IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 337 other Named Plaintiffs listed in Exhibit 23, Plaintiffs, vs. **CITY OF CHICAGO**, a Municipal Corporation, Defendant, and Trustees of the **Policemen's Annuity and Benefit Fund** of Chicago; Trustees of the **Firemen's Annuity and Benefit Fund** of Chicago; Trustees of the **Municipal Employees' Annuity and Benefit Fund** of Chicago; and Trustees of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago Defendants.	**CLASS ACTION** JURY TRIAL DEMANDED Case No. 2013 CH 17450 Calendar No. 5 Judge: Hon. Neil H. Cohen Previous Nos. in Cook County Circuit Court 01 CH 4962 87 CH 10134

Participants' Motions and Memorandum
Repeating their Motion for Class Certification
and
For Summary Judgment
Against
the City of Chicago and
the Trustees of the Police, Fire, Municipal Employees and Laborers
Annuity and Benefit Funds

Pursuant to Code of Civil Procedure §2-1005, 735 ILCS 5/2-1005 and Supreme Court Rules 191 and 192, the Plaintiffs Participants move for summary judgment on (i) Class Certification, (ii) Liability, (iii) Damages, and (iv) Injunctive Relief against the Defendants City and Funds.

I. Statement of Facts as to which there is no material dispute:

Note: For convenience, the following statements of fact are taken verbatim from the Third Amended Complaint, and all references to Exhibits refer to the exhibits attached to the Third Amended Complaint, which undersigned counsel certifies are true and correct copies of the documents they purport to be. [Changes in alleged facts from the Third Amended Complaint are indicated by brackets]

1. Th[e Third] Amended Complaint seeks permanent protection for participants in the City of Chicago Annuitant Medical Benefits Plan, in this continuing litigation originally initiated by the City on October 19, 1987. Plaintiffs, for themselves and for the classes they seek to represent, assert that the City annuitants are entitled to protect the terms and benefits of their City Annuitant Medical Benefit Plan, permanently for each one on the best terms in effect during his or her participation in their respective Annuity & Benefit Fund, under the Illinois Constitution, as well as principles of contract and estoppel; that they are entitled to enforce the benefits of the City of Chicago Annuitant Medical Benefits Plan, for their lives, against the City and the Trustees of their respective retirement systems.

2. Background of the Annuitant Benefit sought to be protected: The City of Chicago Annuitant Health Benefits Plan. The City has provided healthcare benefits to its annuitants since the 1960s. Since at least 1980, the City has provided it as the "City of Chicago Annuitant Medical Benefits Plan"[1], explicitly for annuitants of its four annuity and benefit Funds[2]; i.e., for Police, Fire, Municipal Officers and Employees, and Laborers Fund participants. According to the City's original complaint that launched this litigation:

[1] Exhibit 6,"Your City of Chicago Annuitant Medical Benefits Plan" Handbook.
[2] For clarity, the term "**Plan**" means the City of Chicago Annuitant Medical Benefits Plan. The term "**Fund**" refers differently to one or more of the four Annuity and Benefit Funds created in Cities over 500,000, under the Illinois Pension Code: 40 ILCS Article 5: 5/5-101 (Police), Article 6: 5/6-101 (Firemen's), Article 8: 5/8-101 (Municipal Officers and Employees), and Article 11: 5/11-101 (Laborers and Retirement Board Employees). The term "Funds" refers to them as a group.

> "7. From 1980 through the present, the City has paid the health insurance coverage for annuitants of the Policemen's, Firemen's, Municipal Employees, and, Laborers' Annuity and Pension Funds and their dependents by allowing these annuitants and their dependents to use the City's own Health Care Plan." (Ex. 2, See Count II, City Complaint in *City v Korshak*, ¶7, p. 7)

3. As the City recognizes[3], it has never merely "subsidized" the Plan; it is, and has always been self-insured, the *actual provider* of the benefit:

> "8. The City is a self-insurer of its Health Care Plan." (Ex. 2, Id., ¶8)

4. During the early period, the City provided this coverage without charge.

5. **1982 Creating a statutory funding subsidy vehicle.** When health costs rose, the City and the Police and Fire Funds, created a vehicle by which the Funds could subsidize some of these costs, by enacting legislation obligating the Funds to provide healthcare coverage for their annuitants, and subsidize the providers, funded by a separate tax, outside the City's general corporate budget.

6. Thus, in 1982, the City and the Police and Fire Funds' trustees, caused the 1983 Pension Code amendments to be enacted[4], which created a way to offset some of the City's healthcare costs without a City Budget increase, by adding the Funds' trustees obligation to obtain health coverage for their annuitants, and authorizing them to pay a subsidy to the "provider", set intentionally in the amount that the City charged for coverage, with the subsidy funded by the Funds' corresponding financing provision (§5-168 for the Police Fund, §6-165 for the Firemen's Fund).

[3] Exhibit 22,December 23, 2015 testimony of City Budget Director Alexandra Holt (36:13 and 37:2) and Benefits Manager Nancy Currier (77:17 and 77:22).
[4] Exhibit 8A,1983 Pension Code amendments creating §§ 5-167.5 and 6-164.2; both added by P.A. 82-1044, § 1, eff. Jan. 12, 1983.

7. The result of this was that the Funds fulfilled that obligation by engaging the City's Annuitant Health Benefits Plan; i.e., obtaining annuitant healthcare coverage by the City's providing the benefit at a fixed rate premium ($55 per month for NonMedicare[5], $21 for Medicare participants) and the Funds subsidizing it for their annuitants by paying the annuitant's premium. Indeed, the Police Fund explicitly appointed the City the Administrator of its annuitant health plan.[6]

8. And, Fund participants were routinely and repeatedly informed, both in writing and in pre-retirement seminars conducted by the City over the following years, at least through 1987, with presentations by authorized City and Fund speakers, representing that this was their lifetime benefit; i.e., that the City charged a premium and their Fund paid it. (See e.g., Exhibit 7, Policemen's Fund "Your Service Retirement Benefits" effective January 1, 1986[7], at 10:

> Deductions
> As a general rule, the City Plan, the hospitalization you had as an active member of the Police Department, may be continued only at the time you apply for annuity. (1) The hospitalization premium for the retired employee is paid by the Retirement Board. The premium for any eligible dependent would be automatically be deducted from your annuity checks, beginning with your first check.

9. And, the arrangement was that the City paid the excess costs above the Pension Funds' subsidies:

[5] A substantial portion of City retirees do not qualify for Medicare coverage, either (a) because they retire before age 65, or (b) Local government employees who were originally hired and began their work prior to April 1, 1986 (federal Combined Omnibus Budget Reconciliation Act of 1985 ("COBRA," PL 99-272 § 13205(a)) cannot qualify for healthcare coverage under the Medicare plan by their government employment, regardless of their length of service.

[6] Exhibit 24, "Defendants' Exhibit 19" PABF Minutes June 27, 1985.

[7] It is likely that Firemens' Fund annuitants were similarly informed.

> 10. The city has, from 1980 through June 1987, provided approximately $58.8 million on behalf of the pension funds for their annuitants over and above the premiums paid by those funds for the annuitants' health insurance costs. (Ex. 2, Count II, City's Korshak Complaint at ¶10, at p. 7).

This construct was also described in the testimony from then Policemens' Fund Board member James McDonough (See Exhibit 18, at 30 ff, describing the structure and how it was created.).

10. The 1985 Amendments were later added to enable the same construct for Municipal and Laborers Funds participants, with the subsidies for the Municipal and Laborers Plan set at $25 per annuitant per month regardless of Medicare status, similarly financed.

11. Consequently, from at least 1980 through 1987, there was a contractual agreement under which the City provided the coverage, and charged a premium of either $55 or $21 monthly (depending on the annuitant's Medicare status), and the annuitant's premium was paid by his Fund; either fully (Police and Fire), or $25 per month (municipal and Laborers). *See* the Funds' Verified Korshak counterclaims (Exhibit 3); as described by the Police Fund,

> 17. The City's actions described above gave rise to an implied contract between the Fund, the annuitants and the City under which the City agreed to include the annuitants in the Plan's coverage and to pay the cost of the annuitants' medical benefits coverage to the extent that it exceeds the rates established for the medical benefits coverage effective April 1,1982.[8]

12. **Caught converting Funds' tax receipts, the City concocts a "game plan" to offset that liability by threatening to cut off annuitant healthcare benefits.** That arrangement continued until early 1987, when the City's Byrne administration was found liable for converting pension fund tax levies, in *Ryan v Chicago*, 148 Ill.App.3d 638 (1st Dist.

[8] Police Funds' refiled counterclaims at para. 17 Identical assertions in Firemens', Municipal and Laborers' Fund Verified Counterclaims. Exhibit 3.

1986)(participant derivative action filed for benefit of the Funds) and 274 Ill.App.3d 913(1st Dist. 1995), and faced a liability to the Funds in excess of $25 Million. As part of a "game plan"[9] retaliation to offset its liability for converting the Funds' assets,[10] the Washington administration approached the Funds' trustees, with a concocted threat to discontinue healthcare coverage, but would drop the matter if the trustees would forego the City's *Ryan* case liability[11].

13. When the trustees rejected the City's backdoor deal, the City filed the original *Korshak*[12] complaint on October 19, 1987 (*City v. Korshak, et al., (Trustees) and Ryan, et al. (Participants)*), Circuit Court of Cook County, No. 87 CH 10134)[13] seeking (i) a declaration that it was not obligated to provide retiree healthcare, to enable it to terminate its Annuitant Healthcare coverage for participants in the City's four Annuity and Benefit Plans, and (ii) recover monies expended under the Plan in prior years.

14. The trustees/board members of the four affected annuity and benefit funds (the "Funds"), and the annuitant healthcare plan participants (eventually certified to proceed for the then-existing annuitant/participant classes) asserted counterclaims[14], asserting that as a term of employment, and under principles of contract and estoppel, the City was obligated to continue annuitant healthcare coverage under the terms of the Annuitant Healthcare Plan as in effect on October 19, 1987, and the Funds were obligated to continue their subsidies, both for participants' lifetimes.

[9] Testimony by City Comptroller Ronald Picur, Ex. 9, 44:5-8
[10] Ex.1, Police Fund Trustees' Minutes of May 11, 1987, meeting with City.
[11] Exhibit 1, Minutes of Police Fund trustees meeting May 11,1987.
[12] Named for Marshall Korshak, the first named defendant Fund trustee.
[13] Exhibit 2, *City v. Korshak*, original City Complaint, Oct.19, 1987.
[14] Exhibit 3, Korshak Funds Counterclaims, and Exhibit 4, Participants' Counterclaim

15. **The Korshak trial and first Settlement.** This Circuit Court (Hon. Albert Green) dismissed the City's claims entirely,[15] but upheld the claims asserted by both the Funds and Participants' counterclaims against the City, that the City had voluntarily agreed to be the insurer, provide the annuitant medical benefits coverage, and represented to City employees that this was a lifetime benefit, provided by the City and subsidized by the Funds. These claims proceeded to trial before Judge Green, in June 1988. After the trial was concluded, but before Judge Green rendered his verdict, the City and Trustees entered into a 10-year settlement[16] (obligating the City to continue providing the Annuitant Medical Benefits Plan and pay at least 50% of annuitant healthcare costs through 12/31/1997, allocating costs among the City, the Funds and participants over the settlement period, and preserving participants' right to revive these claims if no permanent annuitant healthcare solution was reached by the end of the settlement period). Approved by the Circuit Court over the participant class' objections, and affirmed by the Illinois Appellate Court, *City v Korshak*, 206 Ill.App.3d 968 (1st Dist.1991), PLA Den., Cert.Den., the ten-year interim settlement proceeded according to its terms.

16. **The First Settlement Period Ends, without a "permanent resolution".** At the conclusion of the ten-year settlement,12/31/1997, the participants moved to revive the litigation, were initially denied by Judge Green[17], who was then reversed by the Illinois Appellate Court[18], reviving the litigation, under Docket No. 01 CH 4962, which eventually was resolved in 2003 by another ten-year agreement, this time approved by all parties and the court, settling the dispute

[15] Exhibit 5, May 16, 1988 Decision by Hon. Albert Green, City v Korshak.
[16] Exhibit 10, City v Korshak, December 15, 1989 Settlement between City and Funds.
[17] Exhibit 5, Decision by Judge Green, May 16, 1998.
[18] Exhibit 12, Korshak revival, Rule 23 Order, June, 15, 2000 *City v. Korshak*, Case No. 98-3465 & 98-3667

for the period through June 30, 2013; again with rights of participants to thereafter reassert their rights/entitlement to healthcare coverage in their retirement. Exhibit 13, Korshak 2003 Settlement.

17. During the course of this settlement, it was also discovered that the basis on which the City set the premiums, based on "Segal" estimates, resulted in charges to annuitants that exceeded their settlement percentages of their healthcare costs. The City and Class Counsel entered into an Audit and Reconciliation Agreement, which produced refunds to annuitants totaling over $51 million over the 2003-6/30/2013 Settlement period.

18. As the 2003 Settlement neared its 6/30/2013 end, class counsel requested the City to negotiate another, hopefully permanent, settlement.

19. Instead, the City issued a May 15, 2013, letter to annuitants declaring it would extend the benefits of the settlement through the end of 2013, then "phase out" annuitant healthcare coverage over the next three years, ending it altogether by January 1, 2017.[19]

20. **Exercising Participants' rights to revive their claims.** Participant Class Counsel's 2013 motion to revive the litigation in the *City v. Korshak* case was denied by Hon. Neil H. Cohen (the judge then assigned to that calendar); ruling that assertion of the Participants' retained rights would have to be done in a new action.

21. Accordingly, undersigned counsel filed the original Complaint in this case, in order to assert Participants' retained rights to permanent healthcare in their retirements. It being a new complaint, and one in which the City was now a defendant[20], the City removed this case to the United States District Court (N.D.Illinois). District Judge Holderman's dismissal of the

[19] Exhibit 21, City Letter May 15, 2013.
[20] Plaintiffs, having chosen a forum, are ordinarily barred from removing a case.

complaint[21] (in his view that healthcare benefits were *not* protected by the Illinois Constitution) was, following the Illinois Supreme Court's *Kanerva v. Weems* decision declaring that retiree healthcare benefits are protected by Illinois Constitution Art. XIII, §5, reversed, vacated and remanded with directions to remand the case to this court[22].

22. Remanded back to this court, both the City and the Funds moved to dismiss the complaint, despite Judge Green's previously upholding most of the same claims in 1988, some actually asserted by the Funds; now seeking dismissal of the same claims they had asserted in the past. Regardless, on December 3, 2015, Circuit Judge Hon. Neil H. Cohen upheld Count I (Constitutional Protection) of the First Amended complaint , but dismissed Count 2 (Contract) and Count 3 (Estoppel), with leave to amend. (Exhibit 20, Decision by Hon. Neil Cohen, December 3, 2015).

23. With respect to the claims asserted herein by the participants, the participants sue as plaintiffs, seeking relief against the City as a defendant (for its actions and announced intention to reduce the healthcare benefits provided to class members), and seeking a declaration that the Funds, as additional defendants, remain obligated to obtain coverage for persons hired before 8/23/1989, and must continue their current subsidy for class members for life without reduction.

24. **Class members' uniform claim** is that the 1970 Illinois Constitution Article XIII Section 5, protects each Fund participant, for life, to the unreduced level, determined at the date they began participation in any of the four affected Annuity & Benefit Plans, of annuitant health benefits provided by the City and as best subsidized by their particular Plan.

[21] *Underwood v. City of Chicago.,* 2013 U.S. Dist. LEXIS 174455 (N.D. Ill. Dec. 13, 2013).
[22] *Underwood v. City of Chicago.*, 779 F.3d 461 (7th Cir. Ill. 2015)

25. Participants seek to enforce this entitlement by a number of claims:

i. First, that the City of Chicago Annuitant Medical Benefit Plan (as it was in effect on August 23, 1989, and subsequent dates pertaining to particular subclasses), is a **benefit of participation** in the City's annuity and benefit plans, and thus protected by 1970 Illinois Constitution Article XIII, §5, against being diminished or impaired by reducing either the benefit or its funding appropriation;

ii. Second, to the extent that the court views the claims as limited to the Pension Code provisions, that the Funds were and remain obligated to provide healthcare coverage for annuitants for life, and that they did so by enforceably contracting the City to provide the City of Chicago Annuitant Medical Benefits Plan, and that that promise, as well as the Funds' subsidies, are enforceable against both the City and the Funds;

iii. Third, that under principles of **contract**, the City has made the annuitant benefits a term of participants' employment, contractually binding the City, such that it may not accept the benefits of the participants work but then renege on its agreement.

iv. Fourth, that , under principles of **estoppel**, the City is estopped to deny its obligation to provide the promised benefit, because it has induced participants to provide services in exchange for repeated representations that the City's Annuitant Medical Benefits Plan is a permanent benefit for

life, such that the City cannot accept their services over the promised period, then renege on its commitment;

v. Fifth, that the Funds are an **instrumentality of the City**, such that the City is obligated to provide the permanent coverage permanently subsidized by the Funds.

Finally, to the extent that the City is actually nonetheless legally permitted to increase annuitant healthcare rates and/or reduce its appropriation for annuitant healthcare, the rates charged by the City are miscalculated and excessive, and should be enjoined until audited and corrected.

26. **Class/Subclass Definitions.** The overall Class would be all persons who are [currently] participants in one of the City's four annuity and benefit funds. Class members' claims are identical across the four Funds, varying only by which of the following categories/subclass the particular participant's entitlement to healthcare arises from (as the retiree or his/her spouse/dependent):

i) **the Korshak 12/31/1987 retiree subclass:** annuitants who retired by 12/31/1987 (the "Korshak" sub class) (this was the initial class certified in the 1987 Korshak Settlement)).

ii) **the "Window" or "Jacobson" subclass:** annuitants who retired after 12/31/1987, but before 8/23/1989 (the class that retired after the Korshak class date, but prior to the enactment of P.A.86-273 incorporating language of the Korshak settlement)).

iii) **the 8/23/1989 Participant subclass:** persons, regardless of retirement date, who began their participation in one of the Funds (initial hiring date) before 8/23/1989 (thus entitled to benefits of participation no less than when they entered the system); and

[Within subclasses i, ii, and iii, members may also be subdivided into (a) those who began working for the City before April 1, 1986

(who thus do not qualify for Medicare coverage from their City employment, and
(b) those with an initial hire date of April 1, 1986 or later, who thus earned qualifying Medicare quarters from their City employment]

iv) **the Post-8/23/1989 Participant subclass:** persons who began their participation after 8/23/1989 (participants who were hired after P.A.86-273's enactment).

27. **Proposed Class Counsel**. For purposes of the Original litigation, continuing through all of the Settlements, undersigned counsel Krislov has been the court-certified class counsel for the first two subclasses. Going forward, the Krislov firm has been engaged by participants in all four categories, and the Krislov firm asserts that it is uniquely experienced, adequate, and appropriate class counsel for the court to certify for all four participant classes.

28. **Summary of the Facts and legal bases for Constitutional protection.** From before October 1987, to a period beyond August 23, 1989, the City of Chicago provided a healthcare benefit to its annuitants (annuitants of the City of Chicago's Police, Fire, Municipal Officers and Employees, or Laborers' Fund); i.e., as participants one of the four Funds.

29. The City provided the benefit itself. The City is a self-insurer under this benefit plan, engaging BlueCross or other administrators on an Administrative Services Only ("ASO") basis. Thus, the City provides the healthcare benefit; it does not subsidize it.

30. The terms of the City of Chicago Annuitant Health Benefits Plan, are set out in the Plan Handbook. Exhibit 6.

31. Eligibility is described as follows:

ELIGIBILITY

You will be eligible for coverage if you are:
• An Annuitant of the City of Chicago. "annuitant" means a former employee who is receiving

an age and service annuity from
one of four retirement funds,
• The spouse of a deceased Annuitant if you
are receiving spousal annuity payments, or
• A dependent of a deceased Annuitant if
you are receiving annuity payments. (Plan Handbook at 2).

32. Accordingly, the City of Chicago Annuitant Health Benefit Plan has been, at all relevant times, a benefit of participants' participation in their respective Funds.

33. Thus, 1970 Illinois Constitution, Article XIII §5 prohibits that benefit, the City of Chicago Annuitant Health Benefit Plan, from being diminished or impaired.

34. Per the Illinois Supreme Court's decision in *Kanerva v. Weems,* the protected benefits are not just what is required by Pension Code provisions. If a public employer provides a benefit for which eligibility is a person's annuitant status, that benefit is protected permanently for that participant, by the Illinois Constitution's Article XIII §5. Per our Supreme Court, an Illinois public employer's obligation to contribute to the costs of annuitant healthcare benefits is permanent, deriving from their status as participants in the unit's retirement systems:

> **¶40** Although some of the benefits are governed by a group health insurance statute and others are covered by the Pension Code, eligibility for all of the benefits is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems. Giving the language of *article XIII, section 5*, its plain and ordinary meaning, all of these benefits, including subsidized health care, must be considered to be benefits of membership in a pension or retirement system of the State and, therefore, within that provision's protections.

35. The benefit's protection is not limited to requirements of the Pension Code. If eligibility is limited to participants in a government retirement system, it is protected:

> Whether a benefit qualifies for protection under *article XIII, section 5*, turns simply on whether it is derived from membership in one of the State's public pension systems. If it qualifies as a benefit of membership, it is protected. If it does not, it is not. (*Kanerva* at ¶ 54)

36. And the court's determinations of what is protected are to be liberally interpreted in favor of the pensioners:

> **¶55** Finally, we point out again a fundamental principle noted at the outset of our discussion. Under settled Illinois law, where there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner. This rule of construction applies with equal force to our interpretation of the pension protection provisions set forth in *article XIII, section 5*. Accordingly, to the extent that there may be any remaining doubt regarding the meaning or effect of those provisions, we are obliged to resolve that doubt in favor of the members of the State's public retirement systems.

37. As in *Kanerva*, dealing with retiree health benefits provided to *state* retirees, the healthcare benefit was provided legally, but not by a Pension Code provision:

> **¶35** The question of whether the pension protection clause applies to an Illinois public employer's obligation to contribute to the cost of health care benefits for employees covered by one of the state retirement systems presents an issue of first impression in this court.[2] Resolution of this issue requires that we determine the scope of the protections afforded by *article XIII, section 5*, which presents a question of constitutional interpretation.

38. As of October 19, 1987 through August 23, 1989, the benefit was knowingly provided by the City, for which it charged all participants a premium equal to the amount of the Police and Fire Fund subsidies. Consequently, for Police and Fire retirees, the annuitant was charged nothing for his or her premium; Municipal and Laborers annuitants were charged for their own coverage if the person's premium exceeded the $25 fund subsidy.

39. The 1988 Trial. During June 1988, the Cook County Circuit Court conducted a trial of the trustees' and participants' claims that existing annuitants are entitled to permanent coverage under the City Plan as it existed on October 1, 1987. In that trial, the Participants asserted the following claims:

(a) Contract. The city bound itself contractually to cover the then-existing annuitants healthcare for life charging premiums equal to the statutory supplement paid by the pension funds; the premiums were subsidized by the Funds--the annuitants' entire premium for Police and Fire annuitants, $25 per month for Municipal and Laborers.

(b) Detrimental Reliance/Estoppel. The city, through its authorized officials, affirmatively induced the annuitants to act to their detriment, in joining and continuing their coverage the City's annuitant healthcare plan, in reliance upon the City's assurance of lifetime medical care coverage, and the City is now estopped from terminating or reducing those benefits.

(c) Illinois Constitution. The Annuitant Healthcare Plan, as in effect on October 1, 1987 through August 23, 1989, was a benefit of participation in an Illinois statutory pension or retirement system, so 1970 Illinois Constitution, Art. 13, Section 5, prohibits the city's attempt to eliminate or reduce Lifetime fixed rate subsidized Medical Care as a retirement benefit.

(i) The City of Chicago Retirement Medical Plan is a pension and retirement benefit of City of Chicago employment.

(ii) A participant's right to coverage under the plan vests, and cannot be reduced after his entry into the system.

(iii) A participant's right to coverage under the City's Retiree Healthcare Plan vests no later than his retirement, and the terms of the benefits cannot be reduced thereafter.

(d) Illinois Constitution, Special Legislation. The statutory provisions (P.A. 86-273 and P.A. 90-32/June 27, 1997) as they purport to change the terms or protection of class members' healthcare coverage are invalid special legislation because they apply only from employment by a named municipality. (1970 Ill. Const. Art. IV, Sec. 13).

40. After the trial, but prior to a decision being rendered by the Court, the City and the Pension Fund trustees reached an agreement between themselves which, through 1997, reduced the City's share of annuitant healthcare coverage from 100% of the cost in excess of the healthcare levy, to "at least" 50% overall; increased the Pension Funds' subsidy or healthcare levy; and substantially increased the cost to annuitants.

41. Pursuant to the Settlement Agreement, in the event no "permanent resolution" of the retiree healthcare issue was reached by the end of the settlement period, the participants, at the end of 1997, were restored to whatever rights they held at the beginning of the case.

42. No permanent resolution of the retiree healthcare issue was reached by the end of 1997. Consequently, the litigation revived once again thereafter, culminating in a series of Settlements which though reaching the end of their terms on June 30, 2013 for the 2003 Settlement, all explicitly preserve Class members' rights to assert:

> "any claims with regard to the provision of annuitant healthcare benefits, other than claims arising under the prior settlement of this Action or under the 1989, 1997, or 2002 amendments to the Pension Code, or for damages relating to the amounts of premiums or other payments that they have paid relating to healthcare under any prior health care plans implemented by the City, including this Settlement Agreement." (2003 Settlement Agreement, Sec. IV.J) Ex. 13.

43. Accordingly, Plaintiffs, for themselves and the Participant class-members, respectfully ask this Court to declare the rights of participants under the Illinois Constitution, the Illinois Pension Code, and common law, as follows:

(i) Declare that *all* participants are entitled to permanent coverage under the plan in effect on the day they joined the system, with any improvements as were added thereafter.

(a) <u>For the participants by a person who retired prior to 8/23/1989:</u>

Order the City to restore the annuitant healthcare plan to the terms in effect during the period October 1, 1987 through August 22, 1989, for persons who have been continuous participants during the class period to the present. (The "Korshak" class, or "1987 Participant Class", defined as all persons who were participants on December 31, 1987; plus the Jacobson or Window class of those participants who first became annuitant healthcare plan participants after December 31, 1987 but on or before August 23, 1989, are also entitled to participate on the same basis.

(b) For those participants who began their participation in one of the City's Annuity and Benefit Funds (i.e., initial hire date) prior to 8/23/1989:

permanent coverage under the plan then in effect—i.e., a fixed-rate plan subsidized by the participant's Fund at the premium or no less than the highest rate in effect at any time.

(c) For those participants who began their participation after 8/23/1989:

permanent coverage under the plan in effect on their hire date, with Fund subsidy at the highest rate in effect during their participation.

44. Facts about the Retiree Healthcare Plans for City of Chicago Retirees, from the Original Korshak litigation.

[Plaintiffs, Class Members here restate following facts, from their Korshak complaint, as to which there is no material dispute]:[23]

Parties:

45. Plaintiffs. Each of the Named Plaintiffs listed in Exhibit 23 hereto is a participant in one of the four City of Chicago Annuity and Benefit Funds, having the indicated hire and retirement date.

46. The CITY OF CHICAGO (the "City") is a municipal corporation organized in accordance with Section 1-1-1 of the Illinois Municipal Code, 65 ILCS ¶1-1-1; and a Home Rule Unit, as defined by 1970 Illinois Constitution, Art.VII, §6, with full powers to engage in the actions described herein, including acting as a self-insured provider of healthcare benefits to its annuitants. The City is sued as a defendant.

[23] References and Authorities Cited. Unless otherwise described:

1) All statutory references are to either the provisions of Illinois law in effect during the period October 1, 1987 through August 23, 1989, including generally, provisions of the Illinois Municipal Code, Ill.Rev.Stat. Ch. 24 ("Municipal Code §_____") or to the Illinois Pension Code, Ill.Rev.Stat. Ch. 108-1/2 ("Pension Code §_____")(1986), or to their subsequent provisions under the Pension Code under the current ILCS format 40 ILCS 5/.

47. **The Pension Funds**. The POLICEMEN'S ANNUITY & BENEFIT FUND OF THE CITY OF CHICAGO (the "Police Fund"), the FIREMEN'S ANNUITY, BENEFIT FUND OF THE CITY OF CHICAGO, (the "Firemen's Fund" or the "Fire Fund"), the MUNICIPAL EMPLOYEES, OFFICERS AND OFFICIAL ANNUITY AND BENEFIT FUND (the "Municipal Fund"), and the LABORERS' AND RETIREMENT BOARD EMPLOYEES' AND BENEFIT FUND OF CHICAGO (the "Laborers Fund") were each created and operate under, respectively, Articles 5, 6, 8 and 11 of the Illinois Pension Code. Previously contained in Ill.Rev.Stat. Ch. 108-1/2, the "Pension Code's current provisions are contained in 40 ILCS 5/Arts. 5, 6, 8 and 11).

48. **The Funds as Necessary Parties and as Defendants.** The Funds are necessary parties in any event because, since 1983 for Police and Firemens' funds, 1985 for Municipal and Laborers Funds, their applicable statute requires them to obtain healthcare coverage for their annuitant participants, spouses and dependents, plus their applicable statute requires them to subsidize the rates charged their participants at a set rate, that Article XIII Section 13 prohibits from being diminished or impaired.

49. **The City's obligation has at least three sources for its obligations asserted here: i) as the provider of a protected benefit of participation, ii) as the contracted insurer, and iii) estoppel, either promissory or equitable, such as to obligate it to provide a benefit promised to its employees, because it induced them and received the benefit of their work, or should be estopped from denying its obligation to them.**

50. Additionally, where the particular statutory provision requires the Trustees to provide health insurance, Plaintiffs assert that the trustees did so by enforceably contracting with

the City to provide such coverage under the City of Chicago Annuitant Health Benefit Plan. In the event that the City is relieved or excused of that obligation, then the Participants assert that their respective Fund's trustees are obligated to obtain equivalent coverage.

51. The Trustees, *et. al.*, and their successor trustees were or are the Members/Trustees of their respective Fund's Board of Trustees, sued in their official capacities, and may be retitled for their current trustees.

52. **City Officials.** By their offices with the City, (i) the City Comptroller is a member of the Board of Trustees of the Firemen's and Municipal Fund and his designee sits as a member of the Laborers' Fund. Pension Code §§6-174, 8-192 and 11-181; (ii) The City Treasurer, City Clerk and City Fire Marshall are also ex officio members of the Firemen's Fund Board (§6-174); (iii) the City Treasurer also sits on the Police Fund's Board (§5-178) and Municipal Fund's Board (§8-192). Each Board has one annuitant member (5-178, 6-174, 8-192, 11-181). The rest of each Board is either appointed by the Mayor or elected by the active employees who participate in the Fund.

53. **The City's Annuitant Medical Benefits Program.** Since approximately 1964, the City has provided a medical benefits program (the City of Chicago Annuitant Health Benefit Plan) in which participation is explicitly provided for City Funds annuitants, their spouses and dependents. That program, since the mid-1970's, has been a benefit provided by the City itself; administered on a self-funded (*i.e.*, the City pays these claims itself rather than obtaining "insurance" coverage from an outside third party provider), "claims made" basis (meaning that sufficient money is appropriated each year for claims expected in that year only).

54. The City engages private carriers solely to administer the City's Annuitant Health Benefits Plan. (often referred to as "ASO" for "Administrative Services Only".)

55. **Annuitant Participation.** Based on the most recent reconciliation report for the period ended 6/30/2013, the participants in the Plan (that is, annuitants who were then enrolled in the City's Annuitant Health Benefits Plan[24] total approximately 23,800; including annuitants of all four Annuity & Benefit Funds, plus survivors and dependents who participate in the City's Annuitant Medical Plan for their primary medical coverage.; Policemen's Fund participants in the Annuitant Health Plan: 8,965, Firemen's Fund: 3,023, Municipal Employees' Fund: 9,245 and Laborers' Fund: 2,584.

56. Although many of these annuitants are over age 65, some very old, with serious medical problems, many people who began working for the City before April 1, 1986 (thus cannot qualify at all from their City employment), many are still well below age 65.[25] Due to age and existing medical conditions, some (probably most of them) would be unable to obtain their own medical coverage at an affordable cost or to qualify for alternative medical coverage at all. Based on their initial hire date, many of them cannot qualify for Medicare coverage from their City employment; some are without sufficient qualifying employment quarters at all, and can obtain Medicare coverage only by paying additional premiums.

Relevant Constitutional and Statutory Provisions

[24] The number of "Class members" is a much greater number, because many of them are still working for the City, so are not yet annuitants. That said, the number of participants in the Annuitant Health Benefits Plan probably does not vary that much, owing to natural attrition.
[25] Anyone who began their City work in 1986 before reaching age 35 have still not reached age 65, even if they obtained qualifying quarters from other employment.

57. **Illinois Constitution.** Under the 1970 Illinois Constitution, municipal pension membership benefits are enforceable contractual relationships which may not be diminished or impaired:

> "Membership in any pension or retirement system of the State, any unit of local government . . . or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

1970 Illinois Constitution, Art. 13, §5.

58. **The City Has Historically Paid For Retiree Healthcare Costs.** Since the mid-1970's, when the City health benefits plan became self-funded, the City has provided a retiree health benefit paying all or a significant portion of the costs of the annuitants' medical benefits. Indeed, the City has actually functioned as the self-insured carrier for the annuitants' health care plans for all four relevant Funds.

59. The current Group Health Benefits for City Annuitants, the City of Chicago Annuitant Medical Benefits Plan, was created by a "handshake" agreement, incorporated into the statutes, and have thereafter been a benefit of participation in the City's Annuity & Benefit Funds since at least 1980, subsidized by the Funds since 1982. The City of Chicago's Annuitant Medical Benefits Plan in existence from 1982 through at least 1989, was the statutory result of a "handshake" agreement between the City's Byrne administration, the Police and Fire Unions and/or Funds trustees, under which the City agreed to provide healthcare coverage to annuitants at a fixed-rate monthly premium($55 for non-Medicare qualified, $21 for Medicare-qualified persons) that was to be subsidized by the Police and Fire Funds' payment of the annuitant's monthly premium, that was financed by a special tax levy for the Funds. This was understood

and intended to be both a benefit of a person's employment by the City and participation in the annuitant's respective annuity and benefit fund. (Exhibit 18, McDonough declaration and Testimony at 30ff)

60. **Participation in the Plan is explicitly provided for annuitants of the City's Funds.** Under the Plan, eligibility is determined by one's being a participant or annuitant in one of the City's four annuity and benefit funds:

> **ELIGIBlLITY**
> You will be eligible for coverage if you are:
> • An Annuitant of the City of Chicago. "Annuitant" means a former employee who is receiving an age and service annuity from one of four retirement funds,
> • The· spouse· of a deceased Annuitant if you are receiving spousal annuity payments, or
> • A dependent of a deceased Annuitant if you are receiving annuity payments. (Plan Handbook, at 2)
>
> Exhibit 6.

61. **Statutory Levy/Subsidy.** Incorporating this agreement, P.A.82-1044 was enacted into the Illinois Pension Code obligating the Policemen's Fund (5-167.5) and the Firemen's Fund (6-164.2) to contract to provide group health insurance for all annuitants, and subsidize the basic monthly premium in an amount of $55.00 per month for annuitants who are not qualified for the Medicare program; $21.00 for Medicare-qualified annuitants. The amount of the Funds' subsidies were most recently raised to $65.00 per month for Medicare qualified individuals, $95.00 per month for those not qualified for Medicare coverage.

62. **No Medicare coverage for existing subclass of Funds' participants whose original hire date precedes April 1, 1986.** Local government employees who were originally hired and began their work prior to April 1, 1986 (federal Combined Omnibus Budget

Reconciliation Act of 1985 ("COBRA," PL 99-272 § 13205(a)) cannot qualify for healthcare coverage under the Medicare plan by their government employment, regardless of their length of service.

63. Accordingly, since all of the class members of the 1987 Participant Class and the Pre-8/23/89 retiree participants began their City employment prior to April 1, 1986, none of them can qualify for Medicare coverage by reason of their employment for the City of Chicago. Arenz at 29 (as to 1987 Class).

64. Additionally, many of the current retirees were hired before August 23, 1989, many of whom have still not retired, but are all entitled to the benefit of their earned City of Chicago Annuitant Health Benefit Plan.

65. Existing City workers who were first hired after March 31, 1986, have accrued or are accruing qualifying calendar quarters of employment towards the required 29 quarter condition for full coverage under the Medicare program upon reaching age 65. Arenz at 29.

66. Other existing government employees can be subjected to the Medicare program by an agreement between the City and the federal government, if the City desires to do so.

67. Unique Position of these retirees, and their substantial numbers. Consequently, the class member annuitants who began their service for the City prior to April 1, 1986 are the last class of City workers who will not be protected by the Medicare program. Although the number of these participants is currently known only to the City and the Funds, it certainly numbers a substantial portion of the class, since even with only twenty years of service, the earliest of the Medicare-qualified by government work would not have begun retiring before 2006, and many have not yet retired.

68. Statutory Subsidy: Police and Firemen's Funds. Since January 12, 1983, and continuing through 8/22/1989 (the date of enactment of P.A.86-273) Pension Code Sections 5-167.5, 6-164.2, respectively, required the Police and Firemen's Funds' Boards to each contract for group health insurance and required the City to pay for a portion of its cost, for electing annuitants, out of the City's levy for its contribution to the Police Fund.

* * *

> (b) The Board shall contract with one or more carriers to provide health insurance for all annuitants.
>
> * * *
>
> (d) The Board shall pay the premiums for such health insurance for each annuitant with funds provided as follows:
>
> The basic monthly premium for each annuitant shall be contributed by the city from the tax levy prescribed in Section 5-168 [6-165 for Firemen's Fund], up to a maximum of $55 per month if the annuitant is not qualified to receive Medicare benefits, or up to a maximum of $21 per month if the annuitant is qualified to receive Medicare benefits.
>
> If the basic monthly premium exceeds the maximum amount to be contributed by the city on his behalf, such excess shall be deducted by the Board from the annuitant's monthly annuity, unless the annuitant elects to terminate his coverage under this Section, which he may do at any time.

69. **The three-way Agreement benefited (and constituted "consideration" for) all three affected groups.** The City was able to provide a valuable benefit without having to fund a pay increase out of its budget; the Funds were able to contract for the healthcare coverage (with the City as the carrier) without invading their pension assets, and the Police and Fire employees and annuitants could anticipate and rely on adequate healthcare for life at no net cost to the annuitant, fixed-rates for coverage of spouses and dependents.

70. This is precisely what the Funds alleged in their 1987 Korshak counterclaims:

71. Statutory Subsidy: Municipal and Laborers' Funds. During 1984, legislation was added to the Illinois Pension Code, P.A. 84-23, establishing similar Group Health Care Plans under the Pension Code for Municipal and Laborers Funds annuitants.

72. The Municipal and Laborers' Funds statutory directive for group health benefits differed from Fire and Police. The Municipal and Laborers' Boards are directed to "approve" a plan and the subsidy is equal to a flat $25.00 per month. Section 11-160.1 Ill.Rev.Stat. Ch. 108-1/2, Sec. 11-160.1 (eff. August 16, 1985) for the Laborers' Fund; Pension Code Section 8-164.1, Ill.Rev.Stat Ch. 108-1/2, Sec. 8-164.1 (eff. July 19, 1985) for the Municipal Fund. Those statutes provide in relevant part:

> "Each employee annuitant in receipt of an annuity on the effective date of this Section and each employee who retires on annuity after the effective date of this Section, may participate in a group hospital care plan and a group medical and surgical plan approved by the Board if the employee annuitant is age 65 or over with at least 15 years of service. The Board, in conformity with its regulations, shall pay to the organization underwriting such plan the current monthly premiums up to the maximum amounts authorized in the following paragraph for such coverage.
>
> As of the effective date the Board is authorized to make payments up to $25 per month for employee annuitants age 65 years or over with at least 15 years of service.
>
> If the monthly premium for such coverage exceeds the $25 per month maximum authorization, the difference between the required monthly premiums for such coverage and such maximum may be deducted from the employee annuitant's annuity if the annuitant so elects; otherwise such coverage shall terminate."

73. Municipal and Laborers provisions purport to create non-protected benefits. Different from the earlier provisions for Police and Firemen, the 1984 legislation creating Pension Code Sections 8-164.1 and 11-160.1 characterizes the group hospital and medical care

benefits provided for Municipal and Laborers' Funds participants as not being pension or retirement benefits under Section 5 of Article XIII of the Illinois Constitution of 1970.

74. Legal issue of the legality of creating a non-protected benefit of participation. Per the decisions of our Supreme Court and this court, the statutory language provisions purporting to characterize healthcare benefits as *not* protected by Art. XIII, Sec.5's protection against diminution or impairment, are unenforceable. *Kanerva v. Weems*, 2014 IL 115811 (July 3, 2014) at ¶ 37-41, 54 and 55 and *Underwood v. City of Chicago*, December 3, 2015 ruling by Hon. Neil H. Cohen, at 8-9. Ex. 20.

75. Regardless, prior to August 23, 1989, the Police and Fire provisions had never contained such limiting language. See Pension Code §§5-167.5 and 6-164.2.

76. Premiums Charged To Funds/Annuitants. Effective April 1, 1982, the City established the following monthly rates for the Funds' annuitants' medical benefits coverage:

Under Age 65 – Single	$ 55.00
Under Age 65 – Family of Two	110.00
Under Age 65 – Family of Three or more	150.00
Medicare Eligible – Single	21.00
Medicare Eligible – Two	42.00
One Over Age 65, One Under Age 65	76.00

77. These rates for the Funds' annuitants' medical benefits coverage remained unchanged to a date beyond August 23, 1989.

78. Thus, from April 1, 1982 through August 23, 1989, annuitants received their healthcare coverage as a benefit of participation in their Funds, who obtained that coverage from the City, who acted as the self-insured provider of the plan, and paid all of the

"insurer's" costs of the Funds' annuitants medical benefits program to the extent that they have exceeded the premium rates.

79. **Communication of Coverage to Annuitants**. In approximately 1984, the City prepared a booklet advising individual annuitants of their rights, benefits and the terms of the City's annuitant medical care plan. This document was distributed to employees at or about the time of their retirement and was also submitted to existing annuitant participants as part of the re-enrollment process. **THE CITY Of CHICAGO ANNUITANT MEDICAL BENEFITS PLAN (Exhibit 6).**

80. Pre-Retirement Seminars. From at least 1984 until sometime in 1987, the City also presented a series of "Pre-Retirement Seminars" to employees. Employees near retirement were invited to attend to inform them as to the terms of various benefits upon retirement including the City's annuitant medical benefit plan. Ogonowski at 60 ff; DX 24, 26.

81. City officials of the Health and Benefits Office were present, in person, at the seminars to explain the terms of these provisions.

82. In describing these provisions, referring City employees and their attendees were told that they would be able to participate in the health plan for life, that their own coverage was to be for life at no cost; and that they would only have to pay for additional coverage for spouse and dependents. *Jandersits at 40, 42; Wilhelm at 55; Ogonowski at 61; Sweeney at 72; Mrs. Hester at 95-96.

83. It thus became widely understood among City employees that they could rely on this subsidized fixed-rate plan for their lifetime following retirement from their City

employment; at no out-of-pocket premium cost for Police and Fire annuitants own coverage, subsidized at $25 per month for Municipal and Laborers annuitants.

84. These "pre-retirement seminars" were repeatedly conducted by City officials over a number of years, such that the rendition was done with the City's full knowledge and authorization; at least apparent, more probably actual authority to so speak.

85. Actions by Retirees. Many employees worked, retired and made plans on the basis of the representations made to them in these seminars, *e.g.*, Jandersits at 40. Additionally, it was the common understanding among City employees that the City would provide medical coverage for life upon retirement, (Wilhelm at 55-6; Scacchitti at 68; Hince at 85) and that was a significant factor for many individuals in choosing to work for the City, rather than work for a private sector employee, *e.g.*, Gayne at 44-45.

86. Many individual employees retired on the basis that this coverage existed, Carlisle Moore, Fire Stip. #1; Feinberg, Fire Stip. #3, and did not seek medical coverage elsewhere.

87. Many employees made retirement plans in reliance on that promise. Sweeney at 72-73; Zalley (Fire Stip. #5).

88. Some people purchased property elsewhere in reliance on the continued existence of medical coverage upon the terms described. Shackleton at 82-83.

89. Most of the pre-8/23/1989 retiree class member annuitants who survive, are now over age 74; some are in ill health (*e.g.*, Scacchitti at 66ff) or have family members whose condition is such that they would have great difficulty qualifying for separate individual medical coverage either at affordable cost or at all, (*e.g.*, Wilhelm at 56; Ralicki, Fire Stip. #2).

90. The usual practice in the Chicago area during the pre-8/23/1989 class period was that large public sector employers paid the entire cost for retiree medical coverage premiums, Arenz at 19, and did not retroactively change healthcare benefits for retirees. Arenz at 23, 28.

91. The City's Budget/Appropriations for Retiree Healthcare Benefits. The City funds used for annuitants' healthcare benefits in the years 1980 through 1987 were included in the City Budget, under line items designated under the decimals ".042," generally under Department 9112: Department of Finance-General.

92. Appropriation Language: 1980-84; 1986-87. In the 1980 through 1984, 1986 and 1987 City Budgets, line item .042 was described in the following terms:

> For health maintenance organization premiums or cost of claims and administration for hospital and medical care provided to eligible employees and their families including employees on duty disability leave. (Source DX37, 40, 41.)

93. 1985 Appropriation Language. In the 1985 City Budget, line item .042 was described as:

> For the health maintenance organization premiums or cost of claims and administration for hospital and medical care provided to eligible employees and their families including employees on duty disability leave and for partial payment of the cost of claims and administration for hospital and medical care provided to certain participants in the Policemen's Annuity and Benefit Fund, Firemen's Annuity and Benefit Fund, Laborers' and Retirement Board Employees' Annuity and Benefit Fund, and Municipal Employees Annuity and Benefit Fund. (DX39, emphasis added.)

94. The 1985 language was inserted by the City Council's Budget Committee to clarify the annuitant medical coverage under line item .042. Kubasiak at 89.

95. Manner of Budgeting. Each year beginning at least 1980, the line item .042 budget appropriation was accomplished by taking the previous year's actual expenditure (to the extent already spent, plus estimated cost through the end of the current year) and increase it by an amount reflecting anticipated healthcare inflation or cost increase for the coming budget year. Gilliam at 8-9ff, 39-40.

96. The previous year's expenditure included expenditures paid by the City for annuitant medical claims without any dispute as to their authorization under the annual appropriation. Gilliam at 10-11.

97. Thus, the appropriated dollars for each budget year included annuitant medical expenses. This was known to the City's Budget Office (Gilliam at 10-11, 18; Fattore at 179) and Council members believed that the annuitants were covered under the City's plan (Gilliam at 18-19) although the City disputes whether the language of the appropriation legally extends to annuitant medical expenditures.

98. The amounts requested, recommended, appropriated and expended for active and annuitant medical expenses (in excess of the "premiums" received from the Pension Funds and the annuitants in each year) were:

Year	Dept. Request	Mayor's Recom.	Appropriation	Actual Expenditures
1979	[open]	[open]	[open]	$37,002,963
1980	[open]	$48,000,000	[open]	$46,742.071
1981	$56,906,000	$56,906,000	$56,225.00	$64,569.800
1982	$66,200,000	$66,200,000	$65,870,000	$75,100,196
1983	$75,250,000	$75,250,000	$74,650,000	$86,289,215
1984	$88,500,000	$88,500,000	$87,200,000	$84,465,869
1985	$89,288,200	$89,288,200	$89,438,000	$91,506,685

Year	Dept. Request	Mayor's Recom.	Appropriation	Actual Expenditures
1986	$97,942,000	$97,942,000	$97,942,000	$83,705,038
1987	$107,158,500	$107,158,500	$107,158,000	

Source: DX37-43.

99. Calculation and Deletion of 1988 Annuitant Healthcare Appropriation. For 1988's requested appropriation, the City Risk Management Department calculated the cost of annuitant healthcare to be approximately $18 million and the Budget Department eliminated it from the budget request at Ms. Gilliam's direction. Gilliam at 37; Fattore at 184-187.

100. Communication of Plan to Annuitants: Regarding Termination of Coverage. During the period preceding August 22, 1989, the City of Chicago's Annuitant Medical Benefits Plan provides as follows regarding "Termination of Coverage:"

> Coverage for you and your eligible dependents will terminate the first of the month following:
>
> - the month a deduction is not taken from your annuity, or
> - the month you reach the limiting age for City-paid benefits, if you have not arranged for deductions from you annuity check.
>
> In addition, coverage for you and your eligible dependents will terminate the earliest of
>
> - the date it is determined that you have knowingly submitted false bills or bills for ineligible dependents for reimbursement under this Plan
> - the date the Plan is terminated, or
> - the date the Plan is terminated for the class of annuitant of which you are a member
>
> for hospital and medical care provided to eligible employees and their families including employees on duty disability leave.

Source: DX33, City X3.

101. At least to August 23, 1989, there had never been any explicit reservation by the City of any right to amend or terminate the Plan, nor any explicit reservation of any right of the funds to reduce the subsidy.

102. Cost and Loss Experience. During the early years of the program the premiums paid by the funds or the annuitants generally covered the costs of claims for reimbursement of annuitant medical costs.

103. During 1984, the costs of medical coverage for active employees and annuitants began to exceed the amount of premiums that were being charged. DX33.

104. Regardless of whether the costs were greater or less than the "premiums" charged, the City had never changed the rates charged as premiums under the Plan from April 1, 1982 to date after August 23, 1989.

105. No Premium Charge for Annuitant. The operation of the Plan was that Police and Fire Funds' annuitants were not required to pay anything out-of-pocket as premiums for their own coverage,[26] Municipal and Laborers' Funds' annuitants had to pay either nothing or $30.00 per month (depending on their Medicare qualification) and paid their own funds for only the additional cost of family dependent coverage.

106. City's Past Efforts to Contain Costs. Beginning in 1984, various members of the City administration began to focus on containing healthcare costs. Gilliam at 20, 31; Carmody Memo 04/15/83 DX9, DX11 and 12.

[26] In fact, annuitants do pay a portion of each claim as with usual insured plans. Picur at 142-3; Williams at 154-64. The City's plan requires the insured to "coinsure" (i.e., pay a percentage of each claim after the first X hundred dollars), 20% of the following X thousand dollars insuring that individuals do share in the actual out-of-pocket costs of their medical care.

107. Re-Enrollment. One effort to contain costs was to require re-enrollment of plan participants both active and retired. By this all plan participants were required to produce evidence of their continued qualifications to participate in the City's medical plan. Gilliam at 40; DX17.

108. The City actively solicited annuitants to re-enroll in the plan. Gilliam at 40; DX18.

109. During enrollment, the City did not suggest that annuitants seek or investigate the desirability of obtaining coverage elsewhere. Gilliam at 40-41.

110. Nor did the City ever advise the annuitants that their plan had been or would be considered terminated, by this re-enrollment requirement. Gilliam at 79, 81. Moreover, although there is some assertion that this re-enrollment actually constituted a "termination" of the old plan and institution of a new plan, Gilliam at 80-81, the City's termination of its annuitant healthcare plan could have been achieved only by terminating both the active and annuitant plan together, Arenz at 27, which was not done.

111. The annuitant re-enrollment took place during 1985.

112. 1984 "Trial Balloon" to Raise Costs of Coverage. A proposal was also submitted under which the premiums would be increased for participation under the City's plan. Gilliam at 20; DX15.

113. A certain September 10, 1984 report called "City of Chicago Annuitant Medical Care Benefits," DX12, noted that expenditures were exceeding the "premiums" received, and proposed that the rates paid by the annuitants be increased by 100% effective two months

later, in November of 1984, and increased by another substantial percentage three months after that, in January of 1985. DX33; CX52.

114. This proposed rate change was communicated to representatives of the four pension funds. However, the response of the funds and their participants was so strong and negative that the effort was abandoned. Gilliam at 52-53.

115. As a result, the premiums charged annuitants for participation in the City's annuitant medical plan had not changed since April 1, 1982, and the annuitants and their families reasonably expected and relied on that situation to remain unchanged for their lives in retirement.

116. The Ryan Case. In late 1986 or early 1987, the City administration became aware of a substantial liability that would soon have to be paid to the City's pension funds as a result of the decision in Ryan v. Chicago, 148 Ill.App.3d 638, 499 N.E.2d 517 (Ill. App. 1986) (petition for leave to appeal denied, 505 N.E.2d 361 (1987). In the Ryan case, the City had converted pension tax levies to its own benefit, investing the money while in its hands and retaining the earnings it had made when turning over the principal months later. The Illinois Appellate Court held that the city would have to repay all earnings made on pension fund tax monies used by it during the period 1979 through 1983 and would have to restore similar earnings made in subsequent years. Picur at 143-4.

117. The City's Reaction. Among City officials, the expectation was that this "Ryan" liability would total approximately $20 million. Gilliam at 76.

118. In the spring of 1987, a meeting was held among certain members of the City administration to develop a strategic plan for handling the City's financial problems, medical costs, and the Ryan case. Gilliam at 19ff; Picur at 118-9.

119. At that meeting, were Sharon Gilliam, the City's then Chief Administrative Officer and Chief Operating Officer; then-Corporation Counsel, Judson Miner; his Assistant Corporation Counsel, Matthew Piers; then-Comptroller Ronald Picur; and other individuals.

120. At that meeting, a strategic "game" plan was developed to counteract the effect of the Ryan decision. Picur at 144; DX28 at p. 2 Margin Notes by Gilliam.

121. At that meeting, the Legal Department advised the others of the argument that the appropriations in the line item ".042" for healthcare would be asserted as not permitting payments to annuitants. Picur at 119.

122. A plan was developed to approach the pension funds, advise them that the City would sue the pension funds to recover the monies spent on annuitant healthcare going back at least to 1980 unless the pension funds agreed to give up their claim to recovery under the Ryan case. Picur at 143-4.

123. Ronald Picur. While this was being planned, then-City Comptroller Ronald D. Picur continued to sit as a trustee of the Firemen's Annuity and Benefit Fund, the Municipal Fund and the Laborers' Fund without advising the other trustees of the City's intentions. Picur at 120.

124. Subsequently, on or about May 8, 1987, the City's Corporation Counsel contacted each of the pension funds, advised them of the Ryan judgment's $25 million potential, and the City's belief that the medical payments (in similar $25 million amount) had been illegally paid

and would have to be recovered from each pension fund unless they agreed to waive the Ryan claim. Each fund rejected the offer.

125. Thereafter, on October 19, 1987, the City Corporation Counsel sent each Fund a letter in which he advised the Fund that he had directed the City's benefits Office to cease making healthcare payments to pension fund annuitants as soon as each of the respective pension funds enters contracts for health insurance, but in no event later than January 1, 1988.

126. The City actually did seek to assert these issues as an offset in the Ryan case, but was denied by the presiding judge in that case.

127. Suit Filed by the City. On October 19, 1987, the City then filed suit seeking to terminate the coverage, force the pension funds to take over the annuitant medical cost obligation and reimburse the City for the $58,000,000.00 it had spent on annuitant medical coverage through September, 1987.

128. Participants' Intervention and Class Certification. Martin Ryan and the other individual plaintiffs in the Ryan case sought and were granted leave to intervene for annuitants' interest, represented by Krislov. May 5, 1988 Order. Their motions for certification of the class as a class action on behalf of the annuitants were granted by the Illinois Court, with undersigned counsel as class counsel.

129. The pension funds each moved to dismiss the City's claim and moved to file counterclaims of their own against the City to continue the coverage unchanged or at least provided a reasonable period in which the plans could obtain alternative medical coverage.

130. On May 16, 1988, this Court dismissed the City's claim against the Pension Fund's Trustees but left standing the counterclaims against the City to force the City's annuitant healthcare coverage to continue.

131. The matter was tried on an expedited basis before this Court during the summer of 1988, and then continued just prior to the filing of briefs when the parties appeared to be near settlement.

132. The settlement was itself delayed since the necessary enabling amendments to the Illinois Pension Code were initially vetoed by the Governor and were not enacted and signed into law until August 23, 1989, P.A.86-273.

133. The Settlements' Expiration and explicit preservation of participants' rights to assert their entitlement to lifetime protection of their benefits. Participants' claims for coverage during the periods thereafter through June 30, 2013 were resolved by interim settlements which have now expired, but all of them explicitly preserving participants' rights to assert their claims to permanent retiree healthcare thereafter. Ex. 13, Korshak 2003 Settlement at Section IV. J., and *see* Ryan v. City and Korshak, Ill. App. Court Nos. 1-98-3465 and 1-98-3667, June 15, 2000 Rule 23 Order, reversing the Circuit Court's refusal to hear the Participants' claims, as revived following the 1997 end of the first settlement.

Back to the Present:

134. **On May 15, 2013, the City declares its intention to reduce benefits beginning January 1, 2014, and to eliminate all of the City's retiree healthcare plans by January 1, 2017.** Exhibit 21, City Letter dated May 15, 2013. Anticipating the June 30, 2013 end of the

applicable settlement periods, the City issued a letter to all retiree healthcare participants that it intends to:

(i) extend current retiree healthcare benefits to the end of 2013;
(ii) maintain the current level of benefits for pre-8/23/1989 retirees for their lifetimes;
(iii) make changes beginning January 1, 2014 to the plans with respect later participants, and terminate their coverage entirely, by January 1, 2017.

Ex. 21, City Letter dated May 15, 2013.

135. The Funds Subsidies after June 30, 2013. Whether P.A. 86-273 and its following statutes would support continuation of the Funds' subsidies, or whether 1970 Ill. Const. Art. XIII, §5 would prohibit their being reduced or ended, the Funds' statutory authority to subsidize retiree healthcare was extended by P.A.98-43, signed into law June 28, 2013, extending the current statutory authorization of the subsidies at their current levels "until the earlier of January 1, 2017, or such date as the City terminates its retiree healthcare plans."

136. The Funds' trustees have declared that they will not continue subsidies beyond any time period provided in the applicable statute, and otherwise refuse to continue the subsidies as benefits of participation protected solely by Ill. Const. Art. XIII, Section 5.

137. Participants assert that the Funds' obligations to provide and subsidize healthcare coverage for annuitants are themselves benefits of participation in their respective Funds protected by the Illinois Constitution Article XIII, Section 5 from being diminished from the levels in existence during any Participant's lifetime.

138. The City's Post-2013 Unilateral Reduction in the Benefit.

139. Beginning with the 2014 Appropriation, the City has unilaterally reduced the annuitants' healthcare benefit.

140. The New "Rates" are flawed; both in the manner of their calculation and from the City's unilateral diminution in the benefit provided.

141. The "new rates" imposed by the City for the post- 6/30/2013 Settlement period are unlawful on at least three grounds. They are not entitled to enforcement, first, since they are calculated by a flawed method that systematically overcharges annuitants, and also results from the City's unilateral diminution in its annuitant healthcare benefit. Additionally, there are two unilateral diminishment actions by the City: (i) increasing the premiums by an estimated costs factor that has been overstated in every previous year going back to its 2003 inception[27] and (ii) reducing its appropriation for the benefit, viewed either individually or in the aggregate, from the $102,326,353 aggregate appropriation and expenditure in in 2013, to $80,609,808 in 2014, reduced to $62,912,845 in 2015, reducing it by a further 50% or $31 million in just the 2016 appropriation alone[28]; (a total diminution of $ 100 million through 2015; $130,755,496 million by the end of 2016; all of which diminutions result in corresponding increases in premiums to annuitants.

142. As a result annuitants have seen their annuitant healthcare premiums increased by the City as much as 300% or more, over just the period since 2013. Indeed, some annuitants are faced with health insurance premiums that exceed the amount of their annuities. Many face

[27] See Exhibit 7, Motion for Audit of 2013-2d half, documenting how City's use of estimated premiums has resulted in post-audit refunds, when compared to actual experience for each year, totaling more than $50 million over the last ten-year settlement period.

[28] Exhibit 25, comparison of City Appropriations for Annuity Healthcare 2012-2016. Source: City's 2016 and 2014 Budget Books, portions showing $31 million cut from city's line item 0052 expenditures for Hospital and Medical Care to Eligible Annuitants and their Dependents for 2016; following $21.7 million reduction in 2014, and $17.7 million reduction in 2015, for a cumulative reduction of $69,625,443, to date which has been entirely borne by annuitants. Confirmed by testimony of City Budget Director Holt, Ex. 22, 19:13-30:24, and City Benefits Manager Currier. Ex. 22, 80:15-20.

premiums exceeding 30% of their entire gross annuity. Some, especially the nonMedicare qualified who have families, spouse and dependents, face premiums exceeding $25,000 per year.

143. Nor are the "cost saving" alternatives offered by the City equivalent by any means. Participants who wish to save money, are offered a selection from plans that either (a) exclude from the covered network the (NorthShore, Northwestern, University of Chicago, Advocate, and Rush) institutions and physicians who make up the overwhelming percentage of healthcare providers in the region, or (b) carry vastly increased out-of-pocket costs for participants, or (c) both. Exhibit 22, December 23, 2015 testimony of Nancy Currier, at 65:4-9, and 121:10 ff.

144. The City's flawed calculation of premiums.

145. During the course of the 2003-2013 Settlement, it was discovered that the Segal projections, on which the City based its settlement period "rates" for retiree healthcare were substantially more than actually experienced during the settlement period.

146. Accordingly, an audit and reconciliation process was ordered, in order to conform rates charged to annuitants with the actual experienced costs of annuitant healthcare. Over the ten-year period of the settlement, the audit and reconciliation process identified overcharges to participants in each and every year. Total overcharges to participants during the 2003-6/30/2013 exceeded $51 million, which were refunded as part of the audit and reconciliation process.

147. Since the June 30 2013 expiration of the 2003 Settlement, the City has refused to audit and reconcile the rates charged to actual experience; refused for the last half of 2013, and will not audit or reconcile the rates to actual charges for 2014, 2015 or 2016.[29]

148. Moreover, the process by which the City continues to calculate annuitant healthcare rates is based on the same estimating source and method.[30] Participants assert that the rates charged for 2014, 2015 and 2016 are excessive, even before considering the City's unilateral reduction of its appropriation for annuitant healthcare.

149. The City's erroneous and UnEqual recognition of its obligations.

In the City's May 15, 2013 letter, it acknowledges its obligation, and agrees to continue retiree healthcare for the Korshak and Window Retirees Subclasses:

> 2. After January 1, 2014, the City will provide a healthcare plan with a continued contribution from the City of up to 55% of the cost for that plan for their lifetimes to the City retirees who are members of the Korshak and "Window" Sub-Classes, meaning those City annuitants who retired prior to August 23, 1989. In short, the City will continue to substantially subsidize these retirees' healthcare plan as it does today.

150. In spite of that assurance, the City is actually diminishing the benefit for those subclasses, as well, raising their premiums, albeit in lesser amounts.

151. Contrary to the City's previous commitment to contribute *"at least"* 55% of the costs of retiree healthcare for those classes, the City surreptitiously changes its commitment to a much diminished *"up to"* 55%. Thus, even if the rates were correctly calculated, the City is now "capping", rather than "flooring" its commitment to these two classes. Indeed, their rates are in fact being increased.

[29] Exhibit 26, Chart of City Rate Changes for 2016.
[30] Testimony of Nancy Currier, Exhibit 22 at 80-82.

152. Inducement, Reasonable Reliance, Harm, Inadequate Remedy at Law. As described above, the City's and Funds' actions have knowingly induced the City's employees to work their entire careers, reasonably relying on the existence of the City of Chicago Annuitant Medical Benefits Plan, and its protection for life, in their retirement, such that the City cannot in good conscience accept the participants' conferred consideration without fulfilling its own promised obligation to them.

153. As evidenced only in part by their attached submissions, the participants are suffering irreparable injury, in having to either pay exorbitant premiums, forego the City plan altogether, or choose other plans inferior in their costs or available providers, or both.

Class Allegations

154. **The "Korshak" subclass-12/1/1987 Retiree Participants.** The claims for these participants are the same ones that have been certified to proceed as a class action with respect to the 1987 participants (the "Korshak" subclass).

155. **The "Window" or Jacobson subclass-Retirees during the 1/1/1988-8/23/1989 "window".** As part of the 2003 Settlement, the action was also certified for the additional or expanded group to include the participants via a person who retired after 1987, but prior to August 23, 1989, who share the Korshak class' claim to common law vesting (entitlement to permanence for the benefits as they existed on one's retirement date), plus statutory and constitutional protections against diminution of benefits which have already begun at a certain level. (This group, who had filed a parallel case in federal court, led by the Retired Chicago Police Assn. and participant plaintiffs led by first named plaintiff Jacobson, are commonly

referred to as the "window" retirees; persons who retired during the 1/1/88-8/23/89 "window" period, after the Korshak class date and before 86-273 was enacted.)

156. **Pre-8/23/1989 Hirees' subclass.** The third group of class members, who share common legal issues, are those who "vested" in their retirement benefits by their joining one of the relevant Funds on or before August 23, 1989, regardless of their retirement date. (This group might be called the "Pre-8/23/89 Hiree Vesters"). Their entitlement is based primarily on their claim to the 1970 Constitution, Art. XIII, Section 5's protection against diminution or impairment of their benefits of participation in one of the four Funds determined at their entry into the system, i.e., their hire date. *Buddell v. Bd. of Trustees, State Universities Retirement System*, 118 Ill.2d 99, 103 (1987).

157. **Subclass 3a-Pre-4/1/1986 hires.** This subclass of Subclass 3 has unique hardship status, because, under federal law, their work for the City, no matter how long, does not earn qualifying employment quarters to qualify the person for coverage under the federal Medicare program.[31] Although some of these persons may earn the required quarters by other employment, most of these subclass members (especially Municipal and Laborers participants) simply do not qualify for Medicare coverage, and thus will face the largest premiums imaginable in their retirement and separately pay for Medicare coverage that most people get free. Because of the long duration of City employment, it is believed that a substantial portion of this subclass is still yet to retire.

[31] Local government employees who were originally hired and began their work prior to April 1, 1986 (federal Combined Omnibus Budget Reconciliation Act of 1985 ("COBRA," PL 99-272 § 13205(a)) cannot qualify for healthcare coverage under the Medicare plan by their government employment, regardless of their length of service.

158. **Subclass 4-Post 8/23/1989 Hires**. The last subclass are those individuals who began their participation (by initial hired date) after the passage of P.A.86-273, which added the questionable language to the statute purporting to label the retiree healthcare benefits as not protected by Art. XIII, Section 5, whose claim to permanence of their benefits will turn on the purely legal issue whether the legislature can legally create a benefit of participation that is not protected by Article XIII Section 5.

159. All four participant groups, as classes or subclasses, readily qualify for class certification as to many issues of entitlement and to a fixed-rate subsidized retiree healthcare program against the City and their respective Fund, and no participants' entitlement conflicts with any others.

160. Numerosity. Each group numbers in the thousands, so joinder of all members of each class or subclass is impracticable.

161. Common Questions. Each group shares, internally and with each other group, the common issues of whether their right to a fixed-rate subsidized plan is protected from being diminished or impaired by the Illinois Constitutional protections of benefits of participation in an Illinois pension fund. Differences between each group's entitlement under other theories may arise. However, they do not conflict with each other. For example, pre-1988 retirees might additionally claim detrimental reliance that may not be available to pre-1989 vesters who have not yet retired. But the entitlement claims made for any one of the three groups would not conflict with either other group's entitlement claims.

162. Adequacy of Representation. Undersigned counsel Krislov has been engaged by hundreds of participants and will present representative parties for each of the four participant

categories, who will fairly and adequately protect the interest of the classes. The proposed participant class representatives understand the nature of the claim, the purpose of the litigation, their role in it, and have no interests antagonistic to the class. And participants' undersigned counsel is well experienced and capable of representing the class or classes, and has long acted as the certified class counsel in this specific case, already. [Additionally, the named plaintiff participants include participants in all four Funds, with hire and retirement dates representing all class categories asserted here, and with none of them having interests adverse to the interests of other class members.]

163. Appropriateness. This court has already appropriately found that the class action is an appropriate method for the fair and efficient adjudication of the controversy, and it remains so.

COUNTS AND CAUSES OF ACTION

COUNT I – State Constitution: Diminution of Pension Benefits, Impairment of Contract,

164. Plaintiffs re-allege the foregoing paragraphs 1-163.

165. The 1970 Illinois Constitution Article XIII, §5 declares that participants' memberships in their retirement systems are contractual relationships, the benefits of which shall not be diminished or impaired:

> "membership in any pension or retirement system of the State... shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."
> (Illinois Constitution of 1970, Art. 13, §5).

166. Participants' healthcare coverage under the City of Chicago Annuitant Medical Benefits Plan, terms and Fund subsidy under the Illinois Pension Code, as they existed on a participant's entry into their particular retirement system (and with improvements thereafter)

are benefits of membership in a pension or retirement system of a unit of Illinois local government, that are enforceable for life, by the protections of 1970 Illinois Constitution, Art. 13, §5, which prohibits them from being diminished or impaired.

167. **Illegal diminution or impairment of Benefits of Participation in a local government pension or retirement system.** The defendants' actions and declared rights to reduce that benefit constitute unlawful impairment of the participants' contractual rights under Art. 13 §5 of the 1970 Illinois Constitution.

168. **Illegal Impairment of contract.** The defendants' actions and declared rights to reduce that benefit also constitute unlawful impairment of Contract, under Art. I §16 of the 1970 Illinois Constitution.

COUNT II - Common Law Breach of Contract

169. Plaintiffs re-allege paragraphs 1 through 163.

170. As per the 1970 Illinois Constitution, Art. XIII, §5, the plaintiffs and class members have a contractual right to the fixed-for-life subsidized healthcare premiums in effect on their retirement date.

171. Also, independent of the Art. XIII, §5 of the 1970 Illinois Constitution, under common law principles of contract, the plaintiffs and pre-8/23/1989 retirement or hire date class members have a contractual right to the plan in effect during the period October 1, 1987 to August 23, 1989, at the $55/21 fixed-rate-for-life healthcare premiums, subsidized by their respective Funds (the entire annuitant premium for Police and Fire annuitants, the $25 or higher subsidy paid at any time for Municipal or Laborer annuitants) without reduction.

172. The plaintiffs and the class members have performed all the duties and obligations required of them under the terms of the contract.

173. The defendant City of Chicago has breached its contractual obligation by unilaterally requiring the plaintiffs and class members to pay increased healthcare premiums.

COUNT III - Common Law Estoppel

174. Participants re-allege paragraphs 1 through 163.

175. The City and funds are estopped by their own conduct from changing or terminating the annuitant coverage to a level below the highest level of benefit during a participant's participation in the group healthcare benefits.

176. The City is estopped from changing or terminating the coverage for class period retirees without affording the Funds a reasonable time in which to obtain alternative coverage from another carrier.

COUNT IV - U.S.C. § 1983
For Record Purposes Only-No Answer is Required.

177. Plaintiffs re-allege the forgoing paragraphs of the complaint.

178. Each plaintiff and class member has a property right to a lifetime healthcare plan, unreduced from the best terms during a person's participation in one of the retirement funds.

179. Each healthcare premium charged to the annuitants by the defendants which exceeds the person's best entitled premium, is a deprivation of a property right secured under the Fourteenth Amendment and actionable under 42 U.S.C. § 1983.

180. Each increase in the healthcare premiums, beyond the fixed-for-life subsidized amount, is a violation of a property right secured under the Fourteenth Amendment and actionable under 42 U.S.C. § 1983.

181. The City's actions were and are performed knowingly and under the color of law by the City of Chicago and its officials, for whom the City is liable herein.

182. The City of Chicago is a "person acting under the color of law" for purposes of 42 U.S.C. § 1983.

183. The actions of each of the defendant pension Funds were and are performed knowingly and under the color of law by the Pension Fund officials for whom the fund is liable herein.

COUNT V - Impairment of Contract – Federal and State Constitution
No Answer is Required with regard to Federal Constitution Contract Clause Violation

184. Plaintiffs re-allege the foregoing paragraphs.

185. Art. 13, § 5 of the Illinois Constitution states that membership in any pension or retirement system of the state shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

186. By increasing the healthcare premiums charged to annuitants, or adversely changing the terms or subsidy, the City and the Funds have denied or impaired the plaintiffs' and class members' contractual rights.

187. The stripping of the Illinois Constitution's protection of group health benefits provided under the Pension Code, by reducing them or re-labeling them as "not benefits of participation" under P.A. 86-273 and other statutes impairs contractual rights of participants.

188. The United States Constitution prohibits States from passing laws impairing the obligations of contract:

> "No State shall... pass any... Law impairing the Obligation of Contracts...."
> (United States Constitution, Art. I, Section 10).

189. Each such adverse change in the group health statutory provisions of the Pension Code, including, as well, increases in healthcare premiums, is an impairment of a contractual right in violation of Art. I, § 10, cl. 1 of the Federal Constitution, secured under the Fourteenth Amendment and actionable under 42 U.S.C. § 1983.

190. Korshak and Window Retirees. With respect to the class members who retired before August 23, 1989, the statutory recharacterization of group health benefits for Fund participants, and each healthcare premium charged in excess of the fixed-for-life subsidized rate alleged herein are thus impairments of a contractual right in violation of the United States Constitution.

Count VI-Denial of Equal Protection
Illegal Discrimination between 8/23/1989 retirees and "hireds"

191. Plaintiffs re-allege the foregoing paragraphs.

192. The City's differing treatment of *pre-8/23/1989 retirees* (rightfully recognizing their lifetime entitlement) from pre-8/23/1989 Fund participants (i.e., denying protection for participants based on their pre-8/23/1989 hiring by the City), constitutes , since entitlement to protection of benefits of participation is based on *hire* date, *not* date of *retirement*, the City's denial of equal protection to pre-8/23/1989 *hirees* is a denial of the Illinois Constitution's Article I, §2 Equal Protection Clause:

> **Section 2. Due Process and Equal Protection.**
> **No person shall** be deprived of life, liberty or property without due process of law nor **be denied the equal protection of the laws**.

Count VII-Invalid Special or Local Legislation.

193. Plaintiffs re-allege the foregoing paragraphs.

194. 1970 Illinois Constitution Article IV, Section 13 prohibits special or local legislation:

> Section 13. Special Legislation.
> The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

195. The provisions of P.A. 86-273, 90-32, 93-42, and 98-43, insofar as they purport to condition healthcare entitlement in a Fund for a City of over 500,000 to annuitants who participate in any of the Funds "by reason of" or "as a direct result of" "employment by the City of Chicago", are invalid special or local legislation, triggering the reinstatement of their predecessor valid provisions.

Memorandum/Argument of Law in Support of Motions

As a Matter of Law, Plaintiffs are entitled to Judgment[32] that the City is obligated to continue the City of Chicago Annuitant Medical Benefit Plan for life, for all Fund participants whose original hire date precedes August 23, 1989.

I. Illinois law is clear:

A. Benefits are to be determined with a presumption in favor of "pensioners";
B. All benefits that are provided by a public employer based on participation in the City's retirement systems (i.e. provided, conditioned on, and flowing from participation in an Illinois retirement system) are protected benefits of participation; not just obligations required by the Pension Code; and
C. Retiree Healthcare Benefits are protected benefits under the Constitution's Art. XIII, §5; thus cannot be diminished, reduced or impaired.

Participants are entitled to Article XIII Section 5's protections. The protected benefits are not narrowly interpreted, (there is a presumption in favor of the pensioners) and the court should view the protected benefit as not limited to the Pension Code's explicit obligations, but as the benefits the City employer provided its annuitants.

A. *Kanerva v. Weems* directs that Pension Rights under the Constitution are to be determined with a presumption in favor of "pensioners", and Benefits that a public employer provides, that are conditioned on and flowing from participation in an Illinois retirement system are protected for life.

Since *Kanerva v. Weems*, 2014 IL 115811, Illinois law has been absolutely clear on "¶35 [t]he question of whether the pension protection clause applies to an Illinois public employer's obligation to contribute to the cost of health care benefits for employees covered by one of the state retirement systems". *Kanerva* held that it *does*, and precludes the employer from reducing the subsidized healthcare benefits provided to its annuitants.

[32] Plaintiffs filed their Motion For Class Certification on or about September 17, 2013.

Indeed, the issue there was whether the State could reduce the State's share/subsidy from providing 100% full-paid health insurance to its "former employees", not under the Pension Code, but simply the benefits legally provided by the State to its former employees:

> **¶1** At issue in this appeal is the validity of Public Act 97-695 (eff. July 1, 2012), which amended section 10 of the State Employees Group Insurance Act of 1971 (Group Insurance Act) (*5 ILCS 375/10* (West 2012)) by eliminating the statutory standards for the State's contributions to health insurance premiums for members of three of the State's retirement systems.

The court recognized that the healthcare was not contained or required by any Pension Code provision;[33] they were merely benefits legally provided to the State's former employees.

Consequently, the court resolved two questions: (1) whether the so-called "Pension Protection Clause" protects benefits beyond annuities, and (2) whether the protection extends beyond benefits compelled by the Pension Code. The Court's holding is absolutely clear: The Constitution protects, and prohibits the reduction of, all benefits that a person receives that are "conditioned on, and flowing directly from a person's being a participant in an Illinois governmental retirement system", Kanerva at ¶40.

B. The court's obligation to construe these questions with a presumption liberally in favor of the annuitants.

Kanerva begins and ends the framework of interpreting by directing the court to interpret pension rights *liberally* in favor of the *annuitants*:

> **¶36** The construction of constitutional provisions is governed by the same general principles that apply to statutes. … . Our objective when construing a constitutional provision is to determine and effectuate the common understanding of the citizens who adopted it …, and courts will look to the natural and popular meaning of the language used as it was understood when the constitution was adopted …. Where the language of a constitutional provision is unambiguous, it will be given effect without

[33] State employees' participate in one of five retirement systems, whose Pension Code provisions are contained in 40 ILCS Art. 2 General Assembly Retirement System, Art. 14 SERS, Art. 15 SURS, Art.16 Teachers Retirement System, Art. 18 Judges

> resort to other aids for construction. …. In addition, it is proper to consider constitutional language "in light of the history and condition of the times, and the particular problem which the convention sought to address ***." … "Moreover, *** **to the extent there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner."**
>
> ...
>
> **¶55 Finally, we point out again a fundamental principle noted at the outset of our discussion. Under settled Illinois law, where there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner.** This rule of construction applies with equal force to our interpretation of the pension protection provisions set forth in *article XIII, section 5*. Accordingly, to the extent that there may be any remaining doubt regarding the meaning or effect of those provisions, we are obliged to resolve that doubt in favor of the members of the State's public retirement systems.

Kanerva, at ¶¶ 36 and 55; Citations omitted, emphasis added.

C. Participants' protected benefits are not limited to just what the Illinois Pension Code requires. Rather the protection against diminution applies to all benefits whose eligibility is conditioned on, and flows from, a person's being an annuitant, participant in the City's retirement systems.

Kanerva also declares that the Constitution's protection extends beyond the explicit obligations contained in the Pension Code, to protect *all benefits whose eligibility flows from participation in a public employer's retirement systems.* The *Kanerva* plaintiffs challenged the reduction in healthcare benefits provided under the Group Insurance Act, not the Pension Code:

> **¶37** In this case, plaintiffs contend that, by eliminating the statutory standards in the prior version of *section 10* of the Group Insurance Act and requiring annuitants and survivors to contribute additional amounts toward the cost of their health care, Public Act 97-695 has diminished or impaired this retirement system membership benefit, in violation of the pension protection clause.

The State argued against Constitutional protection, asserting that the Constitution's Pension Protection clause should only apply to Pension Code provision:

> Defendants respond by asserting that State contributions to retiree health insurance premiums, which are not codified in the Pension Code and are not paid from the assets of the retirement funds established in the Pension Code, are fundamentally different from pension annuities and, therefore, are not included within the protections afforded by *article XIII, section 5*. *Kanerva*, at ¶ 37.

The Court held that the benefits were nonetheless constitutionally protected and permanent; declaring the rule that Article XIII §5 protects *all benefits provided by a public employer to participants in an Illinois public pension or retirement system*, deriving from their status as participants in the unit's retirement systems:

> **¶40** Although some of the benefits are governed by a group health insurance statute and others are covered by the Pension Code, **eligibility for all of the benefits is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems. Giving the language of *article XIII, section 5*, its plain and ordinary meaning, all of these benefits, including subsidized health care, must be considered to be benefits of membership in a pension or retirement system of the State and, therefore, within that provision's protections.**
>
> **…**
>
> **¶41 No principle of statutory construction supports a contrary view**. Defendants contend that the reach of *article XIII, section 5*, is confined to the retirement annuity payments authorized by the Pension Code, but there is nothing in the text of the Constitution that warrants such a limitation. ….. If they had intended to protect only core pension annuity benefits and to exclude the various other benefits state employees were and are entitled to receive as a result of membership in the State's pensions systems, the drafters could have so specified. But they did not. The text of the provision proposed to and adopted by the voters of this State did not limit its terms to annuities, or to benefits conferred directly by the Pension Code, which would also include disability coverage and survivor benefits. Rather, the drafters chose expansive language that goes beyond annuities and the terms of the Pension Code, defining the range of protected benefits broadly to encompass those attendant to membership in the State's retirement systems. Then, as now, subsidized health care was one of those benefits. For us to hold that such benefits are not among the benefits of membership protected by the constitution would require us to construe *article XIII, section 5*, in a way that the plain language of the provision does not support. We may not rewrite the pension protection clause to include restrictions and limitations that the drafters did not express and the citizens of Illinois did not approve. See *Prazen, 2013 IL 115035, ¶¶ 37-38*
>
> **...**
>
> **¶54** Defendants observe that health care costs and benefits are governed by a different set of calculations than retirement annuities. While that is unquestionably true, it is also legally irrelevant. The criterion selected by the drafters and approved

by the voters is status based. ***Whether a benefit qualifies for protection under article XIII, section 5, turns simply on whether it is derived from membership in one of the State's public pension systems. If it qualifies as a benefit of membership, it is protected.*** If it does not, it is not. How the benefit is actually computed plays no role in the inquiry.

…

¶56 CONCLUSION

¶57 For the foregoing reasons, we conclude that the State's provision of health insurance premium subsidies for retirees is a benefit of membership in a pension or retirement system within the meaning of *article XIII, section 5, of the Illinois Constitution*, and the General Assembly was precluded from diminishing or impairing that benefit for those employees, annuitants, and survivors whose rights were governed by the version of *section 10* of the Group Insurance Act that was in effect prior to the enactment of Public Act 97-695. Accordingly, the circuit court erred in dismissing plaintiffs' claims that Public Act 97-695 is void and unenforceable under *article XIII, section 5*.

Thus, if a public employer provides a benefit for which eligibility is a person's annuitant status, that benefit is protected permanently for that participant, by the Illinois Constitution's Article XIII §5.

II. The Benefit to be protected is the City of Chicago Annuitant Medical Benefits Plan, whose eligibility is conditioned on one's being an annuitant of the City's four retirement funds.

The benefits we seek to enforce are the healthcare benefit plan legally provided by the City to its retiree participants in the four annuity and benefit plans; not just the limited wording of the Pension Code provisions that the City finance the Funds' subsidies.

Per the terms of the City of Chicago Annuitant Medical Benefits Plan, as set out in the Plan Handbook, eligibility is "limited to, conditioned on, and flows directly from membership in" one of the City's four annuity and benefit funds:

> # ELIGIBILITY
> You will be eligible for coverage if you are:
> - An Annuitant of the City of Chicago. "annuitant" means a former employee who is receiving an age and service annuity from one of four retirement funds,

- The spouse of a deceased Annuitant if you are receiving spousal annuity payments, or
- A dependent of a deceased Annuitant if you are receiving annuity payments. (C 757, p. 2, Plan Handbook at 2).

Accordingly, the City of Chicago Annuitant Medical Benefit Plan has been, at all relevant times, a benefit of participants' participation in their respective Funds, which 1970 Illinois Constitution, Article XIII §5 prohibits from being diminished or impaired. Nor was there any reservation of right by the City to amend or terminate the plan.

A. The importance of the City's role as the "provider", not merely a "subsidizer".

While the City portrays itself as merely "subsidizing" retiree healthcare (as if that would diminish Article XII Section 5's force against it), the City does not merely "subsidize" retiree healthcare by payments to a third party health insurer. The City is not a "subsidizer"; it is the self-insured actual *provider* of the benefit itself. (December 23, 2015, Tr. 36:6-8; 77-79).

Alternatively, we show that the "contract", as asserted by the Funds in their original *Korshak* counterclaims upheld against the City, is that the Funds fulfilled their obligations to obtain coverage for their participants by contracting with the City qua provider for a fixed rate, either paid for fully by the Police and Fire Funds, and mostly paid by the Municipal and Laborers funds. In any event, the City's obligation is not the "subsidies", nor just the amounts paid by the Funds, but the coverage itself at the rates set to the subsidies.

III. Based on the Undisputed Facts, Plaintiffs and the Classes are entitled to permanent enforcement of the City of Chicago Annuitant Medical Benefit Plan, enforceable for life by Contract and Estoppel.

The contract and estoppel theories of Counts 2 and 3 (respectively, that the Funds complied with their Pension Code obligations by contract with the City agreeing to provide the

coverage, and that the City had repeatedly represented that permanent coverage under the City of Chicago Annuitant Medical Benefit Plan was a term of one's employment) as previously recognized and upheld by Judge Green's May 1988 decision, are certainly well-founded. The repeated communications of permanent coverage to active employees, and in pre-retirement seminars, are unenforceable without proof of each communication being from a person with authority to bind the City.[34]

While a single hearsay or rumor might not be enforceable, repeated City-issued benefits handbooks and City-sponsored "pre-retirement seminars" conducted over a number of years certainly constitutes sufficient "apparent authority" to bind the City contractually or estop the City from denying the enforceability of the benefits. *See, e.g., Dell v. City of Streator*, 193 Ill.App.3d 810 (3d Dist. 1990), enforcing those promised benefits over that city's arguments that providing lifetime coverage for annuitants was either beyond its authority, or fell short of some contract requirement or formality:

> The principle which controls the instant case is not the statutory provision asserted by defendant City, but rather is the doctrine of equitable estoppel: Where a contract is within the general power of a corporation but a portion of the contract exceeds the corporate powers and where the City receives a benefit, it is equitably estopped from refusing payment. The Illinois Supreme Court has stated:
>
> > "[Municipal] corporations, as well as private corporations and natural persons, are bound by principles of common honesty and fair dealing." *McGovern v. City of Chicago* (1917), 281 Ill. 264, 284, 118 N.E. 3.
>
> The case of *McGovern v. City of Chicago,* though more than 70 years old, is instructive of the principle. There the City of Chicago had awarded a 13 month contract to McGovern to make needed repairs to city streets, as directed by the

[34] Such an obstacle to enforcement would similarly require each City employee, police, fire, municipal or laborer, to question each directive received from a superior or dispatcher to verify the authority of each direction.

Superintendent of Streets, and to be paid at a particular rate based on area and kind of repairs. The City Council did not make an appropriation for the full amount, and at the conclusion of the contract term, the City refused to pay for some $ 117,394 of work performed on the ground that the contract was void for want of an appropriation and for extending beyond one fiscal year. The Supreme Court of Illinois ruled that the City had the power to contract to repair its streets, that McGovern had performed in good faith, and that the City was estopped to refuse payment on the ground that it had exercised its power improperly when it had received and accepted the benefit of the contract.

Illinois courts do recognize that those contracts expressly prohibited by law are *ultra vires* and thus unenforceable. (*E.g., DeKam v. City of Streator* (1925), 316 Ill. 123, 146 N.E. 550.) However, as we have previously held, a municipality has the power to enter into employment contracts with its employees, and the irregular exercise of that power does not entitle the City to accept its employees labor without giving them the full compensation promised. *Eertmoed v. City of Pekin* (3d Dist.1980), 83 Ill.App.3d 362, 39 Ill.Dec. 351, 404 N.E.2d 942.

We also observe that rights to lifetime life and medical insurance benefits have, in effect, "vested" for those retired employees who are union members as well as for plaintiffs. To deny plaintiffs their vested rights while paying benefits to union members would be discriminatory and might raise a constitutional question concerning impairment of contract rights.

The City also argues that any agreement with non-union employees was void because there was no formal, recorded action by the City Council but rather some sort of "secret" action. Plainly it was a matter of public record that the City Council appropriated the money to pay insurance benefits for these plaintiffs, after their retirement and until November of 1987. That was hardly "secret" action. Also, the union collective bargaining agreement expressly provided for such lifetime retirement benefits, and it was no "secret" that non-union employees had been promised the same benefits as union employees. The record does not support the City's contention, and the trial court's finding that the City had agreed to provide non-union employees with the same benefits as union employees was not contrary to the manifest weight of the evidence. Furthermore, the evidence is more than sufficient to establish that these lifetime benefits were a part of the compensation for the work performed by these plaintiffs. The 1987 ordinance of the City Council purporting to change the benefits for retired persons will apply only to those non-union employees retiring after the effective date of that ordinance. The City was properly held estopped to refuse to pay the agreed benefits to plaintiffs. The order of the circuit court of LaSalle County is affirmed.

Dell v. City of Streator, 193 Ill.App.3d at 254. Similarly here the City cannot in good

faith induce its employees to understand their entitlement as lifetime healthcare coverage, accept the benefit of their service over their lifetimes, then dump them during retirement, especially when pre 4/1/86 hires can cannot qualify for Medicare.

The enforceable contract or estoppel benefit also is not limited to what state law *requires*; the protection applies to whatever benefit the public employer legally provides to participants in its annuity and benefit plans.

As *Matthews v. CTA* 2014 IL App (1st) 123348[35] set out, in un-dismissing the participants' claims against the CTA, as distinct from the separate Healthcare Trust established by the collective bargaining agreement there:

> ¶84. …..Thus, under the specific terms of the retirement plan agreement, the CTA has no obligation to make any contributions other than those set forth in the retirement plan agreement.
> ….
> ¶85. …. Accordingly, the terms of the retirement plan agreement contradict plaintiffs' claims that the CTA had an obligation to pay retiree health care benefits.. …
> ¶86 All is not lost for plaintiffs, however. Although the CTA does not have a contractual or statutory obligation to pay for retiree health care benefits, plaintiffs have alleged that the CTA nevertheless continued to pay for retiree health care until 2009 and, at this early stage of the proceedings, "we accept as true all well-pleaded facts and all reasonably drawn inferences from those facts in favor of the plaintiff." *Doe*, 213 Ill.2d at 28. As will be explained later in our opinion, plaintiffs' allegations are sufficient to state a cause of action for promissory estoppel and declaratory judgment as we cannot find that it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Feltmeier*, 207 Ill.2d at 277-78. Thus, while the trial court correctly granted the CTA's motion to dismiss with respect to the majority of the claims against it, those two counts remain and should not have been dismissed.

Thus, whether enforced under the Constitution or principles of contract or estoppel, this Court's interpretation of the benefits protected as limited, and strictly so, to the obligations contained in

[35] Appeal pending before Illinois Supreme Court No. 117638, 117713, 117728 cons; argued May 14, 2015.

the Pension Code 1983 and 1985 provisions, which explicitly impose only duties on the Funds, ignores that the City's obligations to provide healthcare to its retirees/Fund participants do not rest solely on whether they are directed in the Pension Code. The City's obligation, once it provided benefits to its retiree participants, continues[36]. That is *Kanerva*. Similar to the State's establishing its healthcare obligations by the legislature's enacting a law; the City did the same by its ordinances establishing and the Plan, under which it was the insurer, providing the benefit of coverage at the rate of the Police and Fire subsidies. That is precisely what James McDonough testified.

As well, the City did, by its May 2013 declaration, voluntarily subject itself to the obligation of providing annuitant healthcare, and may not thereafter diminish it for participants on that date.

[36] There was also no reservation of right to the City to terminate or amend the plan. The Plan's language is that coverage terminates if the plan terminates, (Plan Handbook at C632) does not mention what rights the City had to terminate the Plan (if indeed, Post-*Kanerva*, such a right could be effective). Nonetheless, the ERISA decisions make clear that such a reservation would have to be clear and unequivocal:

From 2005 American Bar Association The Brief, THE EMPLOYER GIVETH AND TAKETH AWAY, RETIREE HEALTH BENEFITS UNDER ERISA-GOVERNED HEALTH PLANS, By Helen M. Kemp, The following are examples of typical unambiguous reservation of rights provisions that courts have held negate any inference that the employer intended for *benefits* to vest:

1. "This plan can be amended at any time, without consent of the insured employees or any other person having a beneficial interest in it."
2. "The coverage described here may be amended, revoked or suspended at the Company's discretion at any time, even after your retirement."
3. "The Plan Sponsor and your employer intend to continue the Plan indefinitely. Since future changes and conditions cannot be foreseen, we do reserve the right to suspend, terminate or modify the Plan at any time when deemed to be in the best interest of the participating member firms."

The City Plan contains no such language.

IV. All of the Applicable 1989 and Subsequent Pension Code Healthcare Amendments are Invalid, Unconstitutional Provisions, Leaving the 1983 and Possibly 1985 Amendments as the Still Applicable Provisions

The 1989 and subsequent versions of the healthcare statutes all share three invalidating aspects.

1. Labelling Annuitant Benefits as Not Protected. First, as actually recognized by the Appellate Court, the 1985, 1989 and subsequent amendments, all purport to create benefits that are not protected by the Constitution. Judge Cohen has already recognized this as "unenforceable" because, per *Kanerva,* the limitation is unconstitutional. A 2, C 00567, December 3, 2015 Order at 9:

> The 1985, 1989, 1997 and 2003 amendments to the Pension Code all contained language providing that the healthcare plans were not to be construed as retirement benefits under the Pension Clause. Our supreme court has now unequivocally held that healthcare is a benefit of membership in a pension or retirement system and is protected by the Pension Clause.
>
> Defendants do not cite to any authority holding that the General. Assembly may avoid the application of the Illinois Constitution by inserting exemption language within a statute.
>
> Under Kanerva, healthcare benefits are covered by the Pension Clause. The amendments' language to the contrary is not enforceable. The General Assembly cannot erase the constitutional rights of the annuitants by statute.

2. Invalid "Special Legislation". Second, they are all invalid "special legislation"[37] because, different from all the rest of the provisions in each Fund's Pension Code Articles 5, 6, 8 and 11 (which create Funds in Cities with populations above 500,000), the amendatory

[37] Article IV, §13 - Special Legislation

> The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

provisions provide healthcare only to annuitants “by reason of employment by” a named City: “the City of Chicago”.

As applied, this invalidates laws whose terms explicitly limit their application to an identified locality or date[38]. Accordingly, Illinois laws (including these four Annuity and Benefit Funds) are customarily crafted as applying to public entities, determined by defined population numbers; such as, above 500,000, or some other figure. While the conditions of applicability may exist only in Chicago, nonetheless the law is valid if it operates "uniformly throughout the state in all localities and on all persons in like circumstances and conditions." *Rincon v. License Appeal Comm.*, 62 Ill.App.3d 600, 605 (1st Dist., 4th Div. 1978) (upholding dramshop provisions applicable only in municipalities with over 500,000 population); quoting from *People Ex Rel Vermilion County Cons. Dist. v. Lenover*, 413 Ill.2d 209, 217 (1969).

In contrast, P.A. 86-273 and its successor statutes (see A17-49, C 1258-1299), invalidly provide for group health benefits only for persons receiving an annuity "by reason of previous

[38] *People ex rel. East Side Levee and Sanitary Dist. v. Madison County Levee and Sanitary Dist.*, 54 Ill.2d 442, 447 (1973) (invalidating legislation applicable only to sanitary district meeting stated criteria on December 22, 1972); *Lee v. City of Chicago*, 31 Ill.2d 252, 255 (1964) (invalidating statute conferring a benefit upon policemen listed on a particular date's pledgibility roster). Contrast with *Lee v. Retirement Bd. of the Policemen's Assn. and Benefit Fund*, 22 Ill.App.3d 600, 606-7 (1st Dist. 1974) (upholding constitutionality of statute computing benefits for employees of cities with a population in excess of 500,000); *Gaca v. City of Chicago*, 411 Ill. 146 (1952) (obligation of City of Chicago to indemnify police, application to municipalities greater than 50,000); *Matthews v. City of Chicago*, 342 Ill. 120, 132 (1930) (population classification valid if it applies to all that are now or may hereafter come within its terms, whether the condition currently exists in one place or many.); *Devine v. Commrs. of Cook County*, 84 Ill. 590 (1877); *Pettibone v. West Chicago Park Commrs.*, 215 Ill. 304 (1905)(invalidating law applicable only to any town “now” falling within applicable definition),

With that preface, the statutes’ providing group health benefits only for persons receiving an annuity "by reason of previous employment by the City of Chicago" are unquestionably invalid. This is all rather strikingly highlighted by the fact that the provisions all appear within Illinois Pension Code Articles otherwise validly applicable only "in each city of more than 500,000 inhabitants." Pension Code §§-101, 6-101, 8-101 and 11-101.

employment by the City of Chicago"[39] and are unquestionably invalid. This is all rather strikingly highlighted by the fact that the provisions all appear within Illinois Pension Code Articles otherwise validly applicable only "in each city of more than 500,000 inhabitants." Pension Code §5-101, 6-101, 8-101 and 11-101.

3. Time limited Pension Benefits. Third, it has never been determined whether the creation of a time-limited retirement benefit (e.g., P.A.86-273's application through 1997) ends the benefit at that date, or serves as a floor which cannot be validly diminished or terminated, for those who were participants during its applicable period.

V. Nor Can the City Legally Discriminate Among "Participants" Based on When They Retired.

Under our Constitution, Participants' interests vest with their participation in a Fund, not just at their retirement. Thus, protected benefits are those that exist during their participation; not just those in effect at their retirement. An employee's contractual right in his pension plan vests at the time he becomes a member of the system. *Kraus v. Board of Trustees*, 72 Ill.App.3d 833 (1979). The terms of this contractual relationship are governed by the version of the Pension Code in effect at the time the employee became a member of the system (*Di Falco v. Board of Trustees of the Firemen's Pension Fund*, 122 Ill.2d 22 (1988)), and may not be thereafter reduced for that employee. *Buddell v. Bd. Of Trustees, SURS*, 118 Ill.2d 99, 106 (1987) (invalidating Pension Code amendment retroactively abolishing entitlement to service credit previously available, if not yet elected on enactment date.).

Nor can the City's declared policy of providing lifetime healthcare "confined to the *Korshak* and *Window* sub-classes" [i.e., pre-8/23/89 *retirees* only], while excluding coverage for

[39] New Pension Code §§5-167.5, 6-164.2, 8-164.1 and 11-160.1, all as amended by P.A. 86-273

others who were participants on 8/23/1989, be legal either. When the City declared its commitment to provide arguably unchanged healthcare to those who could claim under the statutes in effect on 8/23/1989 (i.e., "not because of the 1983 or 1985 amendment, but because in 2013, the City voluntarily committed to do so for these older retirees") actually seals its fate. Since it is "participants", not "retirees", who are protected by the Constitutional protection of the benefits as they exist during one's participation, the City cannot pick only some subgroups of participants to obligate itself to. In obligating itself to any participants on that date, it necessarily obligated itself to all participants on that date, whether active or already retired. Otherwise, it would also violate our State's equal protection clause as well.

Conclusion

For the above reasons, (a) the case should be certified to proceed as a class action for the described classes, and (b) participants in each class, protected by the Illinois Constitution, principles of contract and estoppel, are entitled to judgment declaring their rights to a lifetime healthcare coverage under the best terms in effect during their participation in one of the City's four Annuity and Benefit Plans against both the City of Chicago and the Trustees of their respective Annuity and Benefit Funds.

Prayer for Relief

Wherefore, Plaintiffs, on behalf of themselves and the class members, demand judgment against the City of Chicago and the defendant pension Funds as follows:

A. **Certify the case as a class action** for City of Chicago Retiree Healthcare Plan Participants, with the following proposed subclasses:

   i. Korshak subclass-12/31/1987 annuitant participants,

   ii. Window subclass-retired Post-Korshak, but pre-8/23/1989,

   iii. Pre-8/23/1989 Hirees,

   iv. And Pre-4/1/1986 Hirees;

   v. Participants –First hired date after 8/23/1989;

   all represented by undersigned Counsel;

B. Declare the pre 8/23,1989 retiree participants' entitlement to resumption of the fixed-rate subsidized $55/$21 monthly premium retiree healthcare plan, fully subsidized by the Funds;

C. Declare that PA 86-273 and PA 90-32 are (i) invalid to the extent the statutes purport to either create a class of non-protected benefits of membership or (ii) invalid as applied to the class to convert existing protected benefits into non-protected benefits;

D. Declare that the 1989 and later statutory annuitant healthcare statutory amendments are invalid, for (i) unconstitutionally stripping the benefits of the protections of Article XIII, Section 5, (ii) invalidly diminishing their benefits by their time limitations, and (iii) invalidly limiting their benefits to persons who are annuitants "by reason of employment by the City of Chicago".

E. Enjoin the City and Funds from reducing the group health benefits provided to class members from the level any of them have been provided as a participant, from when plaintiffs and the class members began their participation in the Plan to the present and order the City to restore the appropriated funds for annuitant healthcare to their 2013 levels;

[F. Order the City to restore the premium rates charged back to the levels charged in the lowest levels for any participant, and refund all premiums collected in excess of those amounts]

[G]. Award Plaintiffs' Attorneys fees and costs;

[H]. Any and all other relief the Court deems just and proper.

Dated: March 16, 2016.

By: /s/ Clinton A. Krislov
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EXHIBITS – As Attached to the Third Amended Complaint

EXHIBIT 1	Korshak Police Fund Trustees Minutes, May 11, 1987
EXHIBIT 2	Korshak original city complaint, Oct 19, 1987
EXHIBIT 3	Korshak Funds counterclaims
EXHIBIT 4	Korshak counterclaim by intervenors participants
EXHIBIT 5	Korshak, May 16, 1988 transcripts
EXHIBIT 6	City of Chicago "Your City of Chicago Annuitant Medical Benefits Plan"
EXHIBIT 7	Police Fund -Your Service Retirement Benefits
EXHIBIT 8	A-E Progression of Pension Code Group Healthcare Statutes
EXHIBIT 9	Testimony by Ronald Picur
EXHIBIT 10	Korshak December 15, 1989 settlement between City and Funds
EXHIBIT 11	Korshak Memorandum approving City-Funds Settlement over objection of participants
EXHIBIT 12	Illinois Appellate Court June 15, 2000 order restoring case to active calendar
EXHIBIT 13	Korshak 2003 Settlement
EXHIBIT 14	Agreed Audit and Reconciliation Agreement order
EXHIBIT 15	Korshak Pre-Retirement Seminars 1987
EXHIBIT 16	Example of City Appropriation for Annuitant Healthcare

EXHIBIT 17 Barbara Malloy testimony
EXHIBIT 18 McDonough Declaration and Testimony
EXHIBIT 19 Kordeck Declaration and Testimony
EXHIBIT 20 December 3, 2015 Memorandum and Opinion by Hon. Neil H. Cohen
EXHIBIT 21 May 13, 2013 City Letter regarding plan to phase out annuitant healthcare coverage
EXHIBIT 22 Transcript of December 23, 2015 Hearing on Plaintiffs' Motion for Preliminary Injunction
EXHIBIT 23 List of Named Plaintiffs
EXHIBIT 24 Minutes of Proceedings, PABF, June 27, 1985
EXHIBIT 25 Comparison of City Appropriations and Expenditures for Annuitant Healthcare 2012 -2016
EXHIBIT 26 Chart of City Rate Changes for 2016