaintiffs' Motions for Summary Disposition on Count V of its Second Amended Complaint is hereby DENIED.

**IT IS FURTHER ORDERED** that pursuant to MCR 2.116(I)(2), Summary Disposition is granted in favor of the Defendants.

Date: May 7, 2015



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**JUDGE LITA M. POPKE**

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<sup>12</sup> In light of the reasoning and result of this Opinion, the Court need not address the other arguments raised in the County's response to the Plaintiffs' motion.