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City Pays Millions in Judgment in Firefighters Pension Litigation

St. Louis, MO – September 27, 2007 – St. Louis firefighters and retired firefighters can breathe a sigh of relief today after an infusion of more than \$49.4 million into their pension fund. The transfer of funds from the city was the result of a Missouri Supreme Court ruling last March in favor of the Firemen’s Retirement System of St. Louis (FRS). The ruling required the City of St. Louis to fully fund the retirement system, according to Dan Tobben, an attorney with Clayton-based law firm Danna McKitrick, who handled the case for FRS.

“We’re very pleased that this matter of funding the firefighter’s pension has come to a successful resolution. It sends a signal to all communities that they either properly fund the pension plans for municipal employees or face grievous consequences,” Tobben said.

In the same opinion, the Supreme Court also ruled in favor of the Police Retirement System (PRS) of St. Louis. See *Neske, et al. v. City of St. Louis, et al.*, 218 S.W.3d 417 (Mo. 2007).

As a result of the Supreme Court Judgment, the St. Louis Board of Alderman passed an ordinance to authorize the St. Louis Municipal Finance Corporation to issue up to \$155 million in bonds to fund the firefighter, police and municipal retirement systems.

Following the win in the Supreme Court by FRS, the trustees of the retirement system for city employees (ERS), other than police and firefighters, also hired Mr. Tobben to seek recovery from the city for underfunding ERS. ERS will also receive approximately 47 million dollars from the city as a result of this bond issue.

The Supreme Court ruling came as the culmination of a suit, originally filed in 2003, in which a St. Louis City Circuit Court judge ruled in 2005 that the City of St Louis had breached its obligation to pay \$18.5 million into the firemen’s pension fund for fiscal years 2004 and 2005.

“Cities in Missouri and Illinois need to follow their state law and municipal ordinances when it comes to properly funding their employee pension funds. This decision marks the end of the time when city governments could try to use pension funds as piggy banks for other projects,” Tobben said.

About Danna McKitrick: Located in Clayton, Missouri, Danna McKitrick, P.C. delivers outstanding legal representation to businesses (emerging to national), government-related entities, insurers, and individuals throughout the Midwest. www.dannamckitrick.com (Download press photo of Mr. Tobben from homepage).

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Historical Background of Neske et al

On March 13, 2007 the Missouri Supreme Court ruled in favor of the Firemen's Retirement System of St. Louis (FRS) in a lawsuit requiring the City of St. Louis to fully fund FRS, based on the amounts calculated by its actuary. In the same Opinion, the Court also ruled in favor of the Police Retirement System (PRS), which had also filed suit. (*Neske, et al. v. City of St. Louis, et al.*, 218 S.W.3d 417 (Mo. 1007).

The city appealed the trial court's ruling, citing provisions of the Hancock Amendment to the Missouri Constitution, as well as other constitutional provisions. The trial court noted that the city's position was unreasonable, stating: "To follow the city's logic, it could evade almost any debt by failing to timely appropriate money for it in the fiscal year when due, and then claim that it cannot be forced to pay it in succeeding years." The Supreme Court agreed, holding: "The city cannot evade its responsibilities to the PRS and FRS by refusing to pay them the amounts required and then arguing it has spent the monies elsewhere."

Much of the Missouri Supreme Court's decision dealt with whether Hancock Amendment to the State of Missouri's constitution applied (it does not) and on the definition of the word "shall" and whether it is mandatory or permissive according to the law. In essence, the Court said that "shall" has its normal meaning and the laws mean what they say.

"The statutes and ordinances relating to the PRS and the FRS, when taken as a whole, support the view that actuarial soundness is the principle at the heart of the PRS and the FRS funding provisions. Actuarial soundness requires the city to make its annual contribution of the actuarially-determined amounts certified by the PRS and the FRS boards of trustees."

Regarding the Hancock Amendment, the Court held that "where there is no mandate that the city take on a new responsibility, but only a continued responsibility for it to fund an existing activity according to a previously existing formula, there is no Hancock violation." The city did not challenge the accuracy of the actuaries' calculations or the accuracy of the amount certified by the trustees as the amount to be contributed.

"The firefighter's pension is critical to the men and women who put their lives on the line to protect the people who live in the City of St. Louis. For many of the firefighters, the pension is all they will have when they retire because most are not eligible for Social Security benefits. Unlike private pensions under ERISA, city firefighters' pensions are not insured by the federal government. To fail to adequately fund their pension is unconscionable considering these men and women spent their lives protecting the city, its residents and businesses, and their property," said Tobben, who represented FRS throughout this litigation.

States such as Illinois and New Jersey also are looking for ways to meet their obligations. The New York Times has reported that New Jersey is facing an estimated \$18 billion in unfunded pension obligations and that Illinois is stretching its funding obligations because of very severe underfunding. Public officials are being sued and there have been criminal investigations in San Diego for concealing underfunding of city pensions.

"Government cannot continue to treat its employee pension fund obligations like matters subject to discretionary funding. Employees who qualify for a pension deserve better than that," Tobben said. "The city knew, or should have known, it was obligated to fully fund its pensions. This ruling would not have been necessary if the city had continued to meet its obligation to contribute to the pension funds rather than provoking this litigation."