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Friday  
January 15, 2016

President Dale Covert  
Board Member Robert Lonergan  
Board Member Colleen Peters

Vice President Mike Falkner  
Board Member Tammy Jones

## **By E-Mail Only to the Executive Board**

Ref: *Allen Park Retirees Association Inc – v – State of Michigan, et al*  
**General Membership Updates on APRA Activities in State & Federal Courts**

Greetings to All,

Here is an update, current as of **Friday, January 15, 2016**, on the APRA files in various Courts. There may be – quite understandably – some confusion among the membership as to whether the APRA cases are still active in any of the Courts.

Since we first began this effort in the Ingham Circuit Court in November, 2012, the State, as the Defendant, has used litigation tactics to detour this case into several different Courts. Those include the Wayne County Circuit Court; the Federal Bankruptcy Court; the Federal District Court; and back to the State Court of Claims. It has only been through the steadfast determination of your Executive Board that the APRA has never wavered in its efforts to fight the changes brought about by the State’s Emergency Manager law.

### **Wayne Circuit Court**

The City remains in the State’s receivership through the so-called “**Receivership Transition Advisory Board**,” or **RTAB**. It is no secret that the State still runs the City, and that the RTAB clears all actions by the City Council before they are formally “introduced” by the City.

Unlike the 18-month option that the City had to remove or replace an Emergency Manager, there is **no** time limit on how long the RTAB will run the City of Allen Park. And on July 28, 2015, the City and the RTAB again changed retiree insurance by moving from Blue Cross-Blue Shield to Humana.

Your Executive Board gathered evidence that showed that your membership was again paying higher costs, and – in addition – some physicians who were previously used by your members did not participate in the Humana program. In response to these concerns, the APRA prepared a detailed comparison chart that showed numerous, serious problems with Humana coverage – and made the decision to re-open the lawsuit at the Wayne Circuit Court. That portion of the lawsuit had been ***suspended*** – or “***administratively closed***” by the Wayne Circuit Court in September, 2014, while the APRA case against the State proceeded in the Michigan Court of Claims.

The ARPA moved to re-open its case against **the City** in the Wayne Circuit Court, in **October, 2015**. Although **the City** was the only Defendant named in the Wayne Circuit Court – **the State** immediately jumped back in and filed a legal brief at that Court – once again demonstrating its stranglehold on the City government.

Our original judge at the Wayne Circuit Court, Judge Lita M. Popke, had been reassigned to another docket while our case at the State Court of Claims was active. In **October, 2015**, the APRA Motion to Re-Open the case was assigned to Judge Susan L. Hubbard. On **November 05, 2015**, an extensive hearing was held by Judge Hubbard – with members of your Executive Board in attendance.

After taking the Motion to Re-Open under advisement for consideration, Judge Hubbard issued an Order on **November 24, 2015**, that left the case “*administratively closed*,” pending further action on the case against the State, in Lansing.

It is important to note that this part of the lawsuit **has NOT been dismissed** by the Wayne Circuit Court. It has simply been “suspended” once again, pending final actions by the State Courts in Lansing. We now turn to those updates.

### **The Michigan Court of Claims and Court of Appeals Updates**

#### **1. Court of Appeals Case #1 – The Emergency Manager**

Within 5-weeks after the APRA filed its lawsuit at the Ingham Circuit Court in **October, 2012**, the State Legislature and Governor enacted a statute that sent all lawsuits against the State over to the Michigan Court of Claims. The “Court of **Claims**” judges are now actually Michigan Court of **Appeals** judges, who rotate into the Court of Claims every year – to then serve as trial judges.

The State – contrary to the new Court of Claims law – split the Defendants in **December, 2012**, to make the APRA’s case more difficult.

The “*State*” and *State Treasurer*, as Defendants, were sent to the **Court of Claims**’ docket. But the *State’s Emergency Manager* was sent to **Wayne Circuit Court**, with the [“wink – wink”] claim that Emergency Manager was a “local” official. If that were true, of course, then Belle Isle still belongs to the City of Detroit – and not the State’s DNR.

In **August, 2014**, Judge Popke in Wayne Circuit Court agreed with the APRA’s filings and ruled that the Emergency Manager was, indeed, a “State” official. She ordered the case transferred back to the Court of Claims in Lansing.

In **April, 2015**, however, the **first** Court of Claims judge ruled that it would not “accept” the Emergency Manager back into the Court of Claims. Judge Amy Ronayne Krause ordered that the Emergency Manager be sent back to Wayne Circuit Court – but the judge **did not** try to reverse the original ruling by the Wayne Circuit Court that Allen Park’s Emergency Manager was a **State** official.

That left the APRA hanging between two trial courts – one that had made a decision on the Emergency Manager – and one that had tried to avoid the question. For that reason – and to force the State Courts to make a definite decision – the APRA appealed to the Court of Appeals in **May, 2015**.

That appeal has since been *consolidated* with Court of Appeals’ **case #2**, which is now detailed:

## 2. **Court of Appeals Case #2 – the State and State Treasurer**

The APRA lawsuit against the State itself – and the State Treasurer – remained open in 2015. We had learned that one of the appointed State Treasurers had sent a letter to the Lincoln Park Emergency Manager, stating that the retiree health care cuts were supposed to be “*temporary*” while that City was in receivership.

When we demanded – thru the Michigan Court Rules – to obtain similar correspondence from the State Treasurer for the APRA case, the State refused to turn over all of the demanded communications. Those refusals from Defendants are not unusual, and require more litigation filed at the trial court to get a court order to release them.

Simultaneously with the information demands for the State, the APRA had subpoenaed Blue Cross to produce the actual documents showing when the Allen Park retiree insurances were terminated. Blue Cross refused, and we filed a Motion for Contempt of Court at the Court of Claims in Lansing. In early September, 2015, the Court issued an Order to Blue Cross to produce the documents.

But then – one week later, on September 22, 2015 – the Court abruptly issued an Order that granted the State’s Motion for Summary Disposition – to dismiss the APRA case against the State and State Treasurer.

The State had filed that Motion in the summer of 2015, and we had responded. In the meantime, both the State and the APRA had made arrangements for taking the deposition testimony of the Allen Park Emergency Manager and some of the APRA Board members. All of that came to a halt, however, on September 22<sup>nd</sup>, when the trial court issued its order to dismiss. By then, Court of Appeals Judge Mark T. Boonstra had replaced Judge Krause on the APRA case, and issued the Order of dismissal.

### 2(a) **The Numerous Errors of the Trial Court**

Among the many errors made by the trial court was one involving who, in fact, was actually “dismissed” in the APRA case. The lawsuit had been filed under the name of the APRA’s first President, Russ Pillar.

The Michigan Court Rules lay out a very precise method to determine “**class certification**,” which brings the **rest** of the APRA members into the lawsuit. One of the major reasons for class certification is to have all Plaintiffs [***APRA members***] who have the same injury [***loss of insurance contracts***] in a single lawsuit.

As is the course taken by most Defendants in most lawsuits, the State refused to voluntarily admit the rest of the APRA members into the lawsuit without a Court Order. The APRA, of course, wanted all of its members in the lawsuit – and that dispute was very much alive on September 22<sup>nd</sup>, when the Court issued its Order to dismiss.

Instead of simply dismissing Russ Pillar’s case, however, the Court of Claims simultaneously dismissed **all** 150(+) APRA members without a hearing – and without ever formally bringing them **into** the lawsuit. The exact same error was made by the Wayne County Circuit Court in the case of ***Harper***

**Woods Retirees Association – v – City of Harper Woods**, in September, 2012. This law firm also represented those retirees – and upon our appeal, the State Court of Appeals sent the case back to the Wayne Circuit Court to determine who ***should have been*** included in the original lawsuit. We have included that error in our appeal for the Allen Park case to the State Court of Appeals.

Approximately 1-week after the Court of Claims dismissed the Allen Park case, the State Court of Appeals released its decision in the Harper Woods Retirees case on October 01, 2015. Contrary to what the Court of Claims did in the Allen Park case, the Court of Appeals ruled that each entire labor contract of the retiree had to be examined by the trial court – to see if retiree benefits extended outward for the life of the retiree and the retiree's dependent.

That now is another reason that the Allen Park case must be sent back and properly handled by the Court of Claims – and that has also been appealed by the APRA to the State Court of Appeals.

Of course the major appeal involves whether the State – for any reason it wants – can simply march into a local community and tear up all retiree health care benefits – proclaiming that there is a “financial emergency.”

That major question has also been appealed by the APRA – along with many other issues, in a 37-page legal brief [with exhibits] that was filed on January 04, 2016 at the State Court of Appeals. Our filing is a public record at the Court of Appeals, and it can be sent in a PDF by E-Mail to any APRA member, upon request.

The State's response to our appeal will be filed at the Court of Appeals in late January – or more likely, in February, 2016. We can then submit a very short “reply” brief if necessary – and the Court of Appeals then schedules an oral hearing – most likely in the late Fall of 2016.

### Conclusion

To sum up – ***NONE*** of the APRA's efforts have been permanently dismissed – ***ALL*** of them are still alive in Wayne Circuit Court and the State Court of Appeals. It is a true testament to the steadfast determination of your membership and your Executive Board that the Allen Park retirees have refused to cave in – and thereby forever lose any hope of some kind of court-ordered protection.

The State has now quickly removed all “Emergency Managers” from all municipalities and replaced them with “Transition Boards,” to make it appear that its slash-and-burn efforts were successful. Some EMs remain in school systems, including the former EM for the City of Flint. I personally do not include the State-sponsored poisoning of the Flint water system to be an Emergency Manager “success.”

We also know the true facts in our own case, of course – given that the City of Allen Park is now over **\$3-Million** deeper in debt than when the State threw the City into receivership. There really are few choices, in fact, aside from staying the course and continuing to fight for your rights. I am very grateful, and thank you for your ongoing trust and support, and I remain,

Sincerely,

*Mark A Porter*

Mark A. Porter  
Counsel for APRA