

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE COUNTY,
EMPLOYEE'S RETIREMENT SYSTEM
OF THE COUNTY OF MILWAUKEE, and
PENSION BOARD, EMPLOYEE'S RETIREMENT
SYSTEM OF THE COUNTY OF MILWAUKEE,

Plaintiffs,

v.

Case No. 2:06-CV-00372-CNC
Hon. Charles N. Clevert, Jr.

MERCER HUMAN RESOURCE
CONSULTING, INC., f/k/a WILLIAM
M. MERCER COMPANY, INCORPORATED,

Defendants.

**PLAINTIFFS' RULE 7.4 EXPEDITED
NON-DISPOSITIVE MOTION TO DISQUALIFY QUARLES & BRADY LLP**

Milwaukee County, the Employee's Retirement System of the County of Milwaukee, and Pension Board, Employee's Retirement System of the County of Milwaukee (collectively "Plaintiffs"), through their undersigned counsel, hereby move the Court, the Honorable Charles N. Clevert Jr. presiding, for the following relief:

- Immediately grant Plaintiffs' Motion to disqualify Quarles & Brady LLP ("Quarles");
- Immediately deny Quarles' Motion for Declaratory Ruling; or
- Grant an immediate hearing on either or both Motions.

SUMMARY OF THE ARGUMENT

- Milwaukee County (the "County") is presently in a Catch-22 situation:
 - The central issue now facing Milwaukee County is whether to issue over \$450 million in pension obligation bonds to cover financial liabilities in the County's pension fund – a direct outgrowth of faulty actuarial advice of Mercer, defendant in this case.

- October 2006 is the crucial month for making such decisions, because by statute the County budget process occurs in October.
- The magnitude and causes of the County's pension liability are very much part of this discussion on issuing bonds – yet these are also the very issues central to the lawsuit against Mercer.
- Quarles, the County's long-time bond counsel, is needed more than ever to carefully and candidly advise the County on these decisions.
- Yet Quarles attempt to represent Mercer in this lawsuit has two dire consequences for the County:
 1. It blocks the progress of the County's lawsuit to recover money from Mercer, which would reduce the unfunded liability; and
 2. Quarles insists that no confidential information that might overlap with the lawsuit be shared with them, thus distorting their bond advice.
- This handcuffs the County and underscores what a blatant conflict of interest exists for Quarles.
- Three affidavits explain the urgency of this motion to disqualify Quarles from this case:
 - County Corporation Counsel William J. Domina (Ex. A)
 - County Executive Scott Walker (Ex. B)
 - County Board Chairman Lee Holloway (Ex. C)

FURTHER BACKGROUND FACTS ON QUARLES' PENDING MOTION

- Since 1995, Quarles has represented the County as bond and financial counsel and is the voice of the County before the financial world.
- As bond and financial counsel for the County, Quarles possesses confidential client information regarding the relationship between the pension fund problems and the County's general financial problems.
- On March 29, 2006, Plaintiffs, including the County, sued Mercer for actuarial malpractice and fraud in this case.
- The causes and magnitude of the extraordinary County pension fund problems are inextricably related to the actions of Mercer, the actuary for the County and the Pension Fund, as set forth in the Plaintiffs' Complaint.

- Ignoring its obviously unwaivable conflict of interest, Quarles filed a motion with this Court seeking a declaration that Quarles has no such conflict.
- Quarles' motion has been pending several months – which not only stops progress in this lawsuit but also undermines candid and unimpeded discussion between the County and the Quarles firm on the issuance of more than \$450 million in pension obligation bonds.

As a result, Plaintiffs have no recourse but to seek immediate relief from this Court to disqualify Quarles as counsel for the defendant in this lawsuit, deny the Motion of Quarles to declare an non-waivable conflict non-existent, or, in the alternative, to immediately set a hearing on these issues.

Dated this 5th day of October, 2006.

SUSMAN GODFREY LLP



Kenneth E. McNeil

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AFFIDAVIT OF WILLIAM J. DOMINA

William J. Domina, being duly sworn under oath, deposes and states as follows:

1. I am the Corporation Counsel for Milwaukee County ("County"). I have been the Corporation Counsel for the County since January 6, 2003.

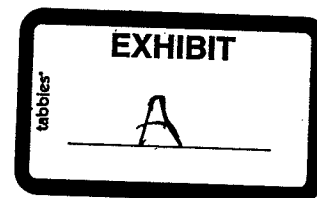
2. Quarles & Brady LLP ("Quarles") has, for a number of years, been bond counsel for the County. Quarles has worked annually on all County bonding issues, including pension obligation bonds. Quarles bond-related representation has been very broad – extending to providing advice related to a guarantee on Midwest Airlines bonds by the County and advice on financial guarantees for the Milwaukee Public Museum.

3. Pension obligations of the County are the biggest budget issue for the County this year. A significant part of the current pension obligations resulted from the 2000 pension changes for which Mercer was the actuary retained to give the Court actuarial opinions and advice on those changes. The unfunded liability for the pension fund is currently estimated to exceed \$455 million.

4. By statute, during the month of October 2006, the County engages in its budget process. This year, more than ever before, concise and clear advice from bond and finance counsel is needed. That advice necessarily deals with the precise issues that are in dispute in this lawsuit.

5. As required by statute, the County Executive submitted his budget last Thursday, September 28, 2006, proposing issuance of more than \$450 million in pension obligation bonds.

6. Quarles is in a conflict situation in seeking to represent Mercer Human Resources Consulting, Inc. ("Mercer"), the actuary which the County believes is responsible for the pension fund problem and the need for the consideration of the issuance of pension obligation bonds among other things.



7. I have elaborated at length on this in another Affidavit filed with the Court dated May 9, 2006 in connection with Quarles' attempt to stay in this lawsuit as defense counsel for Mercer.

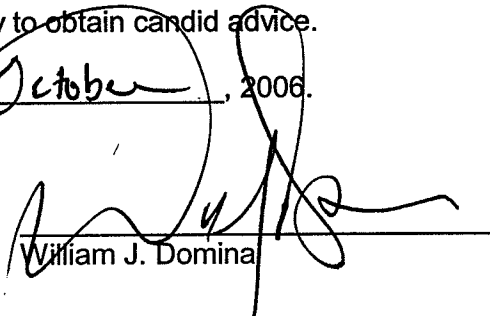
8. It is very important that the County obtain immediate resolution of the conflict issue so that County's legal advisors on financial and pension bond planning are not impeded.

9. Because of Quarles' long experience, it is hard to get a new firm equally up to speed in a timely manner. But the County is faced with the fact that Quarles representation impedes the County, because the County cannot discuss candidly the issues surrounding the pension fund problems which are central to this lawsuit.

10. The County, among other things, must disclose to its bond and financial counsel, in a privileged manner, information and discussions about causes and magnitude of the pension fund crisis, which go directly to the heart of this lawsuit. In addition, the County needs assistance from its bond counsel on how to coordinate its litigation in this lawsuit and its fund-raising so that both are done consistently.

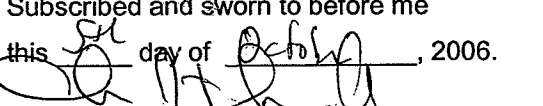
11. Indeed, Quarles has recently highlighted this problem by an email from Quarles to me insisting that anything discussed between the County and Quarles in connection with their bond and financial legal advice must involve no confidential information material to the Mercer lawsuit. That severely impedes the County's ability to obtain candid advice.

Dated this 5th day of October, 2006.



William J. Domina

Subscribed and sworn to before me
this 5th day of October, 2006.



Notary Public, State of Wisconsin
My Commission Expires: is permanent

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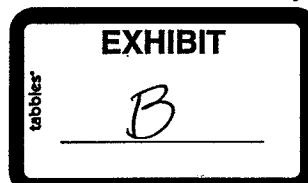
Defendants.

AFFIDAVIT OF SCOTT WALKER

STATE OF WISCONSIN)
) ss
MILWAUKEE COUNTY)

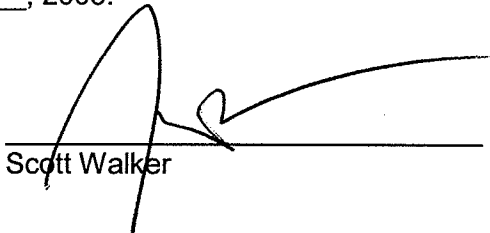
Scott Walker, being duly sworn under oath, deposes and states as follows:

1. I am County Executive of Milwaukee County. I have held that office since 2002.
2. Pursuant to Section 59.17 of the Wisconsin Statutes, I am charged with annually submitting a budget to the Milwaukee County Board of Supervisors. On September 28, 2006, I submitted my budget for calendar year 2007.
3. Included in that budget is a proposal for the issue of over \$450 million of pension obligation bonds. The County needs unimpeded from its bond counsel, Quarles & Brady LLP ("Quarles"); to receive such unimpeded advice the County needs to discuss all issues surrounding the pension crisis which inherently, and centrally, involve issues in this lawsuit.
4. Quarles' insistence on defending the defendant actuarial firm Mercer Human Resource Consulting in the above-referenced lawsuit is, in the County's opinion, a conflict of



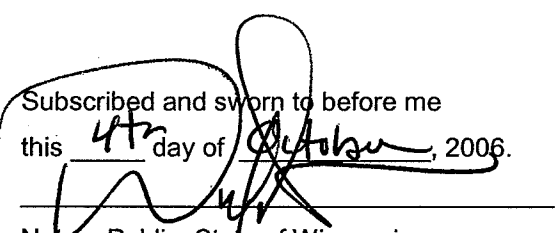
interest, and impedes the County's ability to get the careful, candid, and experienced pension bond advice it needs.

Dated this 4th day of October, 2005.



Scott Walker

Subscribed and sworn to before me
this 4th day of October, 2006.



Notary Public, State of Wisconsin

My Commission expires: is permanent

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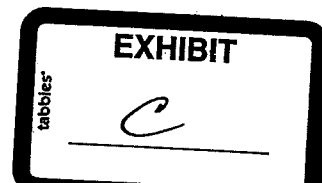
Defendants.

AFFIDAVIT OF LEE HOLLOWAY

STATE OF WISCONSIN)
) ss
MILWAUKEE COUNTY)


Lee Holloway, being duly sworn under oath, deposes and states as follows:

1. I am Chairman of the Milwaukee County Board of Supervisors.
2. Pursuant to Chapter 59 of the Wisconsin Statutes, the Milwaukee County Board of Supervisors annually reviews the budget proposed and submitted by the Milwaukee County Executive. On September 28, 2006, the Milwaukee County Board of Supervisors received County Executive Scott Walker's proposed 2007 budget.
3. Included in this proposal is a proposal for the issuance by the County of pension obligation bonds in excess of \$450 million. It is essential for the County at this critical time to have candid and unimpeded advice of its bond and finance counsel of several years, Quarles & Brady LLP("Quarles").
4. Quarles' current representation of the actuarial firm of Mercer Human



Resources Consulting, Inc. ("Mercer"), which the County and the County Pension Fund are suing as responsible for huge pension fund deficits, while having and continuing to serve as bond counsel, is in the County's opinion, a conflict of interest.

Dated this 4 day of Oct., 2006


Lee Holloway

Subscribed and sworn to before me
this 4th day of October, 2006.


Notary Public, State of Wisconsin

My Commission is permanent