

MICHIGAN LAWYERS WEEKLY

Plaintiffs say bank mismanaged securities

By: Michigan Lawyers Weekly Staff in Verdicts & Settlements February 4, 2014

Plaintiffs Board of Trustees of the City of Birmingham Retirement System asserted that defendant Comerica Bank had mismanaged plaintiffs' securities lending program.

Under the program, Comerica lent its clients' securities to third parties. In turn, the borrowers deposited cash collateral to secure the lent securities' return; Comerica then invested the cash collateral, and split the proceeds with the clients.

The invested cash collateral suffered losses, which plaintiffs claimed came despite Comerica's assurance that the investments would be safe and conservative.

After plaintiffs filed suit, Comerica brought a third-party claim against Munder Capital Management, claiming that Munder had managed the collateral investment accounts and should be liable for any losses.

Comerica moved to dismiss plaintiffs' complaint, arguing that "modern portfolio theory" permitted it to invest some of the cash collateral in relatively risky securities as part of a diversified portfolio. Judge Stephen J. Murphy III denied Comerica's motion.

Plaintiffs' counsel noted that Murphy addressed the issue of litigation against a fiduciary under the Michigan Public Employee Retirement System Investment Act, MCL 38.1132 et seq. The Act is intended to protect public retirement systems and their beneficiaries, to whom ERISA's private-sector protections do not extend.

On Oct. 9, 2013, Murphy granted preliminary approval of the \$11 million settlement. On Dec. 27, 2013, after no members of the class objected or sought to be excused from the classwide settlement, Murphy certified the class for settlement purposes and granted final approval.

Type of action: Class-action claims against investment fiduciary (ERISA and other)

Name of case: *Board of Trustees of the City of Birmingham Retirement System, et al v. Comerica Bank, et al.*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 09-cv-13201; Dec. 27, 2013

Name of judge: Stephen J. Murphy III

Settlement amount: \$11 million

Attorneys for plaintiff: E. Powell Miller, Christopher Kaye

Attorney(s) for defendant: Withheld



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