

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

CITY OF CHICAGO a municipal))
corporation,))
))
Plaintiff,))
)) No. 01 CH 4962
vs.))
)) (Originally
MARSHALL KORSHAK, et al.,)) 87 CH 10134)
(Police, Fire, Municipal an))
Laborers' Funds Trustees,)))
))
Defendants,))
))
and))
))
MARTIN RYAN, et al.,))
(Participants' Class,)))
))
Intervening))
Plaintiffs-Appellants.)))

Record of proceedings had at the
hearing of the above-entitled cause, before the
Honorable NEIL H. COHEN, one of the Judges of said
Court, on August 9, 2017, in Room 2308, Richard J.
Daley Center, Chicago, Illinois, commencing at 10:18
a.m.

A P P E A R A N C E S

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24

1 THE COURT: Underwood, Korshak.
2 MR. KRISLOV: Good morning, Your
3 Honor. Clint Krislov. With me is Ken Goldstein on
4 behalf of the participants.
5 THE COURT: Good morning.
6 MR. PRENDERGAST: Richard Prendergast
7 on behalf of the --
8 THE COURT: Speak up so the court
9 reporter can hear you and everybody in the courtroom
10 can hear you.
11 MR. PRENDERGAST: Richard Prendergast
12 on behalf of the City of Chicago.
13 MS. NABER: Jennifer Naber on behalf
14 of the City of Chicago.
15 MR. DONHAM: Cary Donham on behalf of
16 the Laborers' Fund.
17 MR. D. KUGLER: David Kugler on behalf
18 of the Police Fund.
19 MR. J. KUGLER: Justin Kugler on
20 behalf of the Police Fund.
21 MS. BOECKMAN: Sarah Boeckman and Ed
22 Burke on behalf of the Municipal Fund and the
23 Firemen's Annuity and Benefits Fund.
24 THE COURT: All right. So as I

1 understand it, we're here for two reasons.
2 First, there is a motion for class
3 certification that the plaintiffs have -- the
4 Underwood plaintiffs have submitted.
5 And there's also the issue about
6 jurisdiction and what jurisdiction I have, if any.
7 And I've received briefs on the jurisdiction aspect.
8 I've reviewed the case law that was given to me,
9 especially Justice Simon's recent opinion.
10 But first let's deal with the motion
11 for class certification since that's a different
12 kettle of fish, so to speak.
13 What is the status of the decision
14 on -- by Justice Simon? Has it been --
15 MR. PRENDERGAST: The petition for
16 rehearing was denied three days ago.
17 MR. KRISLOV: I can answer.
18 THE COURT: It's all right. It
19 doesn't have to be you all the time, Clint. He's
20 answering the question.
21 MR. KRISLOV: Okay.
22 MR. PRENDERGAST: The petition for
23 rehearing was denied a couple days ago.
24 THE COURT: Okay.

<p style="text-align: right;">Page 6</p> <p>1 MR. PRENDERGAST: And the mandate is 2 not issued. 3 THE COURT: When will the mandate -- 4 MR. PRENDERGAST: 35 days. 5 THE COURT: 35 days. 6 MR. PRENDERGAST: Provided they don't 7 file a petition for leave to appeal in the meantime. 8 If they file a petition for leave to 9 appeal in the meantime, the matter will stay on 10 appeal. 11 One of the issues they raise on the 12 appeal in both -- and in their petition for 13 rehearing -- was class certification. 14 They didn't get -- they requested the 15 court direct you to do so. The court didn't do so. 16 Presumably, they'll raise that issue again in the 17 Supreme Court. 18 But the point is, that issue is still 19 in the appellate court, as you've previously upheld, 20 until the mandate issues the decisions and gets us 21 back here. 22 THE COURT: Sure. Let's talk about 23 that. 24 There is case law, and the plaintiffs</p>	<p style="text-align: right;">Page 8</p> <p>1 to file is pending? 2 MR. KRISLOV: The issue -- our 3 position is that you can and should proceed with -- 4 THE COURT: Forget about the should. I 5 know your argument, "should." What about can? 6 MR. KRISLOV: We did not appeal the 7 issues that were -- your rulings that were appealed 8 did not include class certification. 9 It is true that we -- in our brief to 10 the appellate court, we said part of the problems 11 with this is that is hasn't been certified. And so 12 we would ask if you would remand to tell the judge to 13 go ahead and certify. 14 That issue has never been addressed in 15 the appellate court, and it was not one of the -- it 16 was not one -- your ruling was just deferring ruling 17 on class certification while we're seeing what 18 happens. 19 THE COURT: There's only -- let me 20 tell you what my intention is. 21 My intention today is if that hadn't 22 been part of the appeal, that I saw no reason to not 23 go forward asking the City to respond to the motion 24 for class certification.</p>
<p style="text-align: right;">Page 7</p> <p>1 have cited it, that I can go forward with certain 2 aspects of this case that doesn't impinge on the 3 matters presently pending on appeal. 4 If the class certification issue is 5 pending on appeal, then I think that I am stuck, and 6 there's nothing I can do about that. 7 Would you agree with that, Clint, or 8 not? 9 MR. KRISLOV: No. We did not -- that 10 was not part of what was appealed. That is a part 11 of -- in our appellate -- and we will, just -- if 12 Rich is done explaining what I'm doing, we will 13 petition for leave to appeal. We are due 14 September 7th, and we will file that. 15 THE COURT: All right. So what's your 16 position -- 17 MR. KRISLOV: On class cert- -- 18 THE COURT: -- on letting the judge 19 finish a question? 20 MR. KRISLOV: I'm all for that. 21 THE COURT: We agree. 22 What is your position on whether I can 23 require the City to file a response to your motion 24 for class certification while the PLA that you intend</p>	<p style="text-align: right;">Page 9</p> <p>1 If it has been raised, or if there's 2 some reason with the City thinks I should not, then 3 I'll listen to it. 4 But I quite agree with Mr. Krislov's 5 submission that it's time for that to happen and 6 perhaps should have happened before. 7 But I'll listen to the City's argument 8 about why I should or should not argue it -- strike 9 that -- order it now. 10 MR. PRENDERGAST: Well, there are two 11 that come off the top of my head. 12 Number one, counsel is not correct. 13 They did not raise this on appeal. They specifically 14 asked for the court to direct this Court to certify a 15 class. 16 THE COURT: So let's talk about that 17 for a second. 18 I'm predisposed to do that anyway. I 19 don't need to wait for a direction from the Supreme 20 Court telling me to do that which -- if this 21 continues to be viable, viable issues on remand -- I 22 don't need for them to tell me to do that which 23 should be done. 24 What's the other reason?</p>

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1 MR. PRENDERGAST: Well, let me just
2 speak to that.
3 THE COURT: Sure.
4 MR. PRENDERGAST: My point is,
5 irrespective of what the Court's inclinations are,
6 it's a jurisdictional issue.
7 If the case is still in the appellate
8 court, which it is until the mandate issues, and it
9 will be for quite a while now, because he's just told
10 you he's going to file a petition for leave to
11 appeal --
12 THE COURT: Sure.
13 MR. PRENDERGAST: Then if that issue
14 was raised, and it was raised, and relief was sought,
15 that that issue, that remains in the appellate
16 process.
17 You do not want a case where -- you do
18 not want a situation where you have an issue that's
19 on appeal and at the same time the Court is ruling on
20 it in the circuit court.
21 THE COURT: I agree.
22 MR. PRENDERGAST: That has
23 consistently been your ruling.
24 THE COURT: I agree.

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1 MR. PRENDERGAST: The other thing,
2 Judge, is that there's a reason why they filed a
3 petition for rehearing and a reason why they're going
4 to seek a petition for leave to appeal, and that has,
5 in part, to do with the appellate court rule on what
6 the remaining relief for that is after the terms of
7 the '83 and '85 statutes, and in particular, the
8 question of how the appellate court parsed the
9 classes here.
10 THE COURT: Or didn't.
11 MR. PRENDERGAST: Or didn't. And so
12 now --
13 THE COURT: Have you requested a PLA
14 as well, filed a PLA?
15 MR. PRENDERGAST: No, we did not. We
16 didn't file a petition of rehearing, and I've not
17 been instruct to file a PLA. If it's filed --
18 THE COURT: So you're accepting
19 Justice Simon's and Harris' and Maureen's opinion
20 that all four classes should be treated the same way?
21 MR. PRENDERGAST: Well, no. What
22 we're going to do is to see what the Supreme Court
23 does with the PLA. We're not going to -- I do not
24 have any information from the appellate division at

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1 this point that they're going to file a PLA. They
2 did not file a petition for rehearing.
3 But on the other hand, if an appeal
4 were granted, there might be any number of issues
5 that would be raised by the City with respect to that
6 opinion.
7 I don't want to stand before Your
8 Honor this morning and weave, so I'm not going to do
9 that.
10 THE COURT: Okay.
11 MR. PRENDERGAST: But there is this
12 issue of this -- what Class 4 even consists of now.
13 And, consequently, until that issue is resolved, and
14 that issue is clearly on appeal until the mandate
15 comes back, we really can't define what the classes
16 are here.
17 THE COURT: Then it's tough to deal
18 with the class certification.
19 MR. PRENDERGAST: Exactly, because we
20 don't -- who are you going to send the notice to?
21 THE COURT: And my original opinion
22 had some factual questions left with regard to
23 Subclass 3 to be resolved.
24 So I see the issue you're raising.

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1 MR. PRENDERGAST: My point is that the
2 class certification is something that the plaintiffs
3 have sought in the U.S. District Court and the
4 Seventh Circuit Court of Appeals, before you, before
5 the appellate court. It's been raised a variety of
6 times. The day will come when that bridge has to be
7 crossed.
8 But what's before you today was, we're
9 just -- the specific discrete issues that were
10 identified for purposes of the July 31 hearing had to
11 be continued to today.
12 And those issues are whether you have
13 jurisdiction to entertain the relief that they're
14 seeking and the additional question of what -- where
15 we are in reconciliation.
16 THE COURT: Yes. But we also have
17 before us the class certification issue raised by
18 Mr. Krislov's second motion.
19 MR. PRENDERGAST: Yes. And it's
20 interesting that it's only been two hearings ago that
21 you granted our motion to vacate a briefing schedule
22 on class certification.
23 THE COURT: I know that.
24 MR. PRENDERGAST: And here again, we

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1 have one more motion for class certification.
2 THE COURT: He's entitled to do
3 whatever he wants to do, Richard.
4 MR. PRENDERGAST: He sure can.
5 THE COURT: He can file anything he
6 wants.
7 And as I said, I'm sensitive to his
8 concerns and the concerns of letting the class know
9 what's going on. But we got to know who the class is
10 for that to happen.
11 MR. PRENDERGAST: We certainly do. We
12 have to know who they are.
13 THE COURT: I'm sensitive to the folks
14 to know what's going on.
15 MR. PRENDERGAST: Your Honor, let me
16 speak clearly.
17 If Mr. Krislov wants to say I'm wrong,
18 he can say I'm wrong. But he keeps this class
19 informed regularly through the internet.
20 THE COURT: That may be, but we're not
21 talking about that. We're talking about as a legal
22 matter and having them defined. That's a separate
23 issue.
24 So, Clint, you get last ups on the

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1 motion for class certification.
2 MR. KRISLOV: Thank you, Your Honor.
3 Number one, we're in communication
4 with about 3- to 500 retirees, many whom are here. I
5 get calls -- I speak with retirees every day. One
6 who has been here all the time in the past, Chuck
7 Lamanta, couldn't make it today, because in the
8 meantime, he developed kidney cancer. He's in the
9 hospital.
10 THE COURT: Clint, Clint, I admonish
11 you to respond to the legal argument.
12 MR. KRISLOV: I am. I am.
13 THE COURT: It's not time -- this is
14 not a jury trial, even though your jury is sitting
15 there.
16 So talk to me about the legal issue or
17 don't, in which case I'll rule.
18 MR. KRISLOV: Here's the relevance.
19 We do have communications with about 3- to 500
20 annuitants.
21 THE COURT: That's not what I'm
22 talking about.
23 MR. KRISLOV: Well, Mr. Prendergast
24 has said --

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1 THE COURT: That's not what I'm
2 talking about. If you're doing it, you're just doing
3 your job and doing it well. That's great.
4 MR. KRISLOV: Class certification
5 involves giving notice to all the members of the
6 class so that they have notice of what's going on.
7 There are, and Ms. Naber will agree --
8 THE COURT: Who are the members of the
9 class? That's not defined --
10 MR. KRISLOV: Well, it is --
11 THE COURT: -- yet.
12 MR. KRISLOV: It can be. It can be,
13 because it is -- every one -- certainly, if all you
14 go by is just --
15 THE COURT: Justice Simon has one
16 opinion; I had another.
17 MR. KRISLOV: Right.
18 THE COURT: I, of course, will follow
19 -- let me finish talking.
20 I, of course, will follow the rules
21 laid down by my superiors. But that rule is not yet
22 in stone, and that's subject to review.
23 MR. KRISLOV: Here's where I disagree
24 with you.

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1 You have made decisions with respect
2 to certain defined groups --
3 THE COURT: Yes.
4 MR. KRISLOV: -- which we call Class
5 1, Class 2.
6 THE COURT: Yes.
7 MR. KRISLOV: The class certification
8 is not that you find the substantive merits of each
9 group's claims and then certify the class.
10 The reason the class certification
11 goes in the order it does is so that all members of
12 the class who are affected can get notice of what's
13 going on.
14 THE COURT: But that's still not
15 defined. Class 3 is not defined by my order. It is
16 by Justice Simon's.
17 MR. KRISLOV: Well, it is -- we're
18 talking about all the people who are affected. It
19 isn't dependent upon whether they're Class 1, Class
20 2, Class 3, Class 4, or Class 3A because they start
21 working -- it doesn't matter.
22 The whole idea, the purpose of the
23 vehicle is to give notice to all the people whose
24 rights may be affected by the decisions of the court.

5 (Pages 14 to 17)

1 And that's why class certification is,
2 under the rules, required to be done as soon as
3 practicable. That way, all the people have notice of
4 what's going on, they can follow it, not follow,
5 communicate with counsel, do whatever, or sit tight,
6 or opt out, which is their right under Illinois law.

7 So that waiting until their rights are
8 determined is putting the cart before the horse, and
9 it's all complicated after all this -- Mr. Dede over
10 here, who has -- the firemen's union is showing up
11 and has advised us that they want to intervene on
12 behalf of fire retirees and employees, that just
13 invites -- you know, if he's -- if he plans on
14 intervening to help us, he's fully welcome.

15 But the problem of having -- the
16 problem of having -- well, if --

17 THE COURT: Clint, keep your eye on
18 the ball I threw to you. I'm not even talking about
19 Mr. Dede right now.

20 Hi, Mr. Dede. How you?

21 MR. DEDE: Good to see you.

22 THE COURT: Mr. Dede, have you filed a
23 motion to intervene?

24 MR. DEDE: Not yet, Judge.

1 THE COURT: Okay. Nice to see you.

2 MR. KRISLOV: The problem is that
3 until it's certified, the class members don't have
4 notice.

5 A case will proceed determining what
6 the rights of the various class members are, but they
7 need to have notice of what -- of the proceedings
8 that affect them.

9 THE COURT: And tell me --

10 MR. KRISLOV: Undermining that --

11 THE COURT: No, stop.

12 Now, tell me what I can do, what I
13 have jurisdiction to do.

14 I agree with you. I've just said

15 that. I agree with you. I want to do this. But why
16 am I -- I feel as if I'm stuck in amber right now and
17 can't do anything because of the process of the
18 appeal.

19 MR. KRISLOV: Okay. The reason for --

20 THE COURT: So tell me why I can't.

21 MR. KRISLOV: Because the only thing
22 that is appealed was that order that made findings
23 on, I believe, six things. And you made findings
24 there is no just cause to delay enforcement or appeal

1 of this order.

2 And that's what you lack jurisdiction
3 over, if you will. That's all. You are -- and Mr.
4 Prendergast, if he wants to tell me I'm wrong, he
5 can, but I don't think he will -- you remain with
6 jurisdiction over the whole rest of the case.

7 THE COURT: It's a 304(a) appeal that
8 we're on, right?

9 MR. KRISLOV: Yes. It's no just cause
10 to -- it's making the findings -- I think it's
11 304(a).

12 THE COURT: It is. So my
13 understanding of 304(a) is that it doesn't deprive me
14 of jurisdiction to go on with the case and
15 substantive matters that have nothing to do with that
16 which is on appeal, because they don't want to stop,
17 the appellate court doesn't want to stop the train
18 from moving on.

19 Tell me, Mr. Prendergast, once again,
20 so I understand your point of view, as to why
21 briefing on the certification motion is going to stop
22 is something that I shouldn't do.

23 MR. PRENDERGAST: Well, let me say,
24 from a practical standpoint, we're not sure whatever

1 the Supreme Court's going to do with his PLA, and
2 then we're finished with the appeal.

3 THE COURT: Yes. Well, if that's the
4 case, why shouldn't we start the briefing schedule
5 now? It doesn't mean I'm ruling on anything. It
6 just means we're putting together a briefing
7 schedule.

8 MR. PRENDERGAST: Well, in part,
9 Judge, because if they grant the PLA, that may have
10 significant impact on what the classes consist of and
11 what the claims are, and then we're going to have --
12 we'll have briefed the class certification.

13 THE COURT: So let me ask you a
14 question about that.

15 Let's assume that the classes are
16 going to be restricted after the appeal, per my
17 original order and against Justice Simon's.

18 What's the downside of letting
19 everybody know who -- that they may be affected by
20 this? Take the best case scenario from your point of
21 view.

22 How does it hurt anybody from knowing
23 what's going on, that they either are or may be a
24 class member?

1 MR. PRENDERGAST: Because I've never
2 seen a notice for class certification go out --

3 THE COURT: Saying "you are" or "may
4 be."

5 MR. PRENDERGAST: -- that didn't
6 define a class. And that is the whole point.

7 So they get this notice, they don't
8 know if they're in it or out of it, because I don't
9 even know whether they're in it or out of it. And
10 we're talking about --

11 THE COURT: How many people are we
12 talking about, potentially?

13 MR. KRISLOV: Depending on how you
14 count, probably about 30,000.

15 THE COURT: So the expense involved
16 with notifying 30,000 people who may or may not have
17 to be notified is rather large, is it not?

18 MR. KRISLOV: No, it's actually quite
19 small. And two reasons. One is, if notice goes out
20 to everybody, we pay for it. Costs about a dollar an
21 envelope.

22 The fact is, the defendants are all in
23 communication with all of these people regularly, the
24 City, with everybody that's an employee and the --

1 THE COURT: Well, that may be, but
2 that's not discrete enough to satisfy me or the class
3 action requirement and notice.

4 MR. KRISLOV: Oh, yes, it is, because
5 to the extent --

6 THE COURT: No, it's not. So let's
7 deal with what Mr. Prendergast is talking about.

8 MR. KRISLOV: Well, the Funds
9 communicate each month with their retirees, and
10 they're --

11 THE COURT: You're going over here,
12 Clint. Talk about what Mr. Prendergast talked about,
13 which is that the definition of the class is not yet
14 discrete. It hasn't yet been decided.

15 MR. KRISLOV: The definition of the
16 overall class is everyone who is a participant in the
17 Funds, whether it's Class 4, which -- the subclasses
18 are going to result from different rights that they
19 may have.

20 And their definitions, like people who
21 started before April 1 of '86 and never qualified for
22 Medicare, their class -- they will probably be a
23 Subclass 3A.

24 But the overall class that is affected

1 is everybody who's a participant now in one of the
2 Funds.

3 THE COURT: All right. My concern is
4 that this is on appeal, and that I am told not to do
5 that which maybe resolved by the appeal, and,
6 therefore, it seems to me that the motion for class
7 certification, as much as I'd like it to go forward,
8 should not go forward right now, since the issue may
9 be decided by the Supreme Court, and since you've
10 asked for them to direct me to do that.

11 That was your call, and that's fine.
12 And I understand why you would do that, because you
13 seem frustrated by my failure to have ordered that
14 beforehand, and that's understandable, too, from your
15 point of view.

16 But it is on appeal, and so we will
17 stay with that appellate process, see what happens,
18 and expedite it as soon as possible.

19 MR. KRISLOV: Can we have -- I'm
20 trying to decide whether to ask you to just continue
21 deferring or just deny it so we can take that issue
22 up on appeal as well.

23 THE COURT: No, you may not. Because
24 I don't manufacture jurisdiction for your

1 convenience. I don't deal with legal fictions. I
2 deal with facts. And what you're asking me to do is
3 give you an order that allows you -- which is
4 fictional, which allows you to appeal. And I haven't
5 decided it. So I'm not going to deny that which
6 you've asked me to grant just for your convenience.

7 MR. KRISLOV: May I have one last
8 word?

9 THE COURT: No. I've decided it.
10 Let's go on.

11 MR. KRISLOV: Okay. We actually have
12 more than -- the items that we have are
13 jurisdiction --

14 THE COURT: We're doing that next.

15 MR. KRISLOV: -- whose order is to be
16 entered from the March hearing; the City's report on
17 the reconciliation and audit process, both for 2013
18 and for the rest of the years; and --

19 THE COURT: Which is inextricably
20 bound with the jurisdiction argument.

21 MR. KRISLOV: Uhm --

22 THE COURT: Yes.

23 MR. KRISLOV: I'm just listening. I'm
24 not fighting. I'm just trying to make sure I get all

1 of them covered.
 2 And the Funds to report on their -- on
 3 what they are doing, especially Police and Fire, to
 4 provide --
 5 THE COURT: I didn't think that was up
 6 today.
 7 MR. KRISLOV: They are supposed to
 8 report on what they're doing to provide healthcare
 9 coverage.
 10 THE COURT: Well, we'll deal with
 11 things in my order, which is jurisdiction is next.
 12 MR. KRISLOV: Okay.
 13 THE COURT: Anyone else? Anyone want
 14 to talk about it, other than that which you've
 15 submitted?
 16 MR. PRENDERGAST: Not other than what
 17 we've submitted, other than what the Court recited,
 18 exactly what we're talking about.
 19 THE COURT: Sure.
 20 MR. PRENDERGAST: The parties disagree
 21 about what the City promised in its 2013 letter, to
 22 provide after termination of the then-existing
 23 coverage --
 24 THE COURT: Speak up, Richard.

1 MR. PRENDERGAST: -- and plaintiffs
 2 want this Court to permanently enjoin the City from
 3 departing from the obligations the City believes the
 4 City assumed as to the post-December 31, 2013,
 5 period.
 6 But there's no such claim for the
 7 Court with respect to that. No claim is pending
 8 before this Court with respect to what the plaintiffs
 9 want you to do here.
 10 The only jurisdiction this Court
 11 retained is over the Korshak agreement and the 2008
 12 reconciliation order --
 13 THE COURT: Yes, but the appellate
 14 court then told me, once again, that I am to consider
 15 the extension granted by the City as part of the
 16 original plan and part of the original settlement
 17 agreement.
 18 I disagreed with that. I made my
 19 feelings known. Justice Simon, Harris and Maureen
 20 Connors told me I was wrong. I understand the
 21 mandate hasn't issued.
 22 MR. PRENDERGAST: No, that's not --
 23 that mandate has issued.
 24 THE COURT: Okay. Well, then, let's

1 deal with it.
 2 MR. PRENDERGAST: And it's quite easy
 3 to deal with.
 4 The issue that was raised on appeal
 5 was whether or not the 2003 agreement extended --
 6 which was supposed to end in June of 2013, when -- in
 7 the May letter the City extended it to the end of
 8 2013 as to Korshak and Window. The question was
 9 whether or not you had jurisdiction to order
 10 reconciliation for that six-month period.
 11 THE COURT: I understand what that
 12 issue is.
 13 MR. PRENDERGAST: You ruled the City
 14 didn't have to. The appellate court reversed you and
 15 said the City does have to.
 16 THE COURT: Yes.
 17 MR. PRENDERGAST: The City has done
 18 that.
 19 THE COURT: And why did they say that?
 20 MR. PRENDERGAST: Because, they
 21 said --
 22 THE COURT: It was part of the plan.
 23 MR. PRENDERGAST: No. It said because
 24 the agreement --

1 THE COURT: That's why.
 2 MR. PRENDERGAST: Because in the
 3 agreement -- I mean -- I'm sorry. In the 2013
 4 letter, it stated that the reconciliation process
 5 will be extended to the end of 2013 -- or the
 6 agreement would be extended to the end of 2013. That
 7 meant the reconciliation process should be extended
 8 to the end of 2013. And that has happened.
 9 The City has gone through the
 10 reconciliation process as ordered by you and by the
 11 appellate court. And Ms. Naber can speak to that.
 12 But beyond that, there was never a
 13 pleading filed here as to what the reconciliation
 14 obligations are after the 2003 agreement fully
 15 expires, which is at the end of 2013.
 16 THE COURT: So let me ask you a
 17 question. Let me ask you a question.
 18 You did come up with a healthcare plan
 19 with a continued contribution from the City of up to
 20 55 percent of the cost for the plan for the lifetime
 21 of the City retirees after January 1st, 2014, yes?
 22 MR. PRENDERGAST: Yes.
 23 MS. NABER: For Korshak and Window.
 24 THE COURT: Yeah, for Korshak and

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1 Window.
2 What they're asking for is an audit
3 and reconciliation as to just those two groups,
4 Clint, or everybody?
5 MR. KRISLOV: The audit and
6 reconciliation is for those two groups; the audit is
7 for everyone.
8 And they agreed to that.
9 THE COURT: Please, just stop.
10 So just as a practical matter, and I
11 understand it's your position, just to summarize,
12 that because no complaint has ever been filed on this
13 alleged contract starting January 14th, that
14 there's nothing before me, and I have no jurisdiction
15 with regard to that, correct?
16 MR. KRISLOV: Well --
17 THE COURT: To hear that -- or to
18 order an audit and reconciliation.
19 MR. PRENDERGAST: To be clear, the
20 City committed to reconcile for Korshak and Window
21 for '14, '15 and '16 --
22 THE COURT: Okay.
23 MR. PRENDERGAST: And is in the
24 process of doing so. So there's no --

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1 THE COURT: There's no beef about
2 that.
3 MR. PRENDERGAST: There's no beef
4 about that.
5 THE COURT: You're doing that anyway.
6 MR. PRENDERGAST: Yeah. Not because
7 that was part of your original jurisdiction, but
8 because the City voluntarily has chosen to do it.
9 THE COURT: So let me ask you a
10 question. That tees up the question perfectly.
11 If you're doing it for Class 1 and
12 Class 2 post-January 2014, why not do it for
13 everybody?
14 MR. PRENDERGAST: Well, because the
15 commitment for everybody is very different.
16 THE COURT: Regardless of what the
17 commitment is, you do have a commitment to supply
18 certain healthcare benefits to Class 3 and Class 4,
19 whomever, outside of Class 1 and Class 2.
20 And the original opinion talked about
21 the fact that the City, once they accepted an
22 obligation to provide certain healthcare benefits,
23 also had the obligation to audit and reconcile the
24 differences, if it was underpayment or overpayment.

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1 As long as that's the case -- and,
2 again, I'm not talking about the jurisdictional
3 issue. I'm not ordering anything. I'm asking, as
4 long as that's the rule of the appellate court that
5 that's what you're supposed to do, regardless of
6 whether there's a lawsuit that has been filed, and
7 regardless of whether I have jurisdiction in this
8 lawsuit to so order, why aren't you doing it anyway?
9 MR. PRENDERGAST: Because -- we'll let
10 Ms. Naber answer --
11 THE COURT: Just as a practical
12 matter, because you have the obligation to, according
13 to the appellate court.
14 MR. PRENDERGAST: One minor
15 correction.
16 The appellate court never ordered
17 reconciliation beyond the end of 2013.
18 THE COURT: I understand that.
19 But the reason they ordered it until
20 December 31st, 2013, was because you have obligations
21 pursuant to the settlement agreement -- let me
22 finish, Richard.
23 MR. PRENDERGAST: Sure.
24 THE COURT: And pursuant to those

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1 obligations you, indeed, have the obligation to not
2 only audit, but reconcile.
3 Okay. So I think that stands for the
4 principle that when you have obligations, you also
5 have obli- -- to pay, you also have obligations to
6 audit and reconcile.
7 That case dealt with December -- with
8 your obligations up to December 31st, 2013.
9 Clint's request is that you -- strike
10 Clint.
11 My question is, as long as that
12 principle stands, that when you have obligations, you
13 should have obligations to the duty as well -- let me
14 finish -- to audit and reconcile. And you have
15 accepted obligations which you think are not part of
16 the original settlement agreement, push that aside --
17 but there are obligations that you've accepted
18 post-January 2014, for the classes.
19 Why aren't there obligations to audit
20 and reconcile under that? Call that a new plan for
21 the sake of argument. I'm sure Clint does not agree.
22 But let's just call it a new plan so I can
23 distinguish between the two.
24 Why aren't there obligations to audit

1 and reconcile for that that you voluntarily accept,
2 without having to go through this?

3 MS. NABER: So as of January 1st,
4 2014, even the appellate court acknowledged there was
5 a new promise. The City is not backing away from
6 that.

7 The new promise was for Korshak and
8 Window, we'd pay the 55 percent. The City
9 voluntarily this past February said, we've
10 reconciled, because we promised a certain percentage
11 of City support for those individuals.

12 For the rest of the group in that May
13 2013 letter that said what the City was going to be
14 doing as of January 1st, 2014, it made no such
15 commitment to the remaining annuitants. It only
16 said --

17 THE COURT: What commitment did you
18 make for the other classes outside of Windows and
19 Korshak, post-January 2014?

20 MS. NABER: We agreed to provide a
21 transition plan for the next three years --

22 THE COURT: Up until 2017, when it
23 would be phased out.

24 MS. NABER: Correct.

1 And the City would provide some level
2 of support that would decrease over the years.

3 THE COURT: And did you do that?

4 MS. NABER: We provided some level of
5 support. We never promised a certain percentage. We
6 never made any promises that it would be at a certain
7 level.

8 We just said that the City would
9 provide some level, and it would diminish each year,
10 which was not defined.

11 THE COURT: And have you given them
12 notice as to the types -- the level of support that
13 you've given?

14 MS. NABER: We gave them -- what we
15 gave them is we charged them premiums.

16 And so they pay the premiums. That
17 was their -- we determined what we would accept from
18 the annuitants, and the City paid the rest.

19 And it varied over the course of those
20 years for different people. We never made a
21 percentage commitment.

22 So when the City voluntarily said it
23 would do the audit and reconciliation for '14, '15
24 and '16, it said it would audit everyone because

1 everyone was in the plan, but only reconcile or
2 provide refunds if it occurs for Korshak and Window
3 because we gave that 55 percent promise.

4 THE COURT: But here's --

5 MS. NABER: And that's all that --

6 THE COURT: But you gave the other
7 classes something, and it was defined, yes? It
8 wasn't this amorphous, you know, we'll give you what
9 we want, when we want, how we want. You told them
10 what you were going to give them so that they could
11 figure out what they -- where they were going to get
12 money for the rest of their healthcare obligations,
13 yes?

14 MS. NABER: We told them what premium
15 we would charge them, correct. We never said what
16 the City would be paying.

17 So whatever --

18 THE COURT: So you didn't do it in
19 terms of percentage. You just said, we're going to
20 give you a defined amount of money, and the rest is
21 up to you?

22 MR. PRENDERGAST: Yes. And the
23 difference there is, Judge, if you don't make the
24 55 percent commitment, or the 45 percent commitment,

1 or whatever the percentage is, you have nothing to
2 reconcile because you don't have a percentage against
3 which to reconcile it, which is consistent with fact
4 that the City did not make any commitment to do a
5 reconciliation.

6 It's not that the City doesn't want to
7 be accountable. It's that there was no set
8 percentage against which you can do a reconciliation
9 and audit.

10 So there is -- and, again --

11 THE COURT: I understand.

12 MR. PRENDERGAST: And again, just to
13 add to the jurisdictional issue here as clearly as I
14 can, the fact that they have never filed a claim in
15 any complaint on that subject but want to basically
16 piggyback on the Korshak and Windows situation where
17 there is a commitment by a certain percentage, is the
18 reason why the Court doesn't have jurisdiction until
19 they give you a pleading that creates a cause of
20 action against which they can make a claim.

21 They have just -- we've raised this
22 several times. There's no magic to drafting a
23 complaint. They just haven't done it. And if they
24 did it, I think you would have it dismissed

1 summarily.

2 Because if you read the 2013 letter
3 and observe what the City has done through 2016, it
4 is entirely consistent with what the City committed
5 to do. And the City can constitutionally be required
6 only to do what it has a commitment to do.

7 And that's the reason why there were
8 competing orders here on reconciliation, and that is
9 why there's a jurisdictional issue that is a
10 fundamental jurisdictional issue, because this issue
11 has never been before you. It was not part of the
12 remand from the appellate court.

13 And counsel knows it, and the reason
14 he -- the refusal to file something, that would
15 create a jurisdictional basis is entirely up to him.
16 It's not up to me. I'm not going to file his
17 pleadings for him.

18 THE COURT: When the -- when Justice
19 Simon opined in this matter --

20 MR. KRISLOV: Your Honor, I think I
21 can explain.

22 THE COURT: You know, Clint, when I
23 want you to, I will let you -- give you the
24 opportunity to speak.

1 MR. KRISLOV: Sorry. Trying to remain
2 silent through Mr. Prendergast sometimes is a
3 challenge for me.

4 THE COURT: I understand.

5 In paragraph 18 of Justice Simon's
6 opinion, he talks about the letter, and he says, and
7 I quote:

8 [AS READ:

9 The letter then explains that the City
10 would, internal quote, adjust the benefit levels
11 provided under the current plan, starting
12 January 1st, 2014.

13 The letter also states that beginning
14 2014 -- again, quote, internal quote -- in light of
15 the evolving landscape of national healthcare
16 challenges faced by Chicago taxpayers, the City
17 will need to make changes to the current retiree
18 healthcare plan, unquote, uninternal quote.

19 Justice Simon goes on to say, if the
20 then-current plan ceased in June 2013, why would
21 the City repeatedly state it would start to make
22 changes to that plan in 2014? The only reasonable
23 interpretation is that it remained the operative
24 plan.]

1 MR. PRENDERGAST: That's not Justice
2 Simon's quote. His quote ended the previous two
3 sentences.

4 THE COURT: I'm sorry?

5 MR. PRENDERGAST: His quote ends at
6 healthcare.

7 THE COURT: No, I'm quoting from the
8 opinion, Richard.

9 MR. PRENDERGAST: Oh, I'm sorry.

10 THE COURT: You're wrong. That is
11 Justice Simon's statement.

12 And so what he's saying is that
13 because you refer to the plan in the May 13th --
14 May 15th, 2013, letter -- and I may disagree with
15 him, but his opinion seem to be saying that since
16 you're talking about the prior plan and moving it
17 forward, it kind of impletes any future developments
18 and your intentions as part of the original plan.

19 And if that's the case, then
20 jurisdiction does lie here, according to their
21 decision.

22 You understand what I'm saying?

23 MS. NABER: I understand what you're
24 saying, Your Honor.

1 THE COURT: Tell me why I'm wrong.

2 MS. NABER: I read that the total
3 opposite. What they were trying to distinguish is
4 that the City extended it for the six months.

5 THE COURT: Yes.

6 MS. NABER: The City wasn't going to
7 make any changes for six months.

8 But as of January 1st, it was a new
9 day. The City was going to make changes, implement
10 new plans, implement a new structure that would be
11 applied to these annuitants. That's in the context
12 of what they were talking about is whether the City
13 extended it six months, and they said, well, yeah,
14 you're looking at it.

15 But I think there's a couple of places
16 in the opinion where it basically said
17 January 1st the City said we'll do something
18 different, and it did do something different.

19 THE COURT: Okay, so your -- just to
20 state succinctly, your position is that anything that
21 was offered after January 1st, 2014, to the
22 non-Korshak, non-Windows classes was a brand new plan
23 and that it was not -- therefore it's not cognizable
24 under this lawsuit, first and most importantly.

1 And, secondly, that you can phase it
2 out by the beginning of 2017. It's your position you
3 can do anything you want, and, therefore -- and if
4 they have a beef about that, they should file a
5 lawsuit based upon whatever cause of action they can
6 find in this letter that accrues as a result of
7 whatever promise you made post-January 1st, 2014 to
8 supply healthcare benefits.

9 MS. NABER: Right. And I don't think
10 there is any beef from those annuitants that the City
11 didn't do what it promised those annuitants in the
12 May 2013 letter.

13 MR. PRENDERGAST: The language you
14 read, by the way, Judge, I agree with counsel.

15 THE COURT: Well, then there's no
16 reason to repeat it.
17 Clint.

18 MR. KRISLOV: The reason that the --
19 that the opinion you read from dealt with the 2013
20 period alone was because we had come you to and said
21 they have to -- at the time, we were in 2014. And
22 they should be reconciling the last -- we came at the
23 end of 2013, and we said you have to reconcile the
24 last half of 2013.

1 You extended this -- by your letter,
2 you extended the settlement and the reconciliation
3 process, and you committed to that, and you have to
4 do that.

5 And that's all that was relevant at
6 the time. That's why when you denied us, we appealed
7 that, and that's all that was relevant at the time.

8 When it came back after that, we said,
9 and we want -- because the letter extends the
10 settlement and reconciliation process. And if I'm
11 not class counsel for all these groups, I don't know
12 where I get the authority to speak.

13 THE COURT: Clint, please.

14 MR. KRISLOV: The fact of the matter
15 is, they extended the agreement through the end of
16 2016 in at least they committed to extending their
17 obligation -- the City's obligations under the
18 agreement to the end of 2016.

19 THE COURT: To whom?

20 MR. KRISLOV: To the -- to all the --
21 to all the retirees in -- they had different
22 proportions. They said, we'll do the Kor- --

23 THE COURT: Where does it say that?

24 MR. KRISLOV: In the Korshak -- it

1 says they'll do the Korshak and Window people what
2 they initially --

3 THE COURT: I agree with you --

4 MR. KRISLOV: Okay.

5 THE COURT: -- and so do they. That's
6 why they've done it.

7 MR. KRISLOV: Well, that's --

8 THE COURT: Let me finish. They've
9 done the audit and reconciliation, or they're in the
10 process of doing it for '14, '15 and '16.

11 MR. KRISLOV: Only because we've
12 moved --

13 THE COURT: Regardless of why, they
14 agreed.

15 MR. KRISLOV: But it's important.

16 They didn't do it voluntarily. They did it after we
17 made a motion, after we appealed, after we came back.
18 We made a motion. They are not doing it voluntarily.
19 They're doing it because we had a pending motion.

20 THE COURT: Hardly relevant to what
21 we're talking about.

22 MR. KRISLOV: Yes. It's -- and with
23 respect to the other people --

24 THE COURT: That's what we're talking

1 about.

2 MR. KRISLOV: With respect to the
3 other people, our belief is they have extended --
4 they say --

5 THE COURT: Show me where.

6 MR. KRISLOV: They say --

7 THE COURT: Show me where they
8 extended the settlement plan to Classes 3 and 4 by
9 this letter.

10 If you're right, if it's a contractual
11 agreement to do that, great. If it isn't, if it's a
12 new contract, not so great. And that means there
13 has -- at least for purposes of jurisdiction. It
14 doesn't mean you can't file a lawsuit based upon
15 this.

16 MR. KRISLOV: It is our position that
17 this letter extended the agreement.

18 THE COURT: Show me where.

19 MR. KRISLOV: It says the City will
20 extend current coverage and benefit levels until
21 December 31, 2013.

22 After January 1, 2014, the City will
23 provide a healthcare plan with continued
24 contributions of what they said was up to 55 percent,

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1 which we had to enforce them doing at 55 percent, for
2 all annuitants who retired on or after August 23 in
3 light of the --
4 THE COURT: No, no, no. For the
5 Korshak and Windows subclasses. That's what they
6 said.
7 MR. KRISLOV: Yes. Next paragraph.
8 THE COURT: All right. Now, I'm
9 concerned about Class 3 and Class 4.
10 MR. KRISLOV: We're not making -- if
11 we're not certifying it, you can't make decisions
12 regarding those without --
13 THE COURT: Then why did you ask me
14 to?
15 MR. KRISLOV: Well, I'm not saying to
16 do it separate. I'm saying that they, by this
17 letter, extended the Korshak agreement in some
18 respects that we asked to hold them to.
19 THE COURT: Where? Show me. For
20 Class 3 and Class 4, where did they extend the --
21 MR. KRISLOV: In the next paragraph --
22 THE COURT: -- Korshak agreement after
23 January 1st, 2014?
24 MR. KRISLOV: The City will need to

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1 make changes to the current retiree healthcare plan.
2 They're changing the existing plan.
3 They're asserting their right to change the existing
4 plan.
5 The existing plan is what continues,
6 and they want to change this.
7 THE COURT: But the plan ended.
8 MR. KRISLOV: No. With all due with
9 respect, the plan didn't end --
10 THE COURT: Could you please let me
11 finish a sentence, then you could tell me "no."
12 MR. KRISLOV: I think I was in mid,
13 but go ahead. I'm sorry. I apologize. I wanted to
14 answer your question.
15 THE COURT: It's called impulse
16 control, please.
17 December 31st, 2013, the plan ended.
18 MR. KRISLOV: No.
19 THE COURT: No?
20 MR. KRISLOV: No, the plan did not
21 end. What they said is after December 31, 2013,
22 we're going to make some changes to it, in respect of
23 the Korshak and Window retirees, we're not going to
24 change anything about that settlement for life.

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1 THE COURT: I meant the settlement.
2 MR. KRISLOV: With respect to the
3 other people, we're going to start making some
4 changes.
5 And at the time, what we said is,
6 look, we are -- we're dealing with the merits on the
7 appeal, which continues, and we'll deal with the
8 merits of what each group is entitled to on the
9 merits, on that appeal.
10 But this doesn't say that the plan
11 ends, nor could they. Because under the settlement
12 agreement --
13 THE COURT: I meant under the -- that
14 the settlement agreement ended.
15 MR. KRISLOV: The settlement agreement
16 didn't end. The settlement agreement continued,
17 because the settlement agreement gives them rights
18 to -- as the latest appellate court says, the
19 settlement agreement continues for everybody who
20 becomes a participant through mid 2003, at least.
21 And we're trying to determine in the
22 appellate court, and we will in the Supreme Court,
23 what each subgroup is entitled to and what changes
24 the City is entitled to make.

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1 Because under the settlement --
2 THE COURT: So let me ask you another
3 question.
4 They say that they've changed it in
5 the way that they've changed it. They're giving a
6 solid number by paying the premium. It's not
7 55 percent of anything. It's just money.
8 MR. KRISLOV: And that's --
9 THE COURT: Let me finish.
10 And that there's therefore, even if
11 you're right, there's nothing to reconcile.
12 What's your answer to that?
13 MR. KRISLOV: The answer is that while
14 the matter is pending on appeal on what each -- what
15 all the people are entitled to, whether it be Class
16 1, 2, 3, 3A, 4, if there's a 5 or 6, who knows,
17 whenever that is determined, it would determine as
18 well what rights the City has under the plan to
19 change things. The whole --
20 THE COURT: So does that mean that I
21 should postpone resolution of this jurisdiction issue
22 until the appeal is resolved?
23 MR. KRISLOV: No. You have
24 jurisdiction. The issue is whether they are --

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1 whether they have -- what they --
2 THE COURT: They don't think I have
3 jurisdiction.
4 Go ahead.
5 MR. KRISLOV: They didn't challenge it
6 until you raised it, and then they jumped on it. And
7 I believe, with all due respect, it's wrong.
8 They, by their letter, extended the
9 Korshak settlement and reconciliation process for
10 something for some period.
11 And what we have done is, under our
12 authority as class representative from Korshak, we
13 have said, you have committed yourself to certain
14 things. We don't agree that that's all you're
15 obligated to do, but we're going to hold you to those
16 things under the Korshak settlement, which this Court
17 retained jurisdiction to interpret and enforce and
18 even -- including their extension thereof.
19 So how far it extends, what they're
20 obligated to do under it --
21 THE COURT: So what is it you want
22 from them?
23 MR. KRISLOV: What do you want from
24 you?

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1 THE COURT: No.
2 MR. KRISLOV: What do I want from
3 them?
4 THE COURT: Uhm-hmm. What do you want
5 them to do for Class 3 and 4?
6 MR. KRISLOV: For Class 3 and 4, I
7 want them to audit, which they are doing. That's
8 part -- our motion, and they've agreed to audit --
9 audit 3 and 4 because -- whatever. They've agreed --
10 after first opposing it, they agreed to it.
11 They will audit 3 and 4. And when the
12 case comes back from the Supreme Court, it goes up
13 there, whatever, we'll know, essentially, what the
14 rights are of those classes.
15 But here's --
16 THE COURT: So if they're already
17 doing what you've asked them to do, what is it you
18 want me to do?
19 MR. KRISLOV: They're the ones that
20 are saying you don't have jurisdiction. You should
21 dismiss this.
22 And our answer is you have
23 jurisdiction to compel them to complete --
24 THE COURT: So why decide the issue

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1 now if it may be resolved by the ruling of the
2 Supreme Court, if there is any? That's the first
3 question.
4 Secondly, why not file another lawsuit
5 using this extension as a basis for a cause of
6 action, just to make sure that your folks have a
7 lawsuit pending with this cause of action that covers
8 them post-January 2014 on the same theory that you
9 just argued?
10 What's the worst that could happen
11 other than the cost involved in putting together a
12 complaint? Why not do it?
13 MR. KRISLOV: Because it's their --
14 THE COURT: It protects them if you
15 do. There's no harm, no foul. There's a lawsuit
16 pending. It may be dismissed, it may not be
17 dismissed. If you're right, it won't be.
18 MR. KRISLOV: Your Honor, I'm only a
19 small firm. I can't do this for the rest of my life,
20 and I can --
21 THE COURT: Okay, then it's because
22 you don't want to.
23 MR. KRISLOV: No, there's --
24 THE COURT: Then don't.

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1 MR. KRISLOV: There's --
2 THE COURT: I'm just saying, wouldn't
3 it solve the problem if you just filed a lawsuit
4 under this contract?
5 MR. KRISLOV: It is not --
6 THE COURT: Alleged contract?
7 MR. KRISLOV: They are amending --
8 they made it clear that they were extending the
9 Korshak settlement. The appellate court ruled that
10 they had extended. It didn't rule that it all ended
11 at the end of 2013. They just dealt with the
12 reconcil- -- the audit and reconciliation for the
13 last half of 2013.
14 THE COURT: I think it's fair to say
15 they didn't rule anything with regard to
16 post-December 31st, 2013.
17 MR. KRISLOV: Well --
18 THE COURT: They didn't rule on
19 whether this was a contractual obligation or not, and
20 if so, what the extent was.
21 MR. KRISLOV: Yes, they did.
22 Absolutely they did.
23 THE COURT: No, they didn't. Not as
24 to Class 3 and 4. They didn't. It was not before

1 them. That was not the issue before the appellate
2 court.

3 MR. KRISLOV: That's now what we're --
4 with all due respect, what they're saying is that you
5 don't have -- that the matter ended and that you
6 don't have jurisdiction to determine what the extent
7 of this letter obligates them to do. That, we do not
8 agree with, and starting us all over again so that
9 they can all file motions to dismiss and go through
10 this is not only --

11 THE COURT: But it was not made a part
12 of the original complaint.

13 MR. KRISLOV: It doesn't have to be
14 part of the original complaint.

15 THE COURT: Well, then we'll see.

16 MR. KRISLOV: It was part of the --

17 THE COURT: It would best if there
18 were another complaint rather than just going on hope
19 that it doesn't have to be. It might have to be.

20 It was not alleged as part of the
21 original complaint as a cause of action or request
22 for relief based upon post-January 2014.

23 MR. KRISLOV: Nor was any of the audit
24 and reconciliation part of the original complaint.

1 THE COURT: True.

2 MR. KRISLOV: I mean, all of this, a
3 case evolves. A case over 30 years evolves --

4 THE COURT: I agree.

5 MR. KRISLOV: -- and it changes. And
6 you don't have to file a new complaint in a new case
7 every time some of the facts between the parties in
8 an ongoing --

9 THE COURT: But their position is that
10 a new contract started in January 1st, 2014. Your
11 position is it didn't.

12 In any case, it's your position that
13 your clients are due certain benefits, and probably
14 more benefits than they're willing to give.

15 MR. KRISLOV: Right.

16 THE COURT: And that is not the
17 subject of a complaint that's currently pending.

18 MR. KRISLOV: Yes, it is. That is
19 pending before the appellate court and before the
20 Supreme Court. Those rights will be determined by
21 the Supreme Court.

22 THE COURT: You're entitled to your
23 opinion.

24 MR. PRENDERGAST: Your Honor --

1 THE COURT: Yes.

2 MR. PRENDERGAST: First of all, we've
3 come full circle.

4 THE COURT: Yes, we have.

5 MR. PRENDERGAST: Because Mr. Krislov
6 has just told you that the agreement did not expire
7 at the end of 2013, and that the rights under the
8 2013 settlement agreement continued, and that has
9 been -- your categorical ruling to the contrary has
10 been affirmed by the appellate court categorically.

11 They are time limited -- it was a
12 time-limited contract. It ended December 31, 2013.
13 That issue is dead.

14 MR. KRISLOV: I object.

15 MR. PRENDERGAST: I don't know why he
16 goes there.

17 MR. KRISLOV: That is not what the
18 Court -- the Court did not --

19 THE COURT: He's entitled to argue,
20 Clint, just like you are.

21 MR. PRENDERGAST: I'm just saying,
22 Your Honor, it has been resolved by this Court that
23 time-limited contracts and when the end of the
24 contract comes to date, which was December 13th,

1 2013.

2 Secondly, what was before the Court in
3 the appellate court opinion that you are referring to
4 was the Korshak case, not the Underwood case.

5 There was no Class 3 or 4 before the
6 Court. It was only the Korshak class, it only
7 pertained to reconciliation rights of the Korshak and
8 Windows classes, and it only pertained to the basis
9 for them.

10 They have reconciliation rights by
11 virtue of the 2008 reconciliation agreement that was
12 entered into the during pendency of that ten-year
13 time period in 2008. And that was what was before
14 the Court for purposes of resolving whether or not
15 there had to be a reconciliation to the end of the
16 term of the agreement, which was December 31, 2013.

17 Everything that happened after that is
18 what the City voluntarily did.

19 Now if Clint wants to argue,
20 Mr. Krislov wants to argue that whatever the City did
21 afterwards is because he made us do it, which is not
22 true, but will certainly be an argument when there is
23 a fee petition before you, but it's not before you
24 today.

1 So what's before you today is that the
2 City issued this letter without consulting
3 Mr. Krislov. It sent this letter out to the
4 annuitants, and this letter says that with respect to
5 all annuitants who retired after August 23, 1989 --
6 paragraph three --

7 [AS READ:

8 The City will need to make changes to
9 the current retiree healthcare plan. These changes
10 will likely include some adjustments in premiums
11 and deductibles, some benefit modifications, and,
12 ultimately, the phaseout of the plan by the
13 beginning of 2017.]

14 Not one word in there about
15 reconciliation. Not one word about doing anything
16 beyond 2013 for those other annuitants.

17 The other annuitants, the so-called
18 Classes 3 and 4, were not before the appellate court,
19 as I said, in the appeal or when this case came
20 before you on the question of reconciliation.

21 That is precisely the reason you don't
22 have jurisdiction, because they have yet to bring a
23 claim on that subject. And when they do, we will
24 address it, probably with a motion to dismiss, but

1 they have to file the claim. They can't say, "we're
2 entitled to the relief" if they don't have a claim
3 before you. That's the jurisdictional issue the
4 court first raised three or four times ago before,
5 three or four court appearances ago. And the Court
6 correctly raised it, and the parties both briefed it.

7 And in our brief, I think we set
8 forth -- I'm not going to reargue the briefs. You've
9 read them. The Court lacks jurisdiction on this
10 subject.

11 And until he files something that
12 vests the Court with jurisdiction, the Court doesn't
13 have jurisdiction on that subject.

14 If the Court had jurisdiction on that
15 subject -- I don't want to jump too far ahead -- but
16 if the Court had jurisdiction on the subject, the
17 Court nonetheless would, I believe, be appropriate to
18 enter the draft order that we submitted, because we
19 think that that correctly reflects the Court's
20 April 19th, 2017, ruling.

21 And the -- but you don't even have to
22 get to the competing orders. You have to get first
23 to the issue of whether there's jurisdiction here,
24 and, clearly, there is none because they simply

1 refuse, for whatever reason, to file a pleading that
2 sets forth their claims so we can address them.

3 MR. KRISLOV: Actually, Your Honor,
4 I've spent the time listening to Mr. Prendergast.

5 But then I was looking through the
6 complaint, and the complaint in Underwood versus the
7 City of Chicago, plaintiffs for themselves and the
8 class they seek, assert that the City annuitants are
9 entitled to protect the terms and benefits of their
10 City annuity medical benefit plan permanently for
11 each one on the best terms in effect during his or
12 her participation in the fund under the Illinois
13 constitution and principles of contract and estoppel.

14 We do address the letter. It is
15 Exhibit -- I think it's 21 to our complaint. That
16 letter is at issue in the complaint, and the
17 complaint at the end asks for declarations of
18 their -- to certify the class, declare their rights
19 for all of them.

20 THE COURT: So, Richard, why doesn't
21 that cure the problem?

22 MR. PRENDERGAST: Because if you read
23 from page one to the relief there, you won't even see
24 the word "reconciliation." It's not part of this

1 case. He asked for declaratory relief to declare
2 their rights.

3 He defined what he believed their
4 rights were.

5 THE COURT: Well, reconciliation is a
6 separate matter.

7 MR. PRENDERGAST: Yes.

8 THE COURT: Let's not confuse the two.
9 The first is jurisdiction; the second is, if I have
10 jurisdiction, should I order reconciliation, and then
11 of what, because of the change of the terms. That's
12 a separate matter.

13 Why is he wrong -- why -- you heard
14 Clint just read his complaint. It seems to indicate
15 that I have jurisdiction to deal with all of this
16 that is before me, even post-January 1st, 2014,
17 because they raised it.

18 MR. PRENDERGAST: Well, I'm not saying
19 you don't have jurisdiction to deal with the matters
20 that he's raised in his pleadings post-2013.

21 I'm saying you don't have jurisdiction
22 to entertain the claim that he's now making, which is
23 not before the Court. And because he says -- because
24 he says that he attached a copy of this letter,

1 believe me, it's attached for other reasons, because
2 he made reference to it --

3 THE COURT: It doesn't matter whether
4 it's attached for other reasons or not --

5 MR. PRENDERGAST: No, no, but --

6 THE COURT: As long as it's impleaded
7 into the complaint, and post-two thousand- --
8 January 1st, 2014, is as well, and he is asking for
9 these permanent healthcare benefits to be declared
10 and relief to be given. Why doesn't that do it?

11 MR. PRENDERGAST: Well, it doesn't do
12 it with respect to the reason that we're before this
13 Court, which is, he came in here and said we have an
14 obligation to reconcile classes other than --

15 THE COURT: Sure. But I'm not --

16 MR. PRENDERGAST: -- Korshak and
17 Windows. That's --

18 THE COURT: But I'm not --

19 MR. PRENDERGAST: -- not in his
20 complaint.

21 THE COURT: I'm not currently being
22 asked to actually rule on what should happen, just
23 what I have jurisdiction to rule on what will happen.

24 MR. PRENDERGAST: Right. And in order

1 to have jurisdiction to rule, you have to have a
2 complaint that makes the claim.

3 THE COURT: Why -- didn't he just do
4 it?

5 MR. PRENDERGAST: No, it's not that --
6 this claim is not found in his complaint. He just
7 says, I've got a complaint here, and I -- we have
8 reference in the complaint to the letter, because in
9 the factual narrative, they are -- they make
10 reference to the letter.

11 But no argument here that somehow we
12 extended the Korshak/Windows settlement into
13 classes -- pardon -- Korshak and Windows, no argument
14 there, or that any relief was granted under this. No
15 claim at paragraph three that I just read you granted
16 some kind of reconciliation rights. That's not in
17 his complaint. That's my point.

18 I mean, I know he's asking for relief
19 post-December 31, 2013, for these various classes,
20 but this wasn't the relief he sought, nor is it the
21 relief he's entitled to.

22 THE COURT: Well, I'm not talking
23 about the relief that he's seeking. I'm just talking
24 about whether I have jurisdiction to consider it.

1 MR. PRENDERGAST: And my point is that
2 you only have jurisdiction to consider what he
3 claims.

4 What he has done here, Your Honor, is
5 filed motions in an effort to extend the jurisdiction
6 of this Court beyond the claims that he has before
7 this Court.

8 I'm not saying he can't amend his
9 complaint. I'm not saying that he can't file a new
10 complaint. I'm saying he's got to have a complaint.
11 You don't get relief without it. That's just the way
12 it works, and we've all been around this long enough
13 to know better.

14 THE COURT: All right.

15 MR. KRISLOV: Can I read the parts of
16 the complaint that deal with exactly this letter --

17 THE COURT: Sure.

18 MR. KRISLOV: -- and these provisions?

19 If you look at paragraphs -- I like
20 the complaint. Whoever did this, I think they did a
21 good job, if I do say so myself.

22 From paragraph 138, the City's
23 post-2013 unilateral reduction in the benefits and
24 the rates -- if he bets me a million dollars --

1 THE COURT: Are you going to read or
2 not? Are you going to paraphrase?

3 MR. KRISLOV: I can go on for three or
4 four pages, but at para- --

5 THE COURT: But you said you want- --
6 "can I read from the complaint?" Yes.

7 MR. KRISLOV: Paragraph 149, the
8 City's erroneous and unequal recognition of its
9 obligations:

10 [AS READ:

11 In the City's May 15th, 2013, letter
12 it acknowledges its obligation and agrees to
13 continue retiree healthcare for the Korshak and
14 Window retiree subclasses.]

15 Then, quotes, paragraph two --

16 THE COURT: Slow, I've got a woman
17 who's trying to take down every pearl of wisdom
18 you're giving.

19 MR. KRISLOV: The more pearls the
20 better the --

21 THE COURT: Let me --

22 MR. KRISLOV: [CONTINUING:

23 In spite of that assurance, the City
24 has --]

1 THE COURT: Clint, stop. Let me shift
2 to my ruling.
3 For the reasons enunciated by Clint in
4 the complaint, I do think that the complaint has been
5 pled for jurisdictional purposes, a claim of relief
6 for Classes 3 and 4 post-January 1st, 2014.
7 I don't know if it's -- and I'm not
8 ruling that he's entitled to it, but I think that a
9 fair reading of the complaint and in consideration of
10 the ruling from Justice Simon and how I should be
11 looking all this in toto, that it's a fair reading
12 that he at least raised the issue, perhaps not with
13 particularity that you would have preferred or I
14 would prefer. And as Mr. Prendergast has suggested,
15 perhaps it should be amended to do so, and if there's
16 a motion before me, I will certainly consider that.
17 But for purposes of jurisdiction and
18 whether I can consider his request to have the City
19 reconcile that which the City says can't be
20 reconciled because there's nothing to reconcile, I
21 find that I have jurisdiction to consider the
22 request.
23 Now, the only question is is that puts
24 an end to that. The next issue is, with regard to

1 this discrete issue, what it is you want me do, and
2 what it is you want, what kind relief you want with
3 regard to this post January 1st, 2014 plan, and
4 what it is you want me to have them do. I will
5 consider that.
6 I would suggest, however, that this be
7 part of an amended complaint asking for that relief.
8 And that's the right way to do it according to the
9 Code of Civil Procedure.
10 And we shall see what the City has to
11 do. That gives them the opportunity to dismiss that
12 request for relief if that's what they ask for. But
13 we shall see.
14 MR. KRISLOV: Can I -- I don't want to
15 interrupt --
16 MR. DONHAM: Your Honor, may ask a
17 question?
18 THE COURT: Sure.
19 MR. DONHAM: It seems like Mr. Krislov
20 was quoting from the Underwood complaint, and then
21 this started with the Korshak issue. So when you
22 were advising him --
23 THE COURT: Oh, is that right? You
24 were quoting from Underwood, not Korshak?

1 MR. KRISLOV: Yes.
2 THE COURT: But this isn't Underwood.
3 This is Korshak. I'm sorry. I thought that was from
4 the Korshak complaint, Clint. That's my mistake,
5 then.
6 Can you give me something from Korshak
7 that you allege that would bring this in? This isn't
8 Underwood.
9 MR. KRISLOV: The original --
10 THE COURT: We're not dealing with
11 Underwood. We're dealing with Korshak.
12 MR. KRISLOV: Well, we are dealing
13 with --
14 THE COURT: No, we're not. We're
15 dealing with Korshak. Read to me from Korshak, and
16 I'll go your way if it's like Underwood.
17 MR. KRISLOV: The original Korshak
18 complaint was filed by the City. We did a
19 countercomplaint saying that the City has made it a
20 term of employment, and the Pension Funds joined, and
21 they filed a thing, their countercomplaint, saying
22 that the City has made --
23 THE COURT: You're not telling me
24 anything --

1 MR. KRISLOV: They're saying --
2 THE COURT: -- that I can stake my --
3 whatever's left of my reputation on.
4 MR. KRISLOV: Well, that's --
5 THE COURT: You're just not doing it.
6 You did it when you read from Underwood. I'm with
7 you. You did -- I asked you to read from Korshak.
8 Did you or not? If you didn't, amend.
9 MR. KRISLOV: No, I was reading from
10 Underwood, and I think it's in the record that I said
11 I was reading from Underwood.
12 THE COURT: No, you didn't. But
13 that's neither here nor there.
14 If it's not in Korshak, then I don't
15 have jurisdiction.
16 MR. KRISLOV: You do, and it's
17 because --
18 THE COURT: But that doesn't mean you
19 can't create it by filing another complaint or by
20 amending. Just do it.
21 And if you don't want to do it --
22 MR. KRISLOV: We'll do it.
23 THE COURT: -- that's on you.
24 MR. KRISLOV: We'll do it.

1 THE COURT: Until then, jurisdiction
2 is found to not exist.

3 MR. KRISLOV: Your Honor, could you
4 direct to us file an amended complaint? But I don't
5 --

6 THE COURT: I'm not directing you to
7 do anything. I don't direct litigants to do
8 anything. If you're making an oral motion to do so,
9 make it.

10 MR. KRISLOV: I move to -- I ask the
11 Court's leave to amend the complaint. But if I could
12 respond --

13 THE COURT: Any objection?

14 MR. PRENDERGAST: No objection.

15 THE COURT: Granted.

16 MR. KRISLOV: Now, if I may respond.

17 MR. PRENDERGAST: Wait. Wait. Excuse
18 me. Before --

19 (Simultaneous colloquy.)

20 THE COURT: You guys have to stop.

21 You guys have to stop.

22 What is it, Richard?

23 MR. PRENDERGAST: Your Honor, the

24 Korshak case was as of 2003 --

1 MS. NABER: '3, dismissed with
2 prejudice. The only jurisdiction is over the
3 settlement.

4 THE COURT: Well, you know, the
5 settlement is in existence, and --

6 MR. PRENDERGAST: Yes. Up through the
7 end of 2013.

8 THE COURT: -- it's a contract.

9 So your point is that if he wants to
10 do it based upon that, he should be filing a
11 separate -- a new complaint.

12 MR. PRENDERGAST: What he's got to do,
13 Judge, is file a complaint --

14 THE COURT: Based upon that.

15 MR. PRENDERGAST: Based on the
16 promises made in this letter, including the promise
17 to do reconciliation for all the classes.

18 He's never done that in any case. He
19 hasn't done it in the Korshak case --

20 THE COURT: I'm sure Mr. Krislov
21 really appreciates you advising him on how to
22 practice, but --

23 MR. PRENDERGAST: I'm not --

24 THE COURT: Well -- but, you have your

1 place; he's he got his.

2 If he wants to make an oral motion to
3 amend the Korshak complaint, I'm going to give him
4 leave to do so. It doesn't mean that I haven't -- I
5 wasn't the judge back in 2003 when it was dismissed
6 with prejudice. I will listen to that.

7 I think the best way around it, Clint,
8 is just to file a separate new complaint using the
9 May 15th, 2013, letter as the basis upon which
10 you're asking for your relief, and it will cure all
11 ills without having to create false barriers to get
12 around, unless you need to do so for your own
13 reasons, about which I will not opine.

14 MR. KRISLOV: What I'm sort of
15 thinking is the way to deal with this is, we may ask
16 you for findings that you don't have jurisdiction,
17 because that -- and that there's no just cause to
18 delay enforcement or appeal of that.

19 THE COURT: Sure. I'll consider that,
20 and I'll consider their response, and we'll figure
21 out the right way to phrase it for purposes of a
22 304(a) appeal.

23 MR. KRISLOV: Okay.

24 MR. PRENDERGAST: I do want to make

1 clear for the record, because I misspoke, that
2 because the Korshak case was dismissed with prejudice
3 in 2003, it can't be amended.

4 THE COURT: Yes, probably right.

5 MR. PRENDERGAST: If counsel wants to
6 file a new claim --

7 THE COURT: Probably right.

8 But, you know, 304(a) with regard to a
9 complaint that's been dismissed with prejudice
10 doesn't get you anywhere, it seems to me.

11 MR. KRISLOV: That's why we filed the
12 Underwood complaint, because you told us that we
13 couldn't revive the Korshak complaint, and so we
14 filed Underwood to cover precisely this for all the
15 classes.

16 THE COURT: I don't think I'm the
17 litigant here. I think you are, and you do what you
18 think is right.

19 My suggestion is, and was in the past,
20 and is again today, that all ills are cured, and you
21 get the issue teed up if you file a complaint based
22 upon the May 15th, 2013, letter, which you claim
23 grants your clients contractual benefits. Okay.
24 Great.

1 You don't want to do it, don't.
 2 MR. KRISLOV: Your Honor, I don't
 3 agree with you at all.
 4 THE COURT: Well, then, don't do it.
 5 MR. KRISLOV: But we'll do it. We'll
 6 do it.
 7 THE COURT: For now, my ruling stands
 8 as to lack of jurisdiction in the Korshak matter
 9 vis-a-vis the Class 3 and Class 4 benefits
 10 post-January 1st, 2014.
 11 MR. KRISLOV: But we're still alive
 12 for the Class 1 and 2?
 13 THE COURT: Well, they're -- I'm not
 14 saying that. They already did the audit and
 15 reconciliations --
 16 MR. KRISLOV: No, they didn't do it.
 17 The audit and reconciliation of the last half of
 18 2013, they have just completed the first go-through,
 19 and it's now being --
 20 THE COURT: But they're in the process
 21 of doing it.
 22 MR. KRISLOV: Because we moved for it.
 23 THE COURT: Well, then, why -- so
 24 what? So why bring that up? They're going to do it.

1 They've acceded to that.
 2 MR. KRISLOV: Well, they haven't --
 3 THE COURT: But they're going to.
 4 MR. PRENDERGAST: We didn't need a
 5 court order to do that.
 6 MR. KRISLOV: Yes, you needed a court
 7 order, because you had opposed our motion to force
 8 you to do it. You had opposed it. And after sitting
 9 down, you agreed to it.
 10 THE COURT: Do what you want to do.
 11 I'm not in the business of telling folks what they
 12 should or shouldn't do anymore. If you want this --
 13 I've ruled on the jurisdiction aspect with regard to
 14 post-January 1st, 2014.
 15 Do what you want to do to get it
 16 before me or any other judge, that's fine.
 17 MR. KRISLOV: Okay.
 18 THE COURT: What's next on your list?
 19 MR. PRENDERGAST: The only other thing
 20 that --
 21 MR. KRISLOV: I could -- you know --
 22 MR. PRENDERGAST: I'll wait.
 23 THE COURT: Go ahead, Clint.
 24 MR. KRISLOV: The Funds and the

1 City -- the Funds, for certain, were going to report
 2 on their plans for -- on what they're doing to
 3 provide coverage for their annuitants beginning in
 4 2018.
 5 It is now mid-August, and retirees
 6 have to know --
 7 THE COURT: I don't recall that, but
 8 you did tell me that I did, so I'll accept that,
 9 and --
 10 MR. PRENDERGAST: Your Honor, I've
 11 looked at the last two transcripts, and that is not
 12 on the agenda for today.
 13 THE COURT: Are you representing the
 14 Funds?
 15 MR. PRENDERGAST: I was just about to
 16 say, if they want to --
 17 THE COURT: They can speak for
 18 themselves, Richard. Let's be about -- Mr. Kugler,
 19 what do you want to say? Ken, what do you want to
 20 say?
 21 MR. D. KUGLER: For 2018 we already
 22 have insurance for most of the retirees. They've
 23 been offered insurance. They've signed up with
 24 various plans, and the Fund is proceeding with

1 whatever we're doing.
 2 We've got the insurance company.
 3 We're not administering it. We're doing the same
 4 thing we've done before, deducting from their annuity
 5 checks sufficient money to cover the insurance that
 6 they've undertaken with whatever -- I think they've
 7 selected from, I think, two or three different
 8 companies.
 9 MR. DONHAM: For 2017, the same -- we
 10 have about a thousand of our retirees who signed up
 11 for the City -- I'm going to use the term "sponsored"
 12 -- Jennifer may disagree with me -- plan, and we're
 13 deducting -- we have permission from the annuitants
 14 to deduct premium from their annuities.
 15 We are gathering information about the
 16 number of members who would be subject to the --
 17 assuming that Justice Simon's order stays in effect
 18 and the class went up to June 30th, 2003, we're
 19 gathering information about how many members and who
 20 they are so that if there's a need to pay the \$25 a
 21 month subsidy, that we can accomplish that.
 22 As far as 2018, the statutory
 23 obligation of the Laborers' Fund is to approve a
 24 plan. And until we have some information about a

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1 plan, we don't have the obligation or the staff to
2 underwrite a plan or to create plan.
3 THE COURT: In the past where have you
4 found the plans that --
5 MR. DONHAM: It's been the plan from
6 the City.
7 For example, this year, it's the City
8 sponsored plan, even though --
9 THE COURT: And is it the City's
10 position that post 2017, you're not going to be
11 looking for a plan for these annuitants any longer?
12 MS. NABER: It's my understanding that
13 the City is -- Blue Cross Blue Shield administers the
14 plan, and it's their plan. It's a private plan. The
15 City is just the sponsor for the annuitants. It
16 really has no interaction with the claims itself.
17 So the City is negotiating with Blue
18 Cross to see if they will carry on the plan. I don't
19 know where that is.
20 THE COURT: What happens if they
21 decide they don't want to do it anymore? Then what?
22 Where do these folks get their healthcare from? Who
23 comes up with a plan? From whence does the plan
24 emanate?

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1 MS. NABER: Your Honor, the majority
2 of these people, more than a majority, are Medicare.
3 So there are supplemental plans that are available in
4 the marketplace all over the place.
5 For non-Medicare annuitants, there's
6 the ACA that they can go on, and many of them have,
7 to obtain coverage. And we understand that a couple
8 of the Pension Funds also have orchestrated insurance
9 companies to provide a plan.
10 They don't have to -- the Funds
11 themselves, even under the '83, '85 statutes, and
12 correct me if I'm wrong, they don't have to be an
13 administrator of a plan, they just have to find a
14 plan and contract with Blue Cross Blue Shield or an
15 outside provider to provide the plan.
16 THE COURT: What's your report?
17 MS. BOECKMAN: So as Cary mentioned,
18 with respect to Laborers' and union, as opposing
19 counsel reiterated in his petition for rehearing,
20 it's permissive with respect to union laborers.
21 I will echo what Cary said with
22 respect to what the union is currently doing for
23 2017. Many of its annuitants are getting healthcare
24 coverage from the Blue Cross Blue Shield City plan,

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1 and then we are making those deductions through the
2 monthly annuities.
3 With respect to the Fireman's Fund,
4 they did discuss this at their July board meeting.
5 Part of the issue, obviously, is with respect to we
6 don't really know what number we're talking about, so
7 we haven't initiated any initial conversations with
8 healthcare providers, but we have started looking at
9 third-party administrators.
10 As Ms. Naber mentioned, the statute
11 doesn't require us to necessarily be the plan's
12 sponsor, but that we need to contract with a health
13 insurance carrier and then pay up to that 55 or \$21
14 subsidy.
15 So both boards discussed this issue.
16 They discussed the subsidy obligation under those '83
17 and '85 amendments, but they are looking for some
18 further direction from the appellate court or the
19 Supreme Court with respect to what group we're going
20 to be eventually talking about.
21 THE COURT: So are you telling me that
22 it's hard to find a provider when you don't know the
23 size of the group you're going to have to --
24 MS. BOECKMAN: Correct.

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1 THE COURT: -- find a policy for?
2 MS. BOECKMAN: Correct.
3 MR. KRISLOV: May I speak, Your Honor?
4 THE COURT: Please do.
5 MR. KRISLOV: Under the 1983 and
6 nineteen --
7 THE COURT: You asked for a report,
8 and they gave it to you.
9 MR. KRISLOV: Well, here's -- they're
10 not responding to -- the statute says for police and
11 fire, "the board shall contract with one or more
12 carriers to provide health insurance for all
13 annuitants."
14 They know how many annuitants they
15 have. They know what their status is: Medicare,
16 non-Medicare.
17 And for the people who started working
18 before April 1, 1986, none of their City work
19 qualified them for Medicare coverage, none of them.
20 And it is now mid August.
21 Ms. Boeckman says, well, they can provide -- maybe
22 they can go on the ACA.
23 They have an obligation, Police and
24 Fire, to contract to provide a plan. And Municipal

1 and Laborers', it is true that their statute is
 2 different. But it says:
 3 [AS READ:
 4 Each employee annuitant in receipt of
 5 an annuity may participate in a group hospital care
 6 plan and a group medical and surgical plan approved
 7 by the board if they retire after age 65 with at
 8 least 15 years of service.]
 9 I mean, it is --
 10 THE COURT: Which you think also
 11 implies they shall have a plan that's available for
 12 them to apply to.
 13 MR. KRISLOV: Yes. And that's the
 14 basic --
 15 THE COURT: Stop right there.
 16 Does anyone disagree with what
 17 Mr. Krislov says from the labor unions about your
 18 obligations to find a plan for these folks?
 19 MS. BOECKMAN: Well, with respect to
 20 the Municipal Fund, I think it's clear that that
 21 statute is permissive with respect -- the board
 22 currently has approved a plan with Blue Cross Blue
 23 Shield through the City, where they are making those
 24 deductions that we talked about.

1 And Mr. Krislov even noted in his
 2 petition for rehearing in the appellate court that
 3 the 1985 Pension Code group healthcare plan
 4 provisions for Municipal and Laborers' were
 5 permissive.
 6 THE COURT: For Municipal and Labor.
 7 MS. BOECKMAN: Correct.
 8 THE COURT: What about for Police and
 9 Fire?
 10 Mr. Krislov is saying there's an
 11 obligation to provide a contract with a healthcare
 12 provider.
 13 Do you agree?
 14 MR. D. KUGLER: We have provided. I
 15 believe that they're either covered through Blue
 16 Cross, Aetna -- and I don't know, there is a third
 17 company that they've selected --
 18 THE COURT: And so what are you doing
 19 in order to maintain your obligation for 2018?
 20 That's what his question is.
 21 MR. D. KUGLER: Well, they're covered
 22 through 2018, or they've opted out. With the letter
 23 that had been sent to them, they've opted out to go
 24 for their own insurance on their own, or if they've

1 joined one of those three different plans.
 2 THE COURT: That you have provided?
 3 MR. D. KUGLER: That we have -- I
 4 don't know about the word "provided." I know --
 5 THE COURT: Yeah, I know. It's a term
 6 of art.
 7 MR. KRISLOV: They haven't contracted
 8 with any of the --
 9 MR. D. KUGLER: We have offered and
 10 made available and participated in whatever we have
 11 done with the Fund to allow them to join one of three
 12 different plans.
 13 THE COURT: Okay.
 14 MR. D. KUGLER: And a number have
 15 opted out of it and have gone with their own
 16 insurance, or if they have a family member that would
 17 cover under their insurance.
 18 MR. KRISLOV: And Fire?
 19 MS. BOECKMAN: Similar situation. I
 20 would just add to what Mr. Kugler said. And we've
 21 also facilitated the payment of those premiums
 22 through the annuitants' monthly annuity checks. So
 23 we get authorization from the annuitant to pay that
 24 premium.

1 THE COURT: Okay.
 2 Next.
 3 Thank you.
 4 Next.
 5 MR. KRISLOV: Oh, the progress on the
 6 reconciliation.
 7 THE COURT: Ms. Naber.
 8 MS. NABER: So for the six months,
 9 2013, second half of the year, the City issued its
 10 reconciliation report as --
 11 THE COURT: For which period?
 12 MS. NABER: For July through
 13 December 2013, the one that was ordered by the
 14 appellate court and you, Your Honor.
 15 THE COURT: Yes. And we were going to
 16 facilitate or try to expedite '14, '15 and '16.
 17 MS. NABER: Right.
 18 THE COURT: What's the status?
 19 MS. NABER: So for '13, the City's
 20 reconciliation report has gone to the Pension Funds
 21 and class counsel. They have a certain time period
 22 in which to review that and hire an independent
 23 auditor. I believe they're in the process of doing
 24 that.

1 For '14, the City has begun the
2 process for '14. We actually have had a couple of
3 long conversations with Mr. Krislov to try to
4 streamline the process, to expedite it, because the
5 normal process takes about nine months. And what I
6 had said to you before, we're trying to target four
7 or five months for each one.

8 THE COURT: Yes.

9 MS. NABER: And so we have been
10 discussing it. And I have to follow up with
11 Mr. Krislov of how we can do that.

12 Since we're auditing everyone but only
13 reconciling Korshak and Window, we think we can alter
14 the plan to expedite it and even lessen the onus on
15 the Pension Funds of what they need to do for us
16 because they have to participate in those funds.

17 THE COURT: So your conversation
18 continues with Mr. Krislov, and you will keep him
19 apprised as to the status of '14, '15 and '16, and
20 you will do your best, diligent efforts to expedite
21 the process.

22 MS. NABER: Absolutely.

23 MR. KRISLOV: Our position is that
24 this has to be completed for all those years by the

1 end of next year. It cannot --

2 THE COURT: Why is that, Clint?

3 MR. KRISLOV: Because our retirees
4 die. They get sick. This is money that is owed back
5 to them for having been overcharged for healthcare
6 premiums from three years ago, three and a half years
7 ago, two years ago.

8 This is their money that they live on.
9 Some of our retirees have to take their pension check
10 and turn it around and pay \$20 extra on top of their
11 pension check to keep their healthcare premiums alive
12 while we're fighting on the merits.

13 The reconciliation process needs to be
14 as speedy as possible so that we can get --

15 THE COURT: I agree. And I so order
16 whatever that needs. It's not with any specifics or
17 particularity, because -- what I'm going to ask you
18 to do, Ms. Naber, is to report back to me on a
19 schedule by which you're going to do -- finish '14,
20 '15, and '16 that everyone can agree to. Talk to
21 Mr. Krislov about it, listen to his objections, and I
22 do -- I am concerned about the attrition rate he's
23 discussing.

24 One could argue that this is something

1 that should have been ongoing anyway, and I just want
2 everyone to know where they stand and how much money
3 they're owed, and I want them to know as soon as
4 practicable. It's their money, if there is any, and
5 they're entitled to it.

6 So regardless of whether they're using
7 it for healthcare, living, food, I don't know how
8 much it is or what we're talking per person, per
9 annuitant. I don't know.

10 MR. KRISLOV: Generally it has been --
11 it's been about \$5 million each year that we have --

12 THE COURT: My question was, like, per
13 annuitant, though.

14 MR. KRISLOV: Well, then, it's about a
15 month, month and a half premium.

16 MS. NABER: If I can clarify. It
17 hasn't been that much. The City is getting better at
18 projecting, and Mr. Krislov is collapsing
19 non-Medicare and Medicare together. Non-Medicare is
20 harder to predict.

21 Medicare is pretty static. For this
22 six-month period that we just did, the refunds to the
23 annuitants are probably going to be \$1 or \$2, so --

24 THE COURT: Well, we'll rely upon --

1 MS. NABER: -- per month, so it's
2 \$6 --

3 (Laughter from the courtroom galley.)

4 THE COURT: Quiet, please.

5 We'll rely upon putative class counsel
6 to do what he has to do in order to see whether the
7 numbers jibe or not.

8 MR. KRISLOV: And the reason the
9 numbers for the last half of 2013 are small, and
10 Ms. Naber will agree with me, there was \$5 million
11 refunded as an overpayment -- as overcharges for the
12 first half.

13 And I thank that, conceptually, I go
14 back and forth. I'm trying to figure this out,
15 whether it's arithmetically correct. But, generally,
16 the overcharges are more likely to be in the first
17 half of the year rather than in the last half because
18 of deductions and copays and how it all relates.

19 THE COURT: I see. All right.

20 MR. KRISLOV: With that, I think our
21 order, if you would, where we sort of started this on
22 March 13, we think that our order more reflects what
23 the Court did on that day, and even what the
24 agreements are today, and we ask that you would enter

1 that order.
 2 THE COURT: I'm not going to enter
 3 that order, because I want to enter into a new
 4 schedule with regard to having the reconciliation
 5 done.
 6 I want you two to talk to each other
 7 and give me a reasonable order by which '14, '15,
 8 '16 are going to be completed.
 9 I want an agreement if you can do it.
 10 If you can't, then bring it back to me. I want it in
 11 two weeks. I want everyone to figure out what this
 12 is going to be, and I want you to stick to the
 13 schedule.
 14 MS. NABER: I understand that, Your
 15 Honor, to come to some arrangement with Mr. Krislov.
 16 But are you saying that you're going
 17 to enter an order on that? Because that doesn't jibe
 18 with no jurisdiction that you just ruled on.
 19 THE COURT: On the reconciliation
 20 aspects.
 21 MS. NABER: But that's what we were
 22 just --
 23 THE COURT: We're talking about
 24 Korshak and Windows, yes?

1 MS. NABER: He's asking for an audit
 2 for everyone, so, post-January --
 3 THE COURT: No, I'm talking about
 4 Korshak and Windows.
 5 MR. KRISLOV: Well, they've agreed to
 6 audit everybody and preserve -- I mean, they're not
 7 going to -- I mean, this was the motion -- this is
 8 where we started in March.
 9 THE COURT: Oh, you mean before
 10 January 1st?
 11 MS. NABER: Right.
 12 MR. KRISLOV: No, no. They're
 13 auditing everybody, because you've got to audit
 14 everybody in order to come out with the right
 15 numbers --
 16 THE COURT: Oh, I see.
 17 MR. KRISLOV: -- even for the
 18 non-Medicare, because they were only supposed to
 19 charge them as if they were Medicare covered for the
 20 Korshak and Windows.
 21 But the other people --
 22 THE COURT: Well, I'll tell you. If
 23 the issue is whether I have jurisdiction to issue
 24 this order or not, I don't.

1 But you have the right to enter into
 2 an agreement, which I'm going to press you hard to
 3 make. And then we have a contract.
 4 Well, I don't know. It's going to
 5 be -- you're going to use your best efforts to meet
 6 it.
 7 MR. PRENDERGAST: That is exactly what
 8 I was going to suggest, Judge.
 9 THE COURT: You're going to use your
 10 best efforts -- it's not any longer about the City.
 11 I believe the City is using diligent efforts. Or
 12 about Mr. Krislov and his clients. They are
 13 clearly -- have a need and right to get this done,
 14 and it should have been done way before I entered on
 15 the scene, but it wasn't. I just want this done, and
 16 I want it done as soon as practicable so that
 17 everybody knows, can argue about it, the one or two
 18 dollars or more.
 19 But get the numbers done. So put
 20 together a schedule. We'll make it part of the
 21 record. For whatever jurisdiction I have over it,
 22 I'll do my best to impose the schedule, okay?
 23 MS. NABER: I understand.
 24 MR. KRISLOV: You certainly have the

1 jurisdiction for --
 2 THE COURT: We're not going to argue
 3 it right now.
 4 MR. KRISLOV: The problem is that --
 5 THE COURT: I have to take three
 6 minutes.
 7 MR. KRISLOV: -- we're in a limbo.
 8 THE COURT: Good. Stay there. I'll
 9 see you in a second.
 10 (Brief recess.)
 11 THE COURT: Okay, back on the record.
 12 MR. PRENDERGAST: Your Honor, if I
 13 may.
 14 THE COURT: You may.
 15 MR. PRENDERGAST: If I understand it,
 16 you want this order to direct the parties to meet and
 17 to -- for the City to come up with a date by which --
 18 or schedule, as you put it --by which it will have
 19 provided the Korshak/Windows reconciliation for '14,
 20 '15, and '16?
 21 THE COURT: Correct.
 22 MR. PRENDERGAST: And the order will
 23 further provide that the Court lacks jurisdiction on
 24 the reconciliation issue with respect to the other

1 matters. And I don't think that's -- I don't know
 2 what else we covered today. I think that's it.
 3 THE COURT: Okay. What else did you
 4 want to talk about, Clint?
 5 MR. KRISLOV: We're in this sort of
 6 limbo, and the problem of your saying you don't have
 7 jurisdiction, if I can have leave to amend the
 8 Korshak complaint --
 9 THE COURT: It was dismissed with
 10 prejudice.
 11 MR. KRISLOV: Yeah, but we're back --
 12 we're here in Korshak because the appellate court
 13 remanded -- sorry -- we're here because the appellate
 14 court remanded back to this Court --
 15 THE COURT: On the settlement.
 16 MR. KRISLOV: On the reconciliation
 17 process. How far that goes, whatever, I think you
 18 have jurisdiction for whatever was in that motion.
 19 You know, we can fight about that, but
 20 I think -- and we'll file an amended -- we'll file a
 21 new complaint. We'll do that.
 22 But for the moment, I think you ought
 23 to maintain your Korshak jurisdiction on the
 24 settlement as extended over whatever merits, whatever

1 time.
 2 THE COURT: Well, I'm not doing that.
 3 I'm going to adhere to the ruling of Justice Simon
 4 and deal with that which I have to deal with up
 5 until, as I think he said, December 31st, 2013.
 6 That's all they dealt with.
 7 MR. KRISLOV: But that's all that was
 8 -- the appeal was only --
 9 THE COURT: Yes, that's all it dealt
 10 with. That's right.
 11 MR. KRISLOV: But the reconciliation,
 12 when it came back, we moved to reconcile -- to audit
 13 and reconcile with respect to the years that were
 14 then timely.
 15 The only reason the 2013 was the only
 16 issue before the appellate court was that that was
 17 the only motion we had made at that time.
 18 When it came back at the same time as
 19 you ordered -- as the appellate court directed, you
 20 ordered them to audit and reconcile. We said that
 21 includes the obligation to audit and reconcile with
 22 respect to other years and people as well.
 23 THE COURT: Sure. So you think I have
 24 jurisdiction to do that based upon the principles

1 established by that opinion.
 2 MR. KRISLOV: And we'll file a new
 3 complaint, but I think you have jurisdiction.
 4 THE COURT: And you don't think I do.
 5 MS. NABER: I don't, Your Honor. And
 6 I just want to clarify, when Mr. Krislov filed the
 7 motion before you on reconciling the six months, it
 8 was March of 2015. It was clear the City was not
 9 going to be doing reconciliations going forward.
 10 Mr. Krislov corresponded with me. I
 11 indicated we're not doing reconciliations. For him
 12 to say that that was the only thing that was ripe at
 13 the time he filed that motion and took it up to the
 14 appellate court is misleading.
 15 And I meant to correct that initially,
 16 but we were already into '15 when he filed that
 17 motion. So '13 was done and '14 was done, and he
 18 knew we were not going to be doing reconciliations.
 19 MR. KRISLOV: '13 may have been done.
 20 I'll go back and I'll check the record --
 21 MS. NABER: I have the motion if you
 22 want to --
 23 MR. KRISLOV: I'll be glad to go back
 24 through things, but I don't call her misleading, and

1 I don't appreciate being called misleading.
 2 So what we -- all that was then before
 3 the Court was our motion with respect to 2013. That
 4 didn't mean that 2014 -- 2014 would not have become
 5 an audit process till 2015.
 6 THE COURT: So, Ms. Naber, why
 7 wouldn't -- following Justice Simon's opinion, why
 8 wouldn't he say that reconciliation of '14, '15 and
 9 '16 for Korshak and Windows would be part of the
 10 settlement agreement, and I should have jurisdiction
 11 over that, as I do over the settlement agreement?
 12 MS. NABER: As we previously
 13 discussed, Your Honor, his opinion clearly said, as
 14 of January 1st, 2014, it was a new deal. It was a
 15 new promise.
 16 It was in that letter. It changed --
 17 it was going to change the plan --
 18 THE COURT: But their duties and
 19 obligations pursuant to --
 20 MR. KRISLOV: They extended -- sorry.
 21 THE COURT: Go ahead, Clint.
 22 MR. KRISLOV: They extended their old
 23 obligations, and that's what we were enforcing, and
 24 that's what we are fighting about --

1 THE COURT: For Windows and Korshak.
 2 MR. PRENDERGAST: Not past --
 3 MR. KRISLOV: For everybody. Because
 4 everybody -- the other people were included in that
 5 letter.

6 THE COURT: Paragraph one?
 7 MR. PRENDERGAST: Your Honor, I think
 8 the Court's opinion was clear. What was before the
 9 Court was whether or not they extended the
 10 reconciliation to the end of 2013. That's what the
 11 Court held.

12 THE COURT: Yes, that's true.

13 MR. PRENDERGAST: They weren't talking
 14 about '14, '15 and '16 --

15 MR. KRISLOV: They weren't.

16 THE COURT: Everyone agrees they
 17 weren't. But the question is why would it be
 18 unreasonable to project from that decision that they
 19 would find that '14, '15 and '16 would be included as
 20 well for Windows and Korshak, since it was part of
 21 the original settlement agreement, and it's part of
 22 the original plan?

23 And that's what they talked about,
 24 rather, that it was part of the plan. And the plan

1 didn't end on December 31st, 2013, for purposes of
 2 your obligations that arose.

3 MR. PRENDERGAST: The obligations that
 4 arose after 2013 were those that the City voluntarily
 5 undertook --

6 THE COURT: Sure.

7 MR. PRENDERGAST: -- by virtue of the
 8 2013 amendment.

9 THE COURT: So your point is that that
 10 should be the subject of a new lawsuit?

11 MR. PRENDERGAST: Well, of course.

12 It doesn't say anything about
 13 reconciliation, and it doesn't say anything about
 14 extending the 2008 reconciliation agreement ad
 15 infinitum.

16 THE COURT: Okay. And, yet, you are
 17 doing a reconciliation for Windows and Korshak
 18 for '14, '15, and '16, and you have undertaken that
 19 obligation.

20 MR. PRENDERGAST: Right. Because no
 21 good act goes unpunished.

22 THE COURT: Well, that's true. For
 23 instance, I wanted to be a judge.

24 MR. KRISLOV: Here's our problem with

1 this one.

2 THE COURT: Yes, sir.

3 MR. KRISLOV: Number one, they're
 4 going to say down the road, "Krislov, you're not
 5 certified for anybody except for the Korshak and
 6 Windows and so (a) you have no authority to speak for
 7 them; and (b), as Mr. Donham will say, because he
 8 said in the other case, you're not certified as class
 9 counsel. We get to the merits all being decided, and
 10 then you want to get a fee, you can't get it, because
 11 you're not -- you don't have the absent class members
 12 here, so you don't get paid anything."

13 And that's exactly what he and the
 14 other Fund maintain they're thinking.

15 THE COURT: Well, we'll wait to see
 16 what he says about that, Clint.

17 But I'm well aware, and the record
 18 will demonstrate clearly, that all these issues are
 19 being held in abeyance because of the appeals, all
 20 of --

21 MR. KRISLOV: Right.

22 THE COURT: Let me finish.

23 All of which are being taken to
 24 intellectual honesty, and because that's what should

1 be done, your point of view.

2 It doesn't mean that -- and it's also
 3 clear that if the appeals were not going on, I would
 4 have ruled on class certification and was prepared to
 5 rule if there had been no appeal.

6 So there you are. The records stands
 7 pretty pristine with regard to that and with regard
 8 to what you're arguing.

9 So I don't think you're prejudiced
 10 thereby.

11 MR. PRENDERGAST: I think rearguing is
 12 the word, because we've been through this --

13 THE COURT: Yes, that's right.

14 MR. KRISLOV: The other part of that
 15 is, we will amend -- we'll file a new complaint, and
 16 I guess we'll go from there.

17 THE COURT: Okay.

18 MR. KRISLOV: The reason that I resist
 19 that is because we have to then pull everything of
 20 Korshak and Underwood --

21 THE COURT: Do what you got to do. Do
 22 what you want to do. Resist any way you want.
 23 You're entitled to do that.

24 MR. KRISLOV: We'll do it, Your Honor.

1 But when this --
 2 THE COURT: If someone brings me a
 3 complaint asking to amend Korshak when there's been a
 4 prior ruling --
 5 MR. KRISLOV: We'll file a new
 6 complaint.
 7 THE COURT: -- dismissing it with
 8 prejudice, you're amending something that doesn't
 9 exist.
 10 One million times zero is still zero.
 11 And that's the way it is. You do what you want to
 12 do. I'm not trying to tell you what to do. I'm just
 13 telling you what the story is.
 14 MR. KRISLOV: We'll file a new
 15 complaint. We'll deal with that. But the
 16 reconciliation that they say they're doing
 17 voluntarily, the fact of the matter is, they're
 18 trying to do it because they don't want to have to
 19 pay anybody any fees.
 20 They want to say --
 21 THE COURT: We'll talk about your fees
 22 later. Right now, I'm more concerned about making
 23 sure that everyone knows what their benefits are,
 24 who's going to pay for them, and that they're going

1 to be covered.
 2 Fees we'll talk about at another
 3 point, because the lawyers' fees should not be the
 4 end all of the existence of a case.
 5 MR. KRISLOV: They're not, as I think
 6 I have demonstrated --
 7 THE COURT: And it's clear that you
 8 have demonstrated that.
 9 So what's our next date? Two weeks
 10 for you to come up with a schedule? You want to come
 11 in the week after Labor Day?
 12 MR. KRISLOV: The week after Labor day
 13 I think I will have to do, because I cannot come in
 14 in two weeks.
 15 THE COURT: All right. Very good. So
 16 this is just for the purposes of a schedule for
 17 reconciliation for '14, '15 and '16, Class 1 and 2,
 18 and that's that.
 19 MR. D. KUGLER: What date was that?
 20 THE COURT: I didn't make a date. How
 21 about September 11th?
 22 MR. KRISLOV: I think we'll pick
 23 another day.
 24 THE COURT: As you wish. I keep it

1 open, but I will fill it with this case if you wish.
 2 If not, choose another date.
 3 MR. KRISLOV: Our petition for leave
 4 to appeal is due on the 7th of September.
 5 THE COURT: What date would you like
 6 to return?
 7 MR. KRISLOV: I guess the 12th is
 8 fine.
 9 MR. PRENDERGAST: Your Honor, a little
 10 later in the week just because --
 11 THE COURT: What date would you like?
 12 MR. PRENDERGAST: The 13th or
 13 14th would be fine.
 14 THE COURT: Okay.
 15 MR. KRISLOV: Then maybe we can do the
 16 8th.
 17 MR. PRENDERGAST: No, I can't do it
 18 the 8th. I can't do it earlier than that in
 19 September. That's why I asked for a couple days
 20 later.
 21 MR. KRISLOV: Okay. And we have to do
 22 an order for today.
 23 THE COURT: Sir, keep your eye on the
 24 ball that's in front of you. 13 or 14?

1 MR. KRISLOV: I have no -- I don't
 2 care. Pick one. Take the 14th. It's not the
 3 13th.
 4 THE COURT: 9-14 at 10:30.
 5 MR. PRENDERGAST: Thank you, Your
 6 Honor.
 7 THE COURT: You wanted to talk -- you
 8 do have to prepare an order for today. Why don't you
 9 trade orders -- the transcript speaks for itself, but
 10 I've denied it over your objection, the
 11 jurisdictional issue, and I've denied the other one
 12 as well, the motion for class certification.
 13 You did get your report from the
 14 unions with regard to --
 15 MR. KRISLOV: No, Pension Funds, not
 16 the unions.
 17 THE COURT: The Funds, I'm sorry, with
 18 regard to 2018. And there you are.
 19 MR. PRENDERGAST: Thank you, Your
 20 Honor.
 21 THE COURT: All right.
 22 (Proceedings concluded at 11:53 a.m.,
 23 August 9, 2017.)
 24

1 REPORTER'S CERTIFICATE

2
3 I, JERRI ESTELLE, CSR, RPR, doing
4 business in the City of Chicago, State of Illinois,
5 do hereby certify that I reported in computerized
6 shorthand the foregoing examination as appears from
7 my stenographic notes.

8 I further certify that the foregoing
9 is a true and accurate transcription of my shorthand
10 notes and contains all the testimony had at said
11 examination.

12 IN WITNESS WHEREOF, I hereunto set my
13 hand as Certified Shorthand Reporter in and for the
14 State of Illinois on August 15, 2017.

15 
16 _____
17 Jerri Estelle, CSR, RPR
18 License Number: 084-003284
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