

# EXHIBIT 20

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

MICHAEL W. UNDERWOOD, et al., )

Plaintiffs, )

v. )

CITY OF CHICAGO, et al., )

Defendants. )

13 CH 17450

MEMORANDUM AND ORDER

Plaintiff Michael W. Underwood and 349 other named Plaintiffs, as participants in the Annuity & Benefit Funds covering the City of Chicago's employees, have filed an Amended Class Action Complaint seeking declaratory and other relief regarding their contention that they are entitled to lifetime subsidized health care.

Defendants are the City of Chicago, the Laborers' & Retirement Board Employees Annuity & Benefit Fund of Chicago, the Trustees of the Firemen's Annuity and Benefit Fund of the City of Chicago, the Trustees of the Municipal Employees' Annuity and Benefit Fund of the City of Chicago and the Trustees of the Policemen's Annuity and Benefit Fund of the City of Chicago.

They have all filed Motions to Dismiss the Amended Class Action Complaint pursuant to 735 ILCS 5/2-619.1.

I. Background

*A. The Creation of the Funds*

In order to administer and carry out the provisions of the Illinois Pension Code ("Pension Code"), the General Assembly created four pension funds covering employees of the City of Chicago ("the City"):

- (1) the Laborers' & Retirement Board Employees Annuity & Benefit Fund ("Laborers");
- (2) the Firemen's Annuity and Benefit Fund ("Fire");
- (3) the Municipal Employees' Annuity and Benefit Fund ("Municipal"); and
- (4) the Policemen's Annuity and Benefit Fund ("Police").

(Am. Compl. ¶¶17-18). The Funds' obligations to their annuitants under the Pension Code are actually financed by the taxpayers of the City through a tax levy.<sup>1</sup>

<sup>1</sup> 40 ILCS 5/5-168; 40 ILCS 5/6-165; 40 ILCS 5/8-173; 40 ILCS 5/11-169.

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The Pension Code was amended from time to time, as new collective bargaining agreements were negotiated.

A discussion of the salient provisions of the amendments which are relevant to the disposition of these Motions to Dismiss follows.

*B. The 1983 and 1985 Amendments to the Pension Code*

In 1983, the General Assembly amended the Pension Code to require the Fire and Police Funds to contract with one or more insurance carriers to provide group health care coverage for their retirees.<sup>2</sup>

The 1983 amendments also provided that the boards of the Fire and Police Funds were to subsidize annuitants' monthly insurance premiums by contributing up to \$55 per month for annuitants who were not qualified for Medicare and \$21 per month for Medicare-qualified annuitants through payments to the City.<sup>3</sup>

The 1983 amendments further stated that the basic monthly premium for each annuitant would be contributed by the City from the tax levy used to finance the Funds. If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the additional cost was to be deducted from the annuitant's monthly benefit.<sup>4</sup>

In 1985, the General Assembly amended the Pension Code to require the Laborers and Municipal Funds to pay up to \$25 per month of the annuitant's monthly premiums.<sup>5</sup> If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the annuitant could elect to have the additional cost deducted from the annuitant's monthly benefit.<sup>6</sup> If the annuitant did not so elect, coverage would terminate.<sup>7</sup> While the 1985 amendment did not specify that the premiums would be funded by the City's tax levy, the Pension Code specifies that the City's tax levy finances all of the Funds' financial obligations under the Pension Code.<sup>8</sup>

The 1985 amendments also directed the Funds to approve a group health insurance plan for the annuitants.<sup>9</sup>

The 1985 amendments further provided that the healthcare plans were not to be construed as pension or retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.<sup>10</sup>

<sup>2</sup> Am. Compl. ¶27; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2 (added by P.A. 82-1044, §1, eff. Jan. 12, 1983).

<sup>3</sup> (Am. Compl. ¶33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2).

<sup>4</sup> Am. Compl. ¶¶26, 31, 33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2.

<sup>5</sup> Am. Compl. ¶36; see also, 40 ILCS 5/5-164.1 (added by P.A. 84-23, §1, eff. July 18, 1985); 40 ILCS 5/11-160.1 (added by P.A. 84-159, §1, eff. Aug. 16, 1985).

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> 40 ILCS 5/8-173; 40 ILCS 5/11-169.

<sup>9</sup> Id.

<sup>10</sup> Id.

*C. The Korshak Litigation, and the 1989, 1997 and 2003 Amendments to the Illinois Pension Code*

In 1987, the City notified the Funds that it intended to terminate retiree health care by the beginning of 1988.

The City soon thereafter filed suit in the Chancery Division of the Circuit Court of Cook County, City of Chicago v. Korshak, 87 CH 10134, seeking a declaration that it had no obligation to provide healthcare to retirees ("the Korshak litigation"). (Am. Compl. ¶89). In response, the Funds filed counterclaims seeking to compel the City to continue healthcare coverage for the Funds' retirees. (Am. Compl. at ¶¶93-94).

Employees who retired on or before December 31, 1987 were allowed to intervene as a group. This group was certified as the "the Korshak sub-class." (Id. at ¶92).

Employees who retired after December 31, 1987, but before August 23, 1989, were permitted to intervene as a group, which was certified as the "Window sub-class." (Id.).

In 1988, the parties entered into a settlement agreement. This agreement was subsequently codified by 1989 amendments to the Pension Code. (Am. Compl. ¶¶95-96). The amendments increased the amounts the Funds were required to contribute monthly for the health care of their annuitants (up to \$65 for non-Medicare eligible annuitants and up to \$35 for Medicare eligible annuitants); required the City to pay 50 percent of the cost of the annuitants' health care coverage through 1997; and made the annuitants responsible for paying the remaining portion of their premiums.<sup>11</sup>

The 1989 amendments specifically stated that the obligations set forth expired on December 31, 1997.<sup>12</sup>

Additionally, these amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.<sup>13</sup>

In June 1997, prior to the expiration of original settlement period, the parties entered into a new settlement agreement which extended the settlement period until June 20, 2002. (Am. Compl. ¶11). This new agreement was also codified by amendments to the Pension Code.<sup>14</sup>

The 1997 amendments increased the Funds' monthly contribution (up to \$75 for non-Medicare eligible annuitants and up to \$45 for Medicare eligible annuitants) and again required

<sup>11</sup> 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 86-273, §1, eff. Aug. 23, 1989).

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 90-32, §5, eff. June 27, 1997).

the City to pay 50% of the costs of the annuitants' health care coverage.<sup>15</sup> The amendments stated that the obligations set forth would terminate on June 30, 2002.

The amendments again provided that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.<sup>16</sup>

In April 2003, the parties entered into yet another settlement agreement extending the settlement period until June 30, 2013 and, again, the Pension Code was amended to codify the terms of the settlement.<sup>17</sup>

Under the 2003 amendments, the City was to pay at least 55% of the health care costs of annuitants who retired before June 30, 2005.<sup>18</sup> For annuitants retiring after that date, the City was to pay between 40-50% of the health care costs.<sup>19</sup> The City was not to pay any costs for annuitants with less than 10 years of service.<sup>20</sup> Between July 1, 2003 and July 1, 2008, the Funds contributed \$85 for each annuitant who was not qualified for Medicare and \$55 for each annuitant who was qualified for Medicare. After July 1, 2008, the Funds paid an additional \$10 per month for all annuitants.<sup>21</sup>

As with the previous amendments, the 2003 amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.<sup>22</sup>

The 2003 settlement agreement also provided for the creation of the Retiree Healthcare Benefits Commission ("RHBC"). (Plaintiffs' Response, Ex. 13 at 9). The 2003 settlement agreement provided that before July 1, 2013, the RHBC would make recommendations concerning the state of retiree health care benefits, their related cost trends, and issues affecting any retiree healthcare benefits offered after July 1, 2013. (*Id.* at 10).

#### ***D. 2013: The RHBC Report and the City's Decision to Phase-Out Health Care Support***

On January 11, 2013, the RHBC issued its report. (City's MTD at Ex. B). The report concluded that continuing the existing financial arrangement was not viable given the City's financial circumstances, industry trends and market conditions. (*Id.*).

Following the RHBC's report, the City decided to gradually reduce and ultimately end its contributions toward the health care of retirees, other than those who retired before August 23, 1989, *e.g.*, the Korshak and Window subclasses. (Am. Compl. ¶98).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Am. Compl. ¶97; 40 ILCS 5/5-167.5(b); 40 ILCS 5/164.2(b); 40 ILCS 5/8-164.1(b); 40 ILCS 5/11-160.1(b) (as amended by P.A. 93-42, §5, eff. July 1, 2003).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

To that end, the City sent annuitants a letter dated May 15, 2013 informing them that the City would extend current health care coverage and benefits through December 31, 2013. (Am. Compl. Ex. 2). The letter stated that after January 1, 2014, the City would provide a healthcare plan with a continued contribution from the City of up to 55% of the cost of that plan for the lifetimes of the annuitants retiring prior to August 23, 1989. (*Id.*). For all annuitants retiring after August 23, 1989, the City stated its intent to modify benefits and to ultimately phase-out its healthcare subsidies and plans by the beginning of 2017. (*Id.*).

### *E. Proceedings in this Case*

In July 2013, Plaintiffs filed a motion before this court seeking to revive the Korshak action. That motion was denied because the Korshak action had been dismissed with prejudice in 2003.

On July 23, 2013, Plaintiffs filed this new action against the City and the trustees of the Funds. The case was removed to federal court on August 9, 2013.

Before the federal district court, Plaintiffs filed their Amended Complaint which identified four putative sub-classes of plaintiffs:

- 1) The Korshak sub-class (those retiring prior to December 31, 1987)
- 2) The Window sub-class (those retiring between January 1, 1988 and August 23, 1989)
- 3) Any participant who contributed to any of the four Funds before the August 23, 1989 amendments to the Pension Code ("Sub-Class 3")
- 4) Any person who was hired after August 23, 1989 ("Sub-Class 4")

(Am. Compl. ¶7).

Count I of the Amended Complaint seeks a declaration that any reduction in Plaintiffs' healthcare benefits would violate Article XIII, §5 of the 1970 Illinois Constitution.

Count II of the Amended Complaint alleges that a reduction in benefits from the benefits in effect from October 1, 1987 to August 23, 1989 constitutes a breach of contract.

Count III asserts that Defendants are estopped from changing or terminating the annuitant coverage to a level below the highest level of benefit during an annuitant's participation in group healthcare benefits.

Counts IV and V asserted claims under federal law.

The City filed a motion to dismiss before the federal district court. The district court granted the motion to dismiss with prejudice. On appeal to the Seventh Circuit, the district court's order was vacated and the state law claims remanded to this court for decision. As only the state law claims were remanded, only Counts I, II and III are currently pending before this court.

## II. Motions to Dismiss

The City and the Funds have filed motions to dismiss Counts I, II and III of the Amended Complaint pursuant to 735 ILCS 5/2-619.1.

A §2-615 motion to dismiss “challenges the legal sufficiency of the complaint.” Chicago City Day School v. Wade, 297 Ill. App. 3d 465, 469 (1<sup>st</sup> Dist. 1998). The relevant inquiry is whether sufficient facts are contained in the pleadings which, if proved, would entitle a plaintiff to relief. Id. “Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint.” Id. “A section 2-615 motion admits as true all well-pleaded facts and reasonable inferences that can be drawn from those facts, but not conclusions of law or conclusions of fact unsupported by allegations of specific facts.” Talbert v. Home Savings of America, 265 Ill. App. 3d 376, 379-80 (1<sup>st</sup> Dist. 1994). A section 2-615 motion will not be granted “unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery.” Baird & Warner Res. Sales, Inc. v. Mazzone, 384 Ill. App. 3d 586, 590 (1<sup>st</sup> Dist. 2008).

A §2-619 motion to dismiss “admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action.” Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1<sup>st</sup> Dist. 2008). A dismissal under §2-619 permits “the disposal of issues of law or easily proved facts early in the litigation process.” Id. Section 2-619(a)(9) authorizes dismissal where “the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9).

### *A. Judge Albert Green’s Rulings in the Korshak Litigation*

During the Korshak litigation, the trial judge, Judge Albert Green, denied the City’s motion to dismiss the Funds’ counterclaim. Now, in the present litigation, Plaintiffs initially contend that Judge Albert Green’s order denying the City’s motion to dismiss in the Korshak litigation disposes of virtually all of the bases for dismissal raised by City and Funds’ current Motion to Dismiss. Plaintiffs are incorrect.

First, Judge Green did not address many of the issues currently pending before this court. Second, a denial of a motion to dismiss is not a final judgment as required for the application of collateral estoppel. State Farm Mut. Auto. Ins. Co. v. Illinois Farmers Ins. Co., 226 Ill. 2d 395, 415 (2007). Nor does Judge Green’s denial of the City’s motion to dismiss in the Korshak litigation constitute the law of *this* case. Only final and appealable orders which are left undisturbed by the appellate court become the law of the case. Ericksen v. Rush-Presbyterian-St. Luke’s Medical Ctr., 289 Ill. App. 3d 159, 168 (1<sup>st</sup> Dist. 1997). A denial of a motion to dismiss is not a final and appealable order.

**B. Capacity to Be Sued**

The trustees of Fire and Municipal Funds contend that dismissal is proper since they do not have the capacity to be sued.

The court finds this argument to be wholly unconvincing given the existence of the Korshak litigation and the Funds' active participation in it. The trustees of the Fire and Municipal Funds were defendants in that suit, filed counterclaims in that suit, and were parties to the settlement agreements in that suit. They have now waived any right to claim that they lack the capacity to be sued. Aurora Bank FSB v. Perry, 2015 IL App (3d) 130673 (lack of standing to be sued can be waived); People ex rel. Illinois State Dental Soc. v. Vinci, 35 Ill. App. 3d 474 (1<sup>st</sup> Dist. 1976)(same).

**C. Statute of Limitations**

The Laborers, Municipal and Fire Funds all contend that Plaintiffs' claims are time-barred because they were not filed within 10 years of 1987. Plaintiffs contend that the settlement agreements entered into during the course of the Korshak litigation reserved Plaintiffs' rights to assert the claims raised in the Amended Complaint. Plaintiffs are correct.

The 1989 settlement agreement provided that if the parties failed to reach a permanent resolution of their dispute by December 31, 1997, the parties would be restored to the same legal status which existed as of October 19, 1997. (Response at Ex. 10). The 1989 settlement agreement further provided that the court's jurisdiction would continue after January 1998 if no permanent solution was reached. (Id.). And, the 2003 settlement agreement expressly provided that after its expiration the class members would retain any right they then had "to assert any claims with regard to the provision of annuitant healthcare benefits" other than claims arising under the prior settlement agreements or amendments to the Pension Code.

The court finds that the 1989 and 2003 settlement agreements defeat any statute of limitations claims.

Moreover, "a statute of limitation begins to run when the party to be barred has the right to invoke the aid of the court to enforce his remedy." Sundance Homes v. County of Du Page, 195 Ill. 2d 257, 266 (2001). "Stated another way, a limitation period begins 'when facts exist which authorize one party to maintain an action against another.'" Id., quoting Davis v. Munie, 235 Ill. 620, 622 (1908); Bank of Ravenswood v. City of Chicago, 307 Ill. App. 3d 161, 167 (1999). This action was triggered by the City's letter of May 15, 2013 informing the Funds' annuitants of the City's plan to modify and ultimately phase-out its healthcare subsidies and annuities by 2017. Arguably, the statute of limitations did not begin to run until May 15, 2013.

**D. Motion to Dismiss Count I (§2-615)**

Count I of the Amended Complaint seeks a declaration that any reduction in Plaintiffs' healthcare benefits would violate Article XIII, §5 of the 1970 Illinois Constitution.

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The City and the Funds argue that Count I should be dismissed with prejudice because a reduction in the annuitants' healthcare benefits does not constitute a violation of §5, Art. XIII of the Illinois Constitution of 1970.

Article XIII, §5 of the Illinois Constitution of 1970 ("the Pension Clause") provides that:

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

Ill. Const. 1970, art. XIII, §5.

1. Kanerva v. Weems

Plaintiffs contend that Kanerva v. Weems, 2014 IL 115811, definitively establishes that Plaintiffs' healthcare benefits cannot be reduced.

In Kanerva, the plaintiffs in four consolidated cases filed suit challenging the validity of Public Act 97-695 which amended §10 of the State Employees Group Insurance Act of 1971 by eliminating the statutory standards for the State's contributions to health insurance premiums for members of three of the State's retirement systems. Id. at ¶¶1, 16. The plaintiffs argued that by amending the law to require annuitants to contribute additional amounts toward the cost of their health care, where the amounts were previously paid by the State, Public Act 97-695 diminished or impaired a membership benefit in violation of the Pension Clause. Id. at ¶20.

Our supreme court identified the central issue of Kanerva as "whether the pension protection clause applies to an Illinois public employer's obligation to contribute to the cost of health care benefits for employees covered by one of the state retirement systems." Id. at ¶35.

The supreme court found that currently, and prior to the approval of the Pension Clause, most state employees were provided with a package of benefits including subsidized healthcare, disability and life insurance coverage and eligibility to receive a retirement annuity and survivor benefits. Id. at ¶39. Eligibility for all these benefits, including healthcare, is conditioned on, and flows directly from, membership in a public pension system. Id. at ¶40. Therefore, subsidized healthcare must be considered a benefit of membership in a pension or retirement system protected by the Pension Clause. Id.

Our supreme court found that although it is true that healthcare costs and benefits are governed by a different set of calculations than retirement annuities, this fact is legally irrelevant. Id. at ¶54. If a benefit is derived from membership in a public pension system, it is protected under the Pension Clause. Id.

Finally, our supreme court reiterated the fundamental principle that "[u]nder settled Illinois law, where there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner. This rule

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of construction applies with equal force to our interpretation of the pension protection provisions set forth in article XIII, section 5." Id. at ¶55.

## 2. Application of Kanerva v. Weems

Kanerva is clear that healthcare benefits are covered by the Pension Clause and, therefore, cannot be diminished or impaired. The question is whether the healthcare benefits of Plaintiffs and the putative class members will be diminished or impaired by the City's plan to gradually phase out healthcare coverage for annuitants retiring on or after August 23, 1989.

### a. Whether the Legislature Could Validly Disclaim the Pension Clause's Application to the 1985, 1989, 1997 and 2003 Amendments to the Pension Code

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

Under Kanerva, healthcare benefits are covered by the Pension Clause. The amendments' language to the contrary is not enforceable. The General Assembly cannot erase the constitutional rights of the annuitants by statute.

### b. Whether Kanerva Applies to the Funds

At oral argument, the Funds asserted that Kanerva applies only to public employers and, therefore, has no application to the Funds. It is true that the Funds are not public employers. It is also true that the Kanerva court framed the central issue as "whether the pension protection clause applies to an Illinois public employer's obligation to contribute to the cost of health care benefits for employees covered by one of the state retirement systems." Kanerva, 2014 IL 115811 at ¶35. That being said, however, it does not follow under the circumstances of this case that Kanerva has no application to the Funds.

The Pension Clause protects, "[m]embership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof." Ill. Const. 1970, art. XIII, §5 (emphasis added).

Under Kanerva, healthcare benefits fall within the scope of the Pension Clause. Nothing in the language of the Pension Clause limits its scope to benefits provided *directly* by public employers.

The Illinois Pension Code provided for the creation of the Funds, by the city council, for the specific purpose of establishing, funding and administering pension funds for the City's employees. E.g., 40 ILCS 5/5-101; 40 ILCS 5/6-101; 40 ILCS 5/8-101; 40 ILCS 5/11-101.

Accordingly, in a very real and practical sense, the Pension Code designed a scheme by which the Funds were created as an instrumentality of the City. Since the Pension Clause protects the benefits of membership in the retirement system of any "unit of local government" or "any agency or instrumentality, thereof," Ill. Const. 1970, art. XIII, §5, Kanerva applies to the Funds.

**c. The 1983 and 1985 Amendments: No Time Limitations**

The 1983 amendments obligated the Fire and Police Funds to contract for group health care coverage for their annuitants and to subsidize the monthly premiums for their annuitants.

The 1985 amendments obligated the Municipal and Laborers Funds to approve a group health insurance plan and subsidize monthly premiums for their annuitants by making payments to the organization underwriting the group plan.

The 1983 and 1985 amendments did not set forth *any* termination date for the Funds' obligations. While the 1983 amendments provided that the group healthcare contracts made by the Firemen and Police Funds could not extend beyond two fiscal years, this limitation was not a time-limitation on the Funds' obligation to provide group health care to their annuitants. This was only a limitation on the length of any of the group healthcare contracts the Fire and Police Funds could enter into while fulfilling its non-time-limited obligation to its members.

The 1983 and 1985 amendments were in effect when the Korshak sub-class, the Window sub-class and Sub-Class 3 entered into the Funds' retirement systems. There does not appear to be any dispute between the parties that the 1983 and 1985 amendments apply to these sub-classes. The court notes that in its May 15, 2013 letter, (Am. Compl. Ex.2), the City stated that it would continue to provide a healthcare plan with a continued contribution from the City for the lifetime of the annuitants who retired prior to August 23, 1989. The City again reiterated this assertion in its Memorandum in support of its Motion to Dismiss.

Therefore, Count I clearly states a cause of action for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments. E.g., Alderman Drugs, Inc. v. Metropolitan Life Ins. Co., 79 Ill. App. 3d 799, 803 (1<sup>st</sup> Dist. 1979)(A complaint that alleges sufficient facts to show an actual controversy between the parties and prays for a declaration of rights states a cause of action.).

The exact nature of those obligations, however, is not properly decided on a §2-615 motion to dismiss.

**d. The Effect of the Time Limitations of the 1989, 1997 and 2003 Amendments**

Unlike the 1983 and 1985 amendments, the amendments to the Pension Code which codified the settlement agreements in Korshak were all time-limited. The 1989, 1997 and 2003 amendments did not provide that the healthcare benefits set forth therein were for the lifetime of the annuitants. Rather, these amendments were clear that the obligations set forth expired with the settlement agreements the amendments codified.

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Plaintiffs contend that there is an argument that the rates set forth in the 1989, 1997 and 2003 amendments cannot be diminished or impaired. Plaintiffs, however, fail to develop this argument. Furthermore, the court disagrees that such an argument is valid.

The Pension Clause is clear that benefits, once given, cannot be impaired or diminished. The Pension Clause, however, does not by itself confer benefits. The nature and extent of any health benefits to be conferred is the subject of the legislative power. In this case, the 1989, 1997 and 2003 amendments to the Illinois Pension Code were time-limited at creation, and for good reason. They were enacted solely to codify the time-limited settlement agreements between the parties. By their express terms, these amendments specifically did *not* provide the annuitants with “lifetime” or “permanent” healthcare benefits. Since any obligations under these amendments expired by the specific terms of those amendments, there is nothing to diminish or impair.

Plaintiffs cite to In re Pension Reform Litigation (Heaton v. Quinn), 2015 IL 118585, to argue that the General Assembly cannot impose a time limit on a grant of pension benefits. Heaton, however, nowhere addresses whether the General Assembly can enact pension statutes with time limitations. Indeed, the General Assembly generally has the right to impose conditions, including time limitations, on statutorily created rights. E.g., In re Petition for Detachment of Land from Morrison Community Hosp., 318 Ill. App. 3d 922, 930 (3d Dist. 2000); Kaufman, Litwin and Feinstein v. Edgar, 301 Ill. App. 3d 826, 831 (1<sup>st</sup> Dist. 1988).

The Pension Clause protects only benefits that have actually been granted. It does not serve to magically create a right to receive benefits not specifically granted.

Therefore, Count I fails to state a cause of action for declaratory relief as to the City’s and Funds’ obligations under the 1989, 1997 and 2003 amendments to the Illinois Pension Code.

***E. Motion to Dismiss Count II (§2-615 and §2-619)***

Count II asserts a common law breach of contract claim against the City based on a contractual right the Plaintiffs and the putative class members have alleged they have under the Pension Clause “to the fixed-for-life subsidized healthcare premiums in effect on their retirement date.” (Am. Compl. ¶116).

Count II also alleges that, independent of the Pension Clause, “Plaintiffs and the pre-August, 23, 1989 retirement or hire date putative class members have a contractual right to the plan in effect during the period of October 1, 1987 to August 23, 1989, at the \$55/\$21 fixed-rate-for-life healthcare premiums, subsidized by their respective Funds . . . without reduction.” (Id. at ¶117).

Plaintiffs allege that the City “has breached its contractual obligation by unilaterally requiring the plaintiffs and [putative] class members to pay increased healthcare premiums.” (Id. at ¶119).

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The City and the Funds argue that any breach of contract claim would be barred by the Statute of Frauds. The City and the Funds further argue that Count II alleges no facts supporting the existence of any contract between themselves and Plaintiffs providing for life-time subsidies for healthcare benefits.

### 1. Statute of Frauds

Illinois law is clear that any "lifetime" contract must be in writing or the contract is barred by the Statute of Frauds. McInerney v. Charter Golf, Inc., 176 Ill. 2d 482 (1997).

Plaintiffs argue that Dell v. Streator, 193 Ill. App. 3d 810 (3d Dist. 1990), provides otherwise, but that case did not address a Statute of Frauds defense. Plaintiffs further contend that written contracts *do* exist. But, as discussed below, the Amended Complaint fails to allege sufficient facts to establish the existence of such written contracts.

### 2. Section 2-615

"In order to state a cause of action for breach of contract, a plaintiff must allege (1) an offer and acceptance; (2) consideration; (3) definite and certain terms of the contract; (4) plaintiff's performance of all required contractual conditions; (5) defendant's breach of the terms of the contract; and (6) damage resulting from the breach." Weis v. State Farm Mut. Auto. Ins. Co., 333 Ill. App. 3d 402, 407 (2d Dist. 2002).

Illinois is a fact-pleading jurisdiction. Simpkins v. Csx Transp., 2012 IL 110662, ¶26. "A plaintiff may not rely on conclusions of law or fact unsupported by specific factual allegations." Id.

Count II fails to allege specific facts showing the existence of any written contracts between Plaintiffs, the City, or the Funds. While Plaintiffs attempt to cure this deficiency in their Response, this court can only consider those facts actually pled in the Amended Complaint.

During oral argument, Plaintiffs argued at length that the City's handbook constituted a contract for lifetime healthcare, and that a "three-way" contract to provide lifetime healthcare somehow existed between the City, the Funds, and the annuitants. But, regardless of Plaintiffs' assertions during oral argument, the existence of a contract relied upon by them for relief must be actually pled in order to be considered by this court. Count II does not plead that the handbook is the contract at issue or contain any allegations regarding any supposed "three-way" contract. Furthermore, Plaintiffs failed to attach the handbook to the Amended Complaint, as required by 735 ILCS 5/2-606.

The court further notes that Count II does not allege any breach of contract by the Funds. While their Response makes it clear that Plaintiffs believe they have a breach of contract claim against the Funds, Count II only alleges a purported breach by the City and only seeks relief from the City.

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Count II is dismissed, without prejudice, pursuant to §2-615 for failure to state a claim for breach of a written contract against either the City or the Funds.

**F. Motion to Dismiss Count III (§2-615)**

Count III asserts that Defendants are, as a matter of common law, estopped from changing or terminating the annuitant coverage to a level below the highest level of benefit during an annuitant's participation in group healthcare benefits. Though Count III fails to allege whether Plaintiffs are asserting a claim for promissory or equitable estoppel, Plaintiff's Response confirms that they are asserting a claim for equitable estoppel.

The elements of equitable estoppel are: (1) words or conduct amounting to a misrepresentation or concealment of material facts on the part of the party allegedly estopped; (2) knowledge by the party allegedly estopped at the time the representations were made that the representations were untrue; (3) lack of knowledge by the party asserting estoppel at the time the representations were made and at the time they were acted upon that the representations were untrue; (4) the party allegedly estopped must intend or reasonably expect the representations to be acted upon; (5) good faith reliance on the representations by the party asserting estoppel to its detriment; and (6) prejudice to the party asserting estoppel if the party allegedly estopped is permitted to deny the truth of the representations." Williams & Montgomery, Ltd. v. Stellato, 195 Ill. App. 3d 544, 552 (1<sup>st</sup> Dist. 1990).

Illinois courts do not favor applying equitable estoppel against public bodies and will do so only to prevent fraud or injustice. Morgan Place v. City of Chicago, 2012 IL App (1st) 091240, ¶33. In order to apply equitable estoppel against a public body, there must be an affirmative act by the public body itself (i.e. legislation) or an act by an official with the *express authority* to bind the public body. Patrick Engineering, Inc. v. City of Naperville, 2012 IL 113148, ¶39. Furthermore, for reliance on an officer's actions to be detrimental and reasonable, the party claiming estoppel must have substantially changed his or her position based on the affirmative act of the public body's officials, *and* upon his or her own inquiry into the official's authority. Id.

Count III alleges that the City and the Funds "are estopped by their own conduct from changing or terminating the annuitant coverage to a level below the highest level of benefit during a participant's participation in the group healthcare benefits" and that the City "is estopped from changing or terminating the coverage for class period retirees without affording the Funds a reasonable time in which to obtain alternative coverage from another carrier." (Am. Compl. ¶¶121-122). Count III, however, fails to set forth any specific facts supporting the application of equitable estoppel.

Plaintiffs allege that between 1984 and 1987, the City held a series of "Pre-Retirement" seminars at which unidentified City officials informed the attendees that they would be able to participate in the City's health plan for life with no cost for their own coverage. (Id. at ¶¶46-47). This allegation does not show an affirmative act by a City official with *express authority* to bind the City. Furthermore, Plaintiffs have failed to allege that they undertook any inquiry into the

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unidentified City officials' actual authority to bind the City. Without such factual allegations, Count III does not state a claim against the City.

Count III is even more deficient in factual support as to the Funds. The Amended Complaint does not contain a single allegation of any affirmative act by any of the Funds, much less an affirmative act by an official with the express authority to bind the Funds.

At oral argument, Plaintiffs' counsel asserted that the City representatives at the "Pre-Retirement" seminars had "apparent authority" to bind the City. "Apparent authority," however, is not a basis for equitable estoppel against a public body:

Because apparent authority is not actual, but only ostensible, an apparent agent may make representations the specifics of which the principal is unaware, and still bind the principal. **'If the unauthorized acts of a governmental employee are allowed to bind a municipality \*\*\*, the municipality would remain helpless to correct errors'** (*City of Chicago v. Unit One Corp.*, 218 Ill. App. 3d 242, 246, 578 N.E.2d 194, 161 Ill. Dec. 67 (1991)) or, worse, to escape the financial effects of frauds and thefts by unscrupulous public servants (*D.S.A. Finance Corp.*, 345 Ill. App. 3d at 563). **Thus, we have required, 'anyone dealing with a governmental body takes the risk of having accurately ascertained that he who purports to act for it stays within the bounds of his authority, and \*\*\* this is so even though the agent himself may have been unaware of the limitations on his authority.'**

Patrick Engineering, 2012 IL 113148, ¶36 (emphasis added).

Count III is dismissed, without prejudice, for failure to state a claim.

### III. Conclusion

Count I states a cause of action for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments, but fails to state a cause of action for declaratory relief as to the City's and Funds' obligations under the 1989, 1997 and 2003 amendments to the Illinois Pension Code.

Count II is dismissed, without prejudice, pursuant to §2-615 for failure to state a claim for breach of a written contract against either the City or the Funds.

Count III is dismissed, without prejudice, for failure to state a claim for breach of contract under a theory of common law equitable estoppel.

Plaintiffs are given leave to amend Counts II and III.

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The status date of December 11, 2015 at 9:30 a.m. stands.

Enter: 12/13/15

Neil H. Cohen #  
Judge Neil H. Cohen 2021

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**ENTERED**  
Judge Neil H. Cohen-2021  
**DEC 03 2015**  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL  
DEPUTY CLERK



# EXHIBIT 21



**DEPARTMENT OF FINANCE**  
**CITY OF CHICAGO**

May 15, 2013

**IMPORTANT NOTICE – PLEASE READ CAREFULLY**

Dear City of Chicago Annuitant:

I am writing to update you of developments regarding retiree healthcare benefits. Under the Korshak Settlement Agreement, the City of Chicago agreed to provide support for healthcare coverage to annuitants through June 30, 2013. The Settlement Agreement also required that the City establish a Retiree Healthcare Benefits Commission (“RHBC”) that, among other duties, was to make recommendations on the state of retiree healthcare benefits, their related cost trends, and issues affecting the offering of retiree benefits after July 1, 2013. Earlier this year, the RHBC fulfilled its duties and provided Mayor Emanuel with its report. Those recommendations can be found online at <http://www.cityofchicago.org/city/en/depts/fin/provdrs/ben.html>.

After reviewing the findings of the report, and after hearing many of the concerns expressed by retirees, employee representatives and industry experts, the City has decided the following:

1. The City will extend current coverage and benefit levels through December 31, 2013. This additional time will allow retirees to maintain coverage for a full plan year, recognizing what we heard from many retirees who have planned deductible and out of pocket expenditures based on an expectation of full year coverage. The City will, however, adjust the benefit levels provided under the current plan starting January 1, 2014.
2. After January 1, 2014, the City will provide a healthcare plan with a continued contribution from the City of up to 55% of the cost for that plan for their lifetimes to the City retirees who are members of the Korshak and “Window” Sub-Classes, meaning those City annuitants who retired prior to August 23, 1989. In short, the City will continue to substantially subsidize these retirees' healthcare plan as it does today.
3. For all annuitants who retired on or after August 23, 1989, in light of the evolving landscape of national healthcare and challenges faced by Chicago taxpayers, the City will need to make changes to the current retiree healthcare plan. These changes will likely include some adjustments in premiums and/or deductibles, some benefit modifications and, ultimately, the phase out of the plan by the beginning of 2017. The City expects to announce the details of this revised structure this summer, so that all retirees, current and future, will have all the information they need to appropriately prepare for this important component of retirement planning. With the changes taking place in the national healthcare market, we will ensure retirees have the information needed to navigate the options available for their healthcare needs going forward, both for Medicare and non-Medicare eligible retirees. As you know, retirees who are eligible for Medicare will continue to receive Medicare coverage, and supplemental Medicare plans are available from many insurance companies – as there are today – for retirees who wish to purchase additional coverage. And retirees who are not eligible for Medicare will have a broad range of healthcare plan options available to them as the Illinois health insurance exchange goes into effect in 2014.

One additional note – as you may know, the current retiree healthcare subsidy provided by the four Chicago pension systems is set to expire on June 30, 2013. If this subsidy is not reauthorized, retirees will likely be responsible for bearing any additional cost for their healthcare plan that is currently borne by their respective pension funds.

We look forward to working with you in the coming months to ensure you have all the information you and your family will need to make sound decisions regarding your retiree healthcare.

Respectfully,

Amer Ahmad, City Comptroller

**A 866**

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# EXHIBIT 22

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

MICHAEL W. UNDERWOOD, et al., )  
)  
Plaintiffs,) )  
)  
vs. ) No. 13 CH 17450  
) Calendar 13  
)  
CITY OF CHICAGO, a Municipal )  
Corporation, )  
)  
Defendant,) )  
)  
and )  
)  
Trustees of the Policemen's )  
Annuity and Benefit Fund of )  
Chicago; Trustees of the )  
Firemen's Annuity and Benefit )  
Fund of Chicago; Trustees of )  
the Municipal Employees' )  
Annuity and Benefit Fund of )  
Chicago; and Trustees of the )  
Laborers' & Retirement Board )  
Employees' Annuity and Benefit )  
Fund of Chicago, et al., )  
)  
Defendants.)

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 December 23, 2015, in Room 2308, Richard J.  
Daley Center, Chicago, Illinois, commencing at 10:30  
a.m.

A P P E A R A N C E S

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Benefit Fund of Chicago.  
Benefit Fund of Chicago.

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THE COURT: Well, good morning. Merry  
Christmas to everyone. Happy New Year. This is  
Underwood versus the City of Chicago.

Will the attorneys for the parties  
please stand and acknowledge themselves for the  
record.

MR. PRENDERGAST: Good morning, Your  
Honor. Richard Prendergast on behalf of the City.

MR. LAYDEN: Mike Layden on behalf of  
the City.

MR. BURKE: Ed Burke on behalf of the  
Fire Fund and the Municipal Fund.

THE COURT: Mr. Burke.

MR. KENNEDY: John Kennedy with Cary  
Donham on behalf of the Laborer's Fund.

THE COURT: Hi. How are you?

MR. KUGLER: David Kugler.

THE COURT: I see you. But for the  
record, go ahead, David. Announce yourself.

MR. KUGLER: For the Police Pension  
Fund, David Kugler.

MS. NABER: Jennifer Naber for the  
City of Chicago.

MR. KRISLOV: Clint Krislov for the

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1 plaintiffs, many of whom are here.

2 MR. GOLDSTEIN: Ken Goldstein for the  
3 plaintiffs.

4 THE COURT: Hi, Ken.

5 All right. Will everyone please be  
6 seated.

7 This is here on Mr. Krislov's request  
8 for the issuance of a preliminary injunction. More  
9 about that a little bit later and what the City's  
10 position is.

11 We had a conference, a telephonic  
12 conference, yesterday between the parties and among  
13 the parties, in which we discussed what was going to  
14 occur today. And what we said was -- what I expect  
15 to occur now is Mr. Krislov, as I understand it,  
16 wishes to call a couple of witnesses for examination,  
17 folks who gave affidavits on behalf of the City,  
18 submissions, in opposition to the issuance of a  
19 preliminary injunction.

20 And then what I expect to occur is,  
21 we'll have a discussion, you may call it an argument,  
22 I'll call it a discussion, with regard to the  
23 parties' respective positions concerning whether a  
24 preliminary injunction should issue or not.

1 With regard to that, the discussion,  
2 I've received submissions from Mr. Krislov on behalf  
3 of the plaintiffs; Mr. Prendergast on behalf of the  
4 City, and others on behalf of the City; and also Mr.  
5 Burke on behalf of the members of the Firemen's  
6 Annuity and Benefit Fund, as well as the Municipal  
7 Employees.

8 MR. BURKE: Yes, sir.

9 THE COURT: Mr. Kugler, you did not  
10 give anything, but I assume you've received  
11 everything and that you wish to join in on  
12 Mr. Burke's submission, as well the City's; is that  
13 correct?

14 MR. KUGLER: We received everything,  
15 Your Honor. Our position is, we have not filed  
16 anything. Our position is, simply, that the  
17 preliminary injunction really doesn't ask for any  
18 relief with regard to the Police Fund, at any rate.  
19 We are complying with the statute as it exists and  
20 will continue to --

21 THE COURT: I didn't ask for an  
22 argument, Mr. Kugler. I merely asked whether you  
23 wish --

24 MR. KUGLER: No.

1 THE COURT: You'll have an opportunity  
2 to argue in the future. But you didn't submit  
3 anything --

4 MR. KUGLER: We did not submit  
5 anything, no, Your Honor.

6 THE COURT: And that's intentional,  
7 correct?

8 And, Mr. Kennedy.

9 MR. KENNEDY: No, Your Honor. The  
10 Laborer's Fund has not filed any papers. We do  
11 oppose the entry of a permanent injunction, for the  
12 reasons we set forth in our original papers, Your  
13 Honor.

14 THE COURT: Would both of you, Mr.  
15 Kennedy, Mr. Kugler, and Mr. Burke, would you all  
16 like to be heard in the future, when we discuss this,  
17 future today? I'll give you that opportunity.

18 Or would you like to rest on your  
19 previously stated positions and the positions stated  
20 by Mr. Burke in his submission.

21 Mr. Burke?

22 MR. BURKE: I would -- Judge, if I  
23 may, I will rely on my submission in this court and  
24 on my prior written submissions in the underlying

1 litigation.

2 THE COURT: Very good. Mr. Kennedy.

3 MR. KENNEDY: On behalf of the  
4 Laborers' Fund, I'd like to reserve the opportunity  
5 to address the Court, but I'm hoping that I don't  
6 need to.

7 THE COURT: Fine. And I'll reserve  
8 that for you as well, Mr. Burke. I won't hold you to  
9 that. In other words, if you think that something is  
10 important for your clients, please feel free to do  
11 so.

12 But otherwise, I won't ask -- well,  
13 I'll ask you, but I'll expect nothing, unless there's  
14 something that you have to say.

15 Same with you, Mr. Kugler. Yes?

16 MR. KUGLER: Yes. We will rely on our  
17 previous submissions, also, Your Honor, reserving the  
18 right to respond if necessary.

19 THE COURT: That would be my honor to  
20 hear you again.

21 MR. KRISLOV: Your Honor, we would --

22 THE COURT: Mr. Krislov, yes.

23 MR. KRISLOV: We would object to the  
24 Funds' taking any position or making any arguments

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1 today. They chose not to file anything --  
2 THE COURT: Your objection's  
3 overruled.

4 Now, Mr. Krislov?

5 MR. KRISLOV: Yes, Your Honor.

6 THE COURT: It's your motion. Would  
7 you like to go forward with it and call anybody.

8 MR. PRENDERGAST: Your Honor, may I  
9 make a suggestion?

10 THE COURT: Sure.

11 MR. PRENDERGAST: I think it would be  
12 helpful to the Court if each of the parties makes a  
13 15-minute or less opening statement.

14 THE COURT: Denied. You can do that  
15 at the end.

16 MR. PRENDERGAST: Okay.

17 THE COURT: And the reason for that,  
18 Mr. Prendergast, is I'm well aware of the parties'  
19 positions. You've stated it to me in open court;  
20 you've stated it to me in prior submissions. I may  
21 agree or disagree. I have questions for everybody.  
22 We'll do that after we take a -- elicit any testimony  
23 from the witness stand.

24 I will not only allow you, permit you,

1 exclude. Is that what you want?

2 MR. KRISLOV: We would like her to be  
3 excluded during Ms. Holt's testimony.

4 THE COURT: I'll hear about that in  
5 one second.

6 Ms. Holt, please come up here. Watch  
7 your step, please.

8 Are we on the record, Ms. Reporter?

9 THE COURT REPORTER: Yes, we are.  
10 (Witness sworn.)

11 THE COURT: Would you please state  
12 your name for the record -- please sit down -- and  
13 spell your last name for the record.

14 THE WITNESS: Alexandra Holt, H-o-l-t.

15 THE COURT: Now, with regard to the  
16 motion to exclude witnesses, would you like to  
17 elaborate on it?

18 MR. KRISLOV: Yes. Ms. Currier is the  
19 other affiant who I would like to cross-examine, and  
20 I would rather that they not be able to -- that she  
21 not get a heads up from what my questions are to Ms.  
22 Holt. I just don't think it's appropriate for her to  
23 listen to testimony before she gives hers regarding  
24 her affidavit.

1 but invite you to make a statement in closing and in  
2 opposition to this motion, and you may take as long  
3 as you like. You'll have every opportunity to be  
4 heard on that.

5 Is that all right with you?

6 MR. PRENDERGAST: Of course.

7 THE COURT: I think it's most  
8 efficient if we bypass attorneys having every  
9 opportunity to speak about it and just consolidate it  
10 and clearly focus on the issues as they become  
11 apparent and are apparent from the submissions.

12 Mr. Krislov, call your first witness.

13 MR. KRISLOV: Your Honor, we would  
14 call, first, Ms. Alexandra Holt. And we would  
15 like -- I know Ms. Currier by face. I don't know Ms.  
16 Holt --

17 THE COURT: Ms. Holt, are you present?

18 MS. HOLT: I am.

19 THE COURT: Would you come up, please.  
20 One second before you go further.

21 MR. KRISLOV: No, I'm not going to --  
22 I just wanted Ms. Currier to leave the courtroom  
23 while the testimony is going --

24 THE COURT: It's called a motion to

1 MR. PRENDERGAST: Your Honor?

2 THE COURT: Yes, Mr. Prendergast.

3 MR. PRENDERGAST: I would normally not  
4 object to a motion to exclude witnesses, except what  
5 Mr. Krislov is doing here is moving to exclude his  
6 own witness. We are not calling this witness. He's  
7 calling this witness. We have no objection to this  
8 witness remaining in court, and I don't think he has  
9 any basis to exclude his own witness. She should be  
10 allowed to stay.

11 THE COURT: Well, he's really calling  
12 the witness as what used to be called as an adverse  
13 witness, a hostile witness, because he isn't  
14 necessarily vouching for the credibility of the  
15 witness. He wishes to discuss with the witnesses  
16 their -- the substance of their affidavits.

17 However, that being said, Mr. Krislov,  
18 I've read both an annotated -- both of these  
19 affidavits, as I promised you I would. I'm familiar  
20 with the substance of it.

21 Ms. Holt's affidavit is not very long,  
22 and it merely discusses, and I believe it addresses,  
23 the hardship aspect which would allegedly befall the  
24 City if I were to issue this preliminary injunction,

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1 one of the factors that I should consider in terms of  
2 issuing an injunction or not. It talks about only  
3 that aspect.

4 It doesn't talk about the same  
5 substance, that which Ms. Currier's affidavit  
6 discusses, which is the nuts and bolts, the meat of  
7 retirees' benefits right now, what they would be if  
8 the injunction were to issue, what different avenues  
9 retirees would have. So they seem to me to be  
10 completely not -- there's no overlapping subject  
11 matter, except that it concerns this issue.

12 So I'm a little -- for that reason,  
13 your motion to exclude is denied. I don't find that  
14 they really deal with the same subject matter at all.

15 And you may proceed.

16 MR. KRISLOV: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 ALEXANDRA HOLT,

19 having been called as a witness and having been first  
20 duly sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. KRISLOV:

23 Q Ms. Holt, good to meet you finally in  
24 person. I think we've read about each other over the

1 revenue, correct?

2 A I believe what I said was that if we were  
3 to keep the subsidy levels for the retiree healthcare  
4 at the same level that they were at 2015, the City  
5 would need to identify an additional \$30 million.  
6 That can be done through revenue, or it can be done  
7 through cuts and expenses.

8 Q Well, let me just read your statement.

9 A Uhm-hmm.

10 Q And the statement says:

11 [AS READ:

12 If the City were required to maintain  
13 subsidies at the 2015 levels, it would need to  
14 identify an additional \$30 million in revenue.]

15 Right?

16 A That's correct.

17 Q Okay. So this 30- -- it's actually, I  
18 think, 30.1 million. This was in the 2015  
19 appropriation?

20 A There was funding in the 2013 appropriation  
21 to pay for --

22 THE COURT: Two thousand what?

23 THE WITNESS: I'm sorry. 2015  
24 appropriation to pay for approximately \$60 million

1 years without meeting in person, so it's good to put  
2 a face with the name.

3 You gave an affidavit, which is  
4 Exhibit 8 to the City's opposition to our preliminary  
5 injunction motion.

6 A I did provide an affidavit as part of the  
7 City's preliminary -- as part of this court case,  
8 yes.

9 Q And that is the Exhibit 8 that is the  
10 attachment, to the best of your knowledge?

11 A I don't know if it's Exhibit 8 or not. I  
12 know that I provided an affidavit. I guess -- I'm  
13 not trying to be difficult --

14 THE COURT: Will the parties stipulate  
15 it is Exhibit 8 without Mr. Krislov having to show  
16 the exhibit?

17 MR. PRENDERGAST: Yes, it is Exhibit  
18 8.

19 THE COURT: All right. Very good.

20 BY MR. KRISLOV:

21 Q Now, as I understand it, what you're saying  
22 is that in order to -- in order to satisfy this  
23 injunction, the City would need to identify, you say  
24 in paragraph four, an additional \$30 million in

1 worth of retiree healthcare.

2 BY MR. KRISLOV:

3 Q Approximately how much --

4 A About \$60 million in 2015.

5 Q Right. I have \$62,912,845.

6 Does that jibe with your recollection?

7 A It's approximately 60 million, yes.

8 Q Let me show you what we'll call Exhibit A,  
9 which is a spreadsheet, which I hope you'll find it's  
10 accurate, because I did it by copying from your own  
11 budget.

12 A Well, then I hope it's accurate.

13 Q Me too.

14 MR. KRISLOV: May I?

15 THE COURT: You may approach the  
16 witness, and neither attorney needs to ask me for  
17 permission to approach during this hearing.

18 MR. KRISLOV: Thank you.

19 THE COURT: But you do need to lay a  
20 foundation for the introduction of evidence.

21 MR. KRISLOV: Will do.

22 BY MR. KRISLOV:

23 Q Ms. Holt, would you take a look at --  
24 (Brief pause.)



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1 THE COURT: Let's go.  
2 BY MR. KRISLOV:  
3 Q Would you take a look at the chart, and --  
4 A Uhm-hmm. Ms. Holt, from now on, we don't  
5 take uh-huhs in here because the court reporter can't  
6 take that down. It's either yes or no, okay?  
7 THE WITNESS: Yes, sir.  
8 BY MR. KRISLOV:  
9 Q So what I've taken from your budget, annual  
10 budget books that are issued by the City, that for --  
11 THE COURT: Whoever has a cell phone,  
12 turn it off.  
13 THE COURT REPORTER: Your Honor, it  
14 was my laptop.  
15 THE COURT: Oh, then, you're going to  
16 have to leave.  
17 (Laughter.)  
18 BY MR. KRISLOV:  
19 Q For 2012 --  
20 THE COURT: Before you start reading  
21 from a document, you need to get it into the record.  
22 MR. KRISLOV: Well, I don't think I  
23 need --  
24 THE COURT: Well, I'm telling you,

1 THE COURT: I'm not dealing with  
2 assumptions in the issuance of an injunction. I'm  
3 not dealing with "I believe" or "may." This is not  
4 the way we do things under our system of justice.  
5 You have to lay a foundation.  
6 Let me ask you, Ms. Holt.  
7 Do you know if that document in front  
8 of you truly and accurately represents the figures it  
9 purports to represent in the City's budget for, in  
10 this case, per the last question, 2012? Yes or no?  
11 THE WITNESS: No. I didn't put it  
12 together, so, no, I do not know that.  
13 THE COURT: All right. Next question.  
14 BY MR. KRISLOV:  
15 Q You would agree, though, the City spent --  
16 that the City's expenditure in 2012 was about \$99  
17 million for retiree healthcare?  
18 A I would agree that it was about -- around  
19 \$100 million, yes, I would agree with that.  
20 Q And for 2013, it was \$102 million, right?  
21 A I believe that to be generally correct.  
22 Q And for 2014, it was reduced to 80,609,880,  
23 and I have the 2015 budget overview which you can  
24 refer to, and I think it will corroborate -- I think

despite what you think.  
You know, show it to the witness, ask  
her if she can identify it and knows what it is, and  
accepts it as real and truthful. Otherwise, it's not  
coming in.  
MR. KRISLOV: Well, the information --  
THE COURT: I don't know that. You're  
not testifying.  
MR. KRISLOV: I'm not testifying.  
THE COURT: Ask her questions.  
MR. KRISLOV: Yes, I will.  
BY MR. KRISLOV:  
Q Ms. Holt, would you agree -- you would  
agree that the 2012 expenditure for retiree  
healthcare was 99,639,866, would you not?  
A Yes, I guess -- I would like to caveat  
that. This is a chart that you prepared. I assume  
you've taken it from the City's budget.  
Q Yes.  
A I would want to -- assuming that this is  
where the information has come from, then the  
information in the appropriation ordinance --  
THE COURT: Not good enough.  
THE WITNESS: -- is correct.

1 you probably know this book better than anybody else  
2 in the room.  
3 A Yes. Again, speaking in rounded numbers, I  
4 do agree that 80 million is correct in terms of our  
5 retiree healthcare expenditure in 2014.  
6 Q And that would reflect a reduction of  
7 21 million, as I calculated from your figures,  
8 21,716,545 that the City reduced its expenditure for  
9 retiree healthcare for 2014?  
10 A Yes. We did reduce our expenditure between  
11 '13 and '14 by approximately \$20 million.  
12 Q And that was done -- who calculated -- who  
13 figured how much to reduce? How did you do that?  
14 A It was based on a change in the subsidy  
15 level for retirees.  
16 MR. PRENDERGAST: Your Honor, let me  
17 interpose a general objection here to this line of  
18 questioning.  
19 The purpose of this hearing is to  
20 determine whether or not you should freeze the 2015  
21 subsidy levels and keep them for 2016, or allow the  
22 2016 reductions to go into effect.  
23 The questions he's asking here about  
24 2012 and 2013 are not relevant to this proceeding.

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1 They may have some argumentative value for him in  
2 context of the overall case. But the purpose of this  
3 preliminary injunction hearing is quite narrow.

4 The question is, what's the impact on  
5 the retirees going from 2015 to 2016. That's the  
6 only relevant inquiry.

7 THE COURT: Mr. Krislov?

8 MR. KRISLOV: I think we can ask our  
9 questions, and --

10 THE COURT: No, it has to be relevant  
11 to --

12 MR. KRISLOV: It is relevant, Your  
13 Honor --

14 THE COURT: Clint.

15 MR. KRISLOV: Your Honor.

16 THE COURT: Clint. Stop interrupting  
17 me when I'm talking. I don't like being bullied, and  
18 I won't let you bully me or anybody else. You can't  
19 just cut me off when you think you know what I'm  
20 going to say. It's just as a matter of courtesy. I  
21 grant you, you know everything I'm going to say. But  
22 you're going to let me say it without interrupting me  
23 because it's just a kind and courteous thing to do,  
24 okay?

MR. KRISLOV: I apologize, Your Honor.

THE COURT: What relevance does this  
have to the freeze vel non between 2015 and 2016 that  
you're requesting through the issuance of this  
preliminary injunction?

MR. KRISLOV: The City's decision to  
reduce the amount that it appropriates is a  
unilateral decision, and that is the unilateral  
decision that we're dealing with today.

And so showing how that is done each  
year, that it is just a unilateral decision of the  
City to do that, and that that's what it is in each  
one of the years that's involved, is relevant to  
whether it can do it this year.

THE COURT: Well, I don't think  
there's any objection on behalf of the City that it  
is done by the City and it is unilateral, after  
taking into consideration all sorts of factors, I  
suppose, would hope, but don't know.

But that's not the issue as to how  
they arrive at it. The issue is not whether -- how  
they arrive at it and whether it's right or wrong.  
The issue is, they've done it, should it go on or  
not?

1 So tell me why these questions as to  
2 how they arrived at it is important.

3 MR. KRISLOV: Because, Your Honor, if  
4 it is just -- if there are other factors which  
5 require them to reduce this, that's one thing. If  
6 this is just a unilateral decision in each year to  
7 just reduce this, that takes away from their  
8 equities.

9 If Mr. Prendergast is going to  
10 interrupt the questioning every other question, he  
11 can argue relevance. It's not -- I'm not going to  
12 take a long time with Ms. Holt, but I have a right to  
13 establish that the only reason the City chooses to do  
14 this is because it chooses to do this. And that  
15 undercuts its equities in saying that it has to raise  
16 additional money, because it had the money before.  
17 It had the money in each of the years. It just chose  
18 to cut the money that it spent for retirees.

19 THE COURT: But you're not alleging in  
20 any complaint that this is done by caprice or by whim  
21 or without a factual foundation for it, albeit one  
22 that the City chooses to believe rather than you.

23 The City has argued to the contrary,  
24 by the way, in their submission that this is

1 something that they had to do. But that's neither  
2 here nor there. The only fact here, conceded fact,  
3 is that they've done it, and you wish to enjoin it  
4 having been done.

5 You haven't alleged that it's been  
6 done without a reason.

7 MR. KRISLOV: Yes, I have.

8 THE COURT: Yes?

9 MR. KRISLOV: Yes. In violation of  
10 the Constitution, Your Honor.

11 THE COURT: Well, but I've ruled  
12 against that.

13 MR. KRISLOV: No, you haven't. You  
14 have not, Your Honor.

15 THE COURT: I have.

16 MR. KRISLOV: With all due respect,  
17 Your Honor, your ruling -- I mean, we can get to  
18 this, but if you would indulge me a few minutes the  
19 opportunity to question Ms. Holt, I think we'll have  
20 her out of here in ten minutes or less.

21 THE COURT: That's not the point. The  
22 point is relevance.

23 MR. KRISLOV: Relevance he can argue  
24 or not. I can argue it is relevant. But this

1 questioning, I believe I have a right to question her  
2 on how the City arrived -- why the City does --

3 THE COURT: I disagree, and that's my  
4 ruling.

5 MR. KRISLOV: It's relevant to the  
6 balance of equity, Your Honor.

7 THE COURT: No, it's not.

8 MR. KRISLOV: The reasons for doing  
9 it?

10 THE COURT: No, it's not.

11 MR. KRISLOV: Their motivation isn't  
12 relevant?

13 THE COURT: No, it's not. We're only  
14 dealing with what is, not the reason therefore.

15 MR. KRISLOV: May I ask about the  
16 reason --

17 THE COURT: Ask a question, and if  
18 there's an objection, I'll deal with it, and we'll  
19 deal with it that way.

20 BY MR. KRISLOV:

21 Q The amount of money that we show is  
22 appropriated for 2015 was \$62,912,845.

23 Would that jibe with your  
24 recollection?

1 A Well, in a couple of ways. First, it was  
2 part of our budget balancing. The City has a  
3 long-term, standing structural deficit that we had to  
4 address in 2015. It meant that in this case, we had  
5 to find over \$300 million to pay both our operating  
6 bills plus increased debt service that came from  
7 legacy borrowing.

8 THE COURT: How much?

9 THE WITNESS: There was 232 million in  
10 a structural deficit, Your Honor, and another hundred  
11 million dollars in debt service payment -- increased  
12 debt service payment that we need to make.

13 THE COURT: Understood.

14 THE WITNESS: None of which addressed  
15 our pension issues, which is a separate discussion.

16 And so we did a couple of things. We  
17 go through the entire budget. We look at both  
18 revenue opportunities. We also look at expense  
19 reductions, which, of course, expense reductions come  
20 with, often, service reductions. So we try to  
21 balance that.

22 And, you know, our single biggest  
23 source of expense in the city is our employees and  
24 the benefits for both our employees as well as our

1 A Yes, that jibes with my recollection.

2 Q And that you reduced that -- what you've  
3 done in the budget -- recommendation of the budget  
4 that was adopted by the City, reduces that from --

5 THE COURT: Which budget? I'm just  
6 asking --

7 MR. KRISLOV: 2016.

8 THE COURT: For which -- 2016.

9 BY MR. KRISLOV:

10 Q The 2016 budget reduces that 62.9 million  
11 by -- to an appropriation of 32,700,910; is that  
12 right?

13 A As part of balancing the 2016 budget, we  
14 did reduce the expenditure down to approximately \$30  
15 million.

16 Q And there was, indeed, previously,  
17 62 million appropriated and spent in 2015, right?

18 A Yes, there was 62 million spent in ap- --  
19 well, we don't have the final 2015 numbers. But the  
20 budgeted number for 2015 was 62 million, and that was  
21 appropriated for 2015.

22 Q And the reason for, as I take it from your  
23 affidavit -- that figure of \$30 million, how was that  
24 arrived at?

1 retirees.

2 And so we look through all of those  
3 and look where there's an opportunity to take down  
4 expenses. But we also have to balance the concerns  
5 of our employees, the concerns of the retirees, and,  
6 particularly, the concerns of the taxpayers and the  
7 residents of the city of Chicago who have an  
8 expectation of a certain level of services. All of  
9 that goes in together in terms of how we make the  
10 decision.

11 In this case, with respect to the  
12 subsidy, the subsidy went down by 25 percent, which  
13 is consistent with the amount that it had gone down  
14 in prior years.

15 BY MR. KRISLOV:

16 Q According to the 2016 budget overview, the  
17 cuts -- the spending cuts for personnel savings and  
18 reforms total 57.1 million.

19 Would that --

20 A That's correct.

21 Q And that was attributed to vacancy  
22 eliminations.

23 Does that mean we're not paying people  
24 who aren't there?

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1 A Yes. We eliminated positions that weren't  
2 currently occupied, about 150 of them.

3 Q And how much did that save in dollars?

4 A About \$12 million.

5 Q And then retiree healthcare was 30.1  
6 million.

7 That leaves other healthcare savings  
8 of how much?

9 A There's about \$10 million of other  
10 healthcare savings. That's for our active employees.

11 Q And so your position is that the  
12 30.1 million reflected a 25 percent reduction from  
13 what?

14 A No, it's -- you can't -- you can't look at  
15 the -- if you don't mind, let me explain for a  
16 second.

17 You can't look at the number itself.  
18 The number was arrive- -- the 30 million is the  
19 result of reducing the subsidy for the retirees who  
20 retired after 1989 by 25 percent. That, then,  
21 generated an additional thirty -- that generated  
22 \$30 million in savings.

23 THE COURT: So let me ask you a  
24 question.

1 personnel-related costs.]

2 Right?

3 A That's correct.

4 Q And then you say:

5 [CONTINUING:

6 91 percent of the City's total

7 positions are union members covered by collective  
8 bargaining agreements that preclude salary  
9 reductions and other personnel changes, except  
10 through layoffs.]

11 Right?

12 A That's correct.

13 Q Okay. So your position, as I take it, is  
14 we had all these other people we couldn't do anything  
15 about, but the retirees, we could.

16 A I don't think that's an accurate  
17 characterization of my position.

18 When we look at the reductions that we  
19 need to make to address the City's structural  
20 deficit -- and by "structural deficit," we're in a  
21 situation -- the City's in a situation that we've  
22 been in for, really, a better part of the last  
23 decade, where the expenses primarily are people --  
24 because we deliver services through people -- have

1 This \$30 million that you saved, this  
2 only deals with the retirees who retired after 1989;  
3 is that correct?

4 THE WITNESS: That's correct, Your  
5 Honor.

6 THE COURT: Did you save any from the  
7 retirees who retired before August 23rd of 1989?

8 THE WITNESS: No. In fact, our  
9 expenses related to those retirees have been  
10 increasing because all of our healthcare expenses  
11 increase each year.

12 THE COURT: So this number just deals  
13 with the folks who retired as of August 23rd of  
14 1989, correct?

15 THE WITNESS: That's correct.

16 THE COURT: All right. Thank you.

17 BY MR. KRISLOV:

18 Q You would not dispute that most of these  
19 people started working before August 23, 1989?

20 A I wouldn't know otherwise.

21 Q Okay. In paragraph seven, you say:

22 [AS READ:

23 81 percent of the City's general  
24 operating funds, excluding debt service, are

1 been growing faster than the revenues. The recession  
2 exacerbated that situation. There have been previous  
3 decisions by the prior administration to deal with  
4 that through one-time revenue sources. So we've  
5 really had to make all of that up over the last five  
6 budgets.

7 For us it's a balancing act between  
8 how much we can increase taxes. We have some  
9 residents of the city who can afford to pay more in  
10 taxes; we have a lot of people who can't afford to  
11 pay more. So we have to balance that.

12 The other choice for us is to reduce  
13 expenses. Given the number of cuts that we've made  
14 over the last five budgets, we're now at a point  
15 where in the work that I've been doing, that I  
16 believe that cutting services -- cutting expenses  
17 further actually will go directly to decreasing --  
18 cutting expenses further will go directly to  
19 decreasing services that the City provides.

20 So all of those factors have to go in  
21 together. The \$30 million that we're talking about  
22 with respect to retirees is only a portion of the  
23 structural deficit that the City had to close for  
24 2016.

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1 And so we had to go look at vacancy  
2 reductions, we had to look at cutting contracts, we  
3 had to look at new revenues. We had to look at a  
4 whole series of things to continue to pay our  
5 employees, to continue to provide services, and  
6 continue to make pension payments.

7 Q And so was the \$30 million figure -- who  
8 set the \$30 million figure?

9 A As I indicated, it wasn't a determination  
10 of \$30 million. The decision was made to reduce the  
11 subsidy that was provided by 25 percent. The end  
12 result of that was \$30 million in savings.

13 Q Okay. The -- what I don't understand,  
14 really, is the 25 percent, we've reduced the people  
15 that we do it for, or we reduce the money, or we do  
16 -- I don't know -- it's 25 percent of what?

17 A Of the subsidy level that's provided by the  
18 City.

19 Q Okay. But the subsidy level was, the year  
20 before, 62 million nine, and the subsidy level -- for  
21 2015, and the subsidy level for 2016 is 32 million.  
22 If I divide the 32 into 62, I get lots more than  
23 25 percent.

24 A I think that's because you and I are

1 talking about a different subsidy. You're talking  
2 about the cash subsidy that's provided. I'm  
3 referring to the subsidy level that's provided to the  
4 individual.

5 So the City pays X percent of the  
6 cost, they pay Y percent of the cost, and the pension  
7 funds obviously pay a share as well. I'm talking  
8 about the reduction in the percentage of the City's  
9 subsidy, not in the dollar amount.

10 But it's sort of -- in some ways, it's  
11 neither here nor there. The fact is that in looking  
12 at this year's budget, the 2016 budget, we obviously  
13 look at a range of factors. In the case of retiree  
14 healthcare, it's both the phaseout that was  
15 announced -- the change in the subsidy levels that  
16 was announced by the City back in 2013 and how we  
17 were going to address that and how that was going to  
18 work, and then also the other factors that I had  
19 talked about in terms of balancing the budget.

20 Q What's the -- how do you get 25 percent?  
21 You divide 30 million into what to get 25 percent?

22 A You don't divide 30 million into anything.  
23 You take the individual subsidy level that's provided  
24 to each tier of retiree based on when they retired

1 and the number of years of service that they have,  
2 and you reduce that subsidy that's provided to them  
3 on an individual basis by 25 percent.

4 If you do that, then the ultimate  
5 savings is \$30 million.

6 Q Okay. When you talk about a subsidy, you  
7 know that the City is a self-insurer, right?

8 A That's correct. I know that.

9 Q So the City is the insurer. It's not  
10 subsidizing somebody. The City is the providers of  
11 the insurance, right?

12 A We pay for the healthcare cost directly.  
13 We don't -- since we are self-insured --

14 Q Yes or no.

15 THE COURT: Excuse me. You're going  
16 to let her finish her answer.

17 MR. KRISLOV: Your Honor, I'd like to  
18 strike the answer --

19 THE COURT: You may not. You're going  
20 to wait till it's done. I'll see whether it should  
21 be stricken or not, but I have to let the witness  
22 finish.

23 Again, courtesy.

24 Please finish your answer, Ms. Holt.

1 THE WITNESS: We do -- we are  
2 self-insured. We do pay for the healthcare costs of  
3 our employees and retirees directly. I would still  
4 say, though, that it is a subsidy, because it is a  
5 share that we are paying for that either our retirees  
6 or our own employees do not have to pay for.

7 BY MR. KRISLOV:

8 Q And Blue Cross is hired on an  
9 administrative-services-only basis, correct?

10 A That's my understanding.

11 Q And so the benefit -- the programs that are  
12 provided under the City of Chicago Annuitant Medical  
13 Benefits Plan is what you refer to as a subsidy,  
14 right?

15 A I'm referring to the subsidy as the share  
16 the City pays for the overall cost of a particular  
17 retiree's healthcare through the City plan.

18 THE COURT: That's how she defines it.  
19 People could argue whether it is or is not, but  
20 that's what she means when she says "subsidy."

21 MR. KRISLOV: Okay.

22 BY MR. KRISLOV:

23 Q You say the -- in order to -- paragraph  
24 seven, you say:

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[AS READ:

Because the average city employee earns \$73,000 annually, more than 400 employees would have to be terminated in order achieve \$30 million in savings.]

What you're doing there is saying that if you were to find \$30 million in additional revenues by chopping positions, you would have to chop 400 positions, right?

A That is one option. We would need to cut expenses in some way, whether it's people or services that we provide.

Q And had you left the budget at the same amount that you had in 2015, you wouldn't have -- you would have had to just raise the revenues that would be indicated, right?

A No, I'm not sure I agree that.

We have two choices in trying to pay for expenses that the City has: One is to cut expenses, which is, as I had stated, really, at this stage, it's about either cutting people or cutting services; the other choice is to increase taxes or fees.

If we had left the subsidy where it

was for 2015 and carried that additional 30 million into 2016, we would have had to find money someplace, either through increased fees or taxes, or through cutting expenses to pay for that \$30 million.

Q Okay. But it wasn't -- you wouldn't have necessarily had to do that by firing 400 employees?

A There are lots of options that are available. If we go towards reducing services, then our choice -- if we go towards cutting expenses, then our choices are firing employees, or eliminating jobs, or cutting other kinds of programs that the city provides.

Q Right. But you're not -- the -- sticking the sentence in there as if you had to cut 400 employees. That would -- that's one of your options, but that isn't required, right?

A No, it's not required. It's one of our options. Cutting our after-school program is another option. Cutting back garbage service is another option. I mean, there are options available to us, but all of them do result in some kind of service reduction at this point.

Q And the total corporate -- the total corporate budget, there's -- as I understand, there

are two budgets in the city. One is the corporate budget, which is basically the general spending, and the other are reserve moneys, from whether it's project deals, bond deals, whatever, that are sort of separate. If we just focus on the corporate side, that's sort of the City's general operating account; would you agree?

A The corporate fund is our generating account.

Q Okay. And the total in the -- the total budget for the corporate fund in each year is about \$3 1/2 billion, right?

A No, I wouldn't say in each year. It was 3 1/2 billion in 2015.

Q And 3 1/2 billion, a little more. It's like 3.6 billion in 2016?

A Yes, it did increase in 2016 due to raises that were required under the union contracts.

Q So that's \$100 million that it went up.

And the total of \$30 million to the City's annual corporate budget is, as I calculate it, about 1 percent; would that be right?

A That's correct.

Q Or is it 1/10 of 1 percent?

A It's approximately, yes, about 1 percent.

Q Okay. And of the total -- even if you had to raise taxes for that \$30 million, that would raise the average property tax by \$30?

A It would raise it by \$30. But you can't look at it on its own. You really do have to look at what's happened in the budgets over the past four years, including 2016.

The City has just enacted a \$544 million property tax increase to pay for pension obligations that the City has, in addition to other tax and fee increases that went in 2015.

You need to look at what the impact of even an additional \$30 million has on our taxpayers, and particularly those taxpayers who are lower income and have a more difficult time paying their bills.

So when we do tax increases each year as part of the budget process, we do try to look at it as a whole. And we look at it not just for that particular year. We also look at what we've done over the last four years, of five year -- five budgets in this case and try to balance that in a way which is hopefully sustainable for the people who have to pay the bills.

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1 Q And did you consider in not raising taxes  
2 by that additional \$30 million that the retirees  
3 might actually be protected by the Illinois  
4 Constitution against such a diminution?

5 A I'll defer to the lawyers on the legal  
6 issues. As I -- the City, back in 2013, when the  
7 settlement agreement that had provided the healthcare  
8 -- retiree healthcare expired, announced that it was  
9 going to be reducing the subsidies over time,  
10 proposed a three-year phaseout, certainly, from, you  
11 know, the legal advice that we had, that we believed  
12 that that's within our rights to do that.

13 Q Okay. When you raise the idea that you're  
14 going to have to -- that cutting summer and  
15 after-school programming, that if you chose to do it  
16 by cutting summer and after-school programming, you'd  
17 have to cut 12,500, or 17,500 positions, these are  
18 not the only -- these and cutting 400 people from  
19 their jobs are not the only options that you had open  
20 to you, right?

21 A We certainly have other options open to us,  
22 but as I indicated, they are options that will  
23 reduce -- result in service reductions.

24 Other options that I have, for

1 One second, Your Honor.  
2 THE COURT: Sure.  
3 (Brief pause.)

4 BY MR. KRISLOV:

5 Q You said you left the issue of whether or  
6 not these people were -- the retirees were protected  
7 by the Illinois constitution to the lawyers?

8 A Uhm-hmm.

9 Q Right?

10 A Yes, I did say that.

11 Q You are a lawyer?

12 A I am.

13 Q And so you understand the concept of  
14 constitutional protection, right?

15 A I do.

16 Q But you did not -- and what I asked was  
17 whether -- or what I'd like -- did you consider  
18 whether it would be constitutionally -- whether  
19 retirees were constitutionally protected against a  
20 reduction in the subsidy?

21 A Do you mean as a personal matter or in my  
22 official role? I'm not sure I understand.

23 Q In your capacity as the budget director of  
24 City of Chicago.

1 example, would be, you know, impacting the healthcare  
2 programs that the health department provides to  
3 low-income residents. I could also cut our gasoline  
4 budget by reducing garbage collection to, say, every  
5 other week.

6 I mean, we do have a series of options  
7 available to us. I think the point of that affidavit  
8 and that statement is that none of them are really  
9 good options, and that all of them do have some  
10 direct impact on our residents. They have some  
11 direct impact on services, and because most of our  
12 expenses are personnel, they're likely to have an  
13 impact on personnel as well.

14 MR. KRISLOV: Move to strike  
15 everything following the "but."

16 THE COURT: Denied.

17 BY MR. KRISLOV:

18 Q But one of the things could have been to  
19 just raise the \$30 million by leaving the  
20 appropriation at the same level and having to raise  
21 by additional taxes, right?

22 THE COURT: Asked and answered. She  
23 said that. She said she could.

24 MR. KRISLOV: Okay.

1 A So my capacity as a budget director of the  
2 City of Chicago is -- not to be difficult -- is not  
3 to provide legal advice.

4 In this case, you know, the attorneys  
5 who advise the City, who both work for the City and  
6 who advise the City, outside attorneys, provided us  
7 with the advice on what we could and could not do.

8 Certainly, we took that into  
9 consideration when we announced the phaseout of the  
10 subsidies back in 2013. And we always take that  
11 advice into consideration when we make decisions,  
12 whether it's related to retiree healthcare, or it's,  
13 you know, transitioning to grid garbage or whatever  
14 it might be doing that the City -- whatever we might  
15 be doing to save money. And I rely on their advice  
16 in this case because they're the experts.

17 I'm the expert in the budget, and how  
18 we pay for things, and how we spend our money, and  
19 operational issues. But I would obviously rely on  
20 the expertise of our attorneys to advise on  
21 constitutional issues.

22 BY MR. KRISLOV:

23 Q Did you consider this back in 2013, or did  
24 you consider it more recently, the constitutional

1 issue more recently? Was that taken into account,  
2 in, say, 2015?

3 A Legal issues around this, including the  
4 constitutional issues, have been taken into account  
5 all the way through the decision-making process.

6 Q But what I'm asking is during 2015, was  
7 that aspect considered?

8 A And as I indicated, yes, it's been  
9 considered from day one, and it continues to be  
10 considered.

11 Q The answer that --

12 THE COURT: The answer is yes.

13 MR. KRISLOV: The question is, is it  
14 considered now in the 2015 reduction, in the  
15 reduction from 2015 to 2016.

16 MR. PRENDERGAST: Actually, that  
17 wasn't the question.

18 THE COURT: No, that wasn't the  
19 question. The question was about the 2015 budget,  
20 not the 2016.

21 But you may rephrase.

22 MR. KRISLOV: Thank you.

23 BY MR. KRISLOV:

24 Q For the 2016 budget, was that reviewed

1 A I am aware of none.

2 Q So the City could have ceased right then  
3 and there to provide any subsidies based upon the  
4 expiration of the prior statute?

5 MR. KRISLOV: Objection. She is not  
6 being --

7 THE WITNESS: It's my understanding --

8 THE COURT: One second.

9 MR. KRISLOV: She's not a legal --  
10 she's not a legal -- she disavows being a legal  
11 expert in this respect, and he wants her to testify  
12 as to the legality.

13 THE COURT: That objection is  
14 sustained.

15 BY MR. PRENDERGAST:

16 Q Assume for me that the City's obligation  
17 under those time-limited statutes expired in the  
18 middle of 2013, for the purposes of my question.

19 Do you have that assumption in mind?

20 A I do have that assumption in mind.

21 Q When in 2013 the City extended subsidies to  
22 the end of 2013 and then introduced a phaseout  
23 program over the next four years, why -- do you know  
24 why the City did it in a phaseout process rather than

again?

1 A Yes, it was reviewed again.

2 Q And the decision was that you could keep on  
3 reducing it at the City's unilateral decision?

4 A The advice was that the City was able to  
5 continue to reduce and that we were not obligated to  
6 continue to provide that subsidy.

7 MR. KRISLOV: No further questions of  
8 Ms. Holt, Your Honor.

9 THE COURT: Cross.

10 CROSS-EXAMINATION

11 BY MR. PRENDERGAST:

12 Q Ms. Holt, you were asked about 2013 in the  
13 last question you were just asked, what was  
14 considered.

15 In mid 2013, are you aware that a  
16 statute which provided for subsidies expired, that  
17 was provided to the City that provides the subsidies  
18 expires as a matter of law?

19 A I am aware that that statute expired.

20 Q Okay. At that point in time, after that  
21 point in time, were you aware of any statutory  
22 obligation on the part of the City to provide  
23 subsidies?  
24

1 just stopping subsidies altogether?

2 A We did it for a couple of reasons: First,  
3 with respect to 2013, when we chose to continue to  
4 extend the subsidy at its current levels to the end  
5 of 2013, we were in the middle of a plan year. We  
6 did that specifically because we didn't want to be in  
7 a position of asking retirees to go out in the middle  
8 of the year, in the middle of a plan year, and try to  
9 find a new healthcare plan. We knew that that would  
10 be difficult for them to do, particularly for those  
11 that didn't have a second job or didn't have a spouse  
12 that could provide that healthcare, and we wanted to  
13 provide that bridge.

14 We then, at the same time, as I had  
15 noted, announced that we would be doing the phaseout  
16 over the following three years. We did that phaseout  
17 intentionally, again, to provide people an  
18 opportunity to look for other options, but also  
19 because we knew that the Affordable Care Act was  
20 coming into play over a couple of years and that  
21 there would be more options widely available to  
22 retirees; hence both the extension in 2013 that the  
23 City chose to do, as well as the phasedown over the  
24 following three years.

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1 Q And each of those programs, whether it was  
2 the extension to the end of 2013 or the phaseout over  
3 the next three years each year, each of those was  
4 time limited, was it not?

5 A They were time limited. We do our  
6 healthcare programming, in this case, fiscal years or  
7 calendar years, because they're the same for us.

8 So when we put out, either for  
9 retirees/employees, the healthcare plan for the next  
10 year, it is just for the next year.

11 Q So what you did for 2013 was time limited  
12 for 2013, correct?

13 A That's correct.

14 Q What you did for 2014 was time limited for  
15 2014, correct?

16 A That's correct.

17 Q What you did for 2015 was time limited for  
18 2015, correct?

19 A That's correct.

20 Q And what you're doing for 2016 was time  
21 limited through the end of 2016; is that correct?

22 A That is correct.

23 MR. PRENDERGAST: I have no further  
24 questions, Judge.

THE COURT: Redirect.  
REDIRECT EXAMINATION  
BY MR. KRISLOV:

1 Q So for each year after 2013, after midyear  
2 of 2013, for each year, there's an ordinance that  
3 sets out what the City's going to do on its annuitant  
4 healthcare plan for the year?

5 A It's part of our appropriations ordinance.

6 Q Okay. And that's the ordinance that each  
7 year sets what you're going to do, right?

8 A That ordinance sets what we're allowed to  
9 spend each year for our retiree healthcare.

10 Q And you don't need another ordinance in  
11 order to have the retiree healthcare plan for that  
12 year, correct?

13 A I do need the appropriation ordinance which  
14 authorizes me to spend money. That appropriation  
15 ordinance is only good for that particular fiscal  
16 year.

17 Q So for each year, there's an appropriation  
18 ordinance -- for each year, there's -- the ordinance  
19 is the appropriation ordinance. That's what  
20 authorizes you to do the annuitant healthcare plan  
21 for that year?  
22  
23  
24

1 A That's correct.

2 Q You mentioned the Affordable Care Act, and  
3 as I understand it, the City's desire in this  
4 phaseout is basically to put the retirees onto the  
5 Affordable Care Act rather than have the City pay for  
6 their healthcare, correct?

7 A I'm not sure that's fully accurate. I  
8 would say that I don't think it's necessarily our  
9 desire to put them on the Affordable Care Act.

10 The Affordable Care Act relates to the  
11 fact that we did a three-year phaseout. Knowing that  
12 the Affordable Care Act was coming into play, we knew  
13 that retirees who didn't have another option, such as  
14 secondary employment, or, again, a spouse or a  
15 partner who provides healthcare, would have another  
16 -- yet another option available to them, other than  
17 the insurance plans that were available on the market  
18 when we started in 2013, so that was one of the  
19 guiding principles behind why we chose to do the  
20 phasedown the way that we've done it.

21 Q And did you consider as well that the --  
22 you're aware that Blue Cross has dropped its  
23 individual PPO plans from the Illinois insurance  
24 exchange, are you not?

1 MR. PRENDERGAST: Objection. No  
2 foundation for that, and it's beyond the scope of my  
3 cross --

4 THE COURT: It's not beyond the scope  
5 since you brought up the ACA as -- Affordable Care  
6 Act as a reason, as another option for the annuitants  
7 and retirees to take advantage of. Ms. Holt said it.  
8 She just said it just now.

9 And I don't know what she's aware of  
10 it or not, but Mr. Krislov can ask the question, and  
11 she can answer it if she can, if she knows.

12 THE WITNESS: I can't speak to Blue  
13 Cross Blue Shield directly. I do know that some of  
14 the plans that are offered in the state of Illinois,  
15 because there are others other than Blue Cross Blue  
16 Shield, have changed the nature of their plans.  
17 That's something that they do on an -- as I  
18 understand, on an annual basis.

19 BY MR. KRISLOV:

20 Q Are you aware -- you're aware that Blue  
21 Cross has dropped its individual PPO?

22 A I'm not aware of what Blue Cross has done.

23 Q How about United Healthcare. Are you aware  
24 that they dropped their individual purchase choice

1 programs?

2 A I can't speak to that specifically.

3 Q Okay. So if the retirees have inferior  
4 plans at the conclusion of your phaseout, that's  
5 really not your problem?

6 THE COURT: Would you repeat it so I  
7 could hear? I didn't hear the verb.

8 If the retirees what?

9 BY MR. KRISLOV:

10 Q I said if the retirees have, after the City  
11 has phased this out, inferior plans to choose from,  
12 that's not your problem as far as the City's  
13 concerned?

14 MR. PRENDERGAST: Objection. Lack of  
15 foundation.

16 THE COURT: No.

17 You can answer the question.

18 THE WITNESS: Well, I don't know if I  
19 would say it's not our problem, per se. I mean,  
20 obviously, all of these are very difficult decisions  
21 that have to be taken seriously.

22 THE COURT: Answer the question, Ms.  
23 Holt.

24 THE WITNESS: I'm sorry, Your Honor.

1 THE COURT: Any redirect -- recross,  
2 I'm sorry.

3 RECROSS-EXAMINATION

4 BY MR. PRENDERGAST:

5 Q If, Ms. Holt, the City of Chicago had only  
6 been concerned about the financial --

7 THE COURT: Say that again. I'm  
8 hearing coughing, I didn't hear the question,  
9 Richard. I'm sorry.

10 BY MR. PRENDERGAST:

11 Q If the City had only been concerned about  
12 the financial aspect of the reduction of healthcare  
13 costs, would that have been the only consideration,  
14 and not caring one thing about the retirees, as the  
15 Court notes, the heart issue, okay, then in mid 2013,  
16 purely on a financial basis, what would the City have  
17 done?

18 A We would have completely cut the subsidy  
19 for all retirees at that point in time.

20 Q Thank you.

21 Second question. Counsel talked to  
22 you about various appropriation ordinances.

23 Do you recall his questions?

24 A I do recall his questions.

1 I don't know whether they're going to  
2 have inferior plans or not. I can't speak to that.

3 THE COURT: That's not the question,  
4 Ms. Holt. The question is --

5 THE WITNESS: Yes, sir.

6 THE COURT: -- after you decide to  
7 phase them out, ending in 2017, it's the City's  
8 position that they're on their own and the City's not  
9 concerned about it, correct?

10 THE WITNESS: That's --

11 THE COURT: Yes or no.

12 THE WITNESS: Yes. That is correct.

13 THE COURT: From a financial point of  
14 view. We're not talking about heart. We all care  
15 about our people, but this is the City speaking.  
16 You're an agent of the City. You just care -- you're  
17 just talking about the financial concern of the City.

18 And after the total -- the termination  
19 of the phaseout period, the City, from what you're  
20 just saying, is only concerned with the financial  
21 aspect, not the heart aspect, correct?

22 THE WITNESS: That is correct.

23 MR. KRISLOV: No further questions,  
24 Your Honor.

1 Q Were each of those appropriation ordinances  
2 time limited?

3 A Yes. Each appropriation ordinance was time  
4 limited to the fiscal year for which it relates.

5 MR. PRENDERGAST: Thank you.

6 MR. KRISLOV: The only question --  
7 just one question on the --

8 THE COURT: Proceed.

9 REDIRECT EXAMINATION

10 BY MR. KRISLOV:

11 Q The appropriation ordinance, each year's  
12 appropriation ordinance is the amount to be spent for  
13 that year, right?

14 A Yes, it's the amount to be spent for that  
15 year and that year only.

16 THE COURT: Okay. You're done.

17 MR. KRISLOV: Wait. Let me -- she  
18 threw in the "that year only."

19 BY MR. KRISLOV:

20 Q The ordinance doesn't say "in that year  
21 only," the ordinance says for that year, right?

22 A No. It is for that year only, both based  
23 on the ordinance, as well as state appropriation law,  
24 as well as the accounting laws that we have to spend.

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1 The money that is collected and spent  
2 in 2015 has to be collected and spent in 2015.

3 Q Understood. But the ordinance, the  
4 appropriation ordinance says for this year, for the  
5 year -- whatever year we're talking about, it is the  
6 ordinance to be -- this is what is to be raised for  
7 this year, right? This is what is to be raised for  
8 this year, this is what is authorized to be spent for  
9 this year, right?

10 A Yes, for that year and that year only, that  
11 is correct.

12 Q You keep adding "for that year only."

13 THE COURT: That's your answer,  
14 whether you like it or not. You can argue to me  
15 later.

16 MR. KRISLOV: I just want to get  
17 whether --

18 THE COURT: You want to get the answer  
19 you want, and she's not giving it to you.

20 MR. KRISLOV: Well, I don't know that.

21 THE COURT: It happens. You may  
22 inquire further.

23 BY MR. KRISLOV:

24 Q Do you know whether the language of the

ordinance says "and for that year only" or it just  
says "for that year"?

1 A I don't know that it says either of those  
2 sentences. The fact is --

3 Q Okay. Thank you. That's --

4 THE COURT: Let the woman finish her  
5 answer, please.

6 MR. KRISLOV: Your Honor.

7 THE COURT: Don't "Your Honor" me. If  
8 you ask a question, you got to wait and have courtesy  
9 and let the witness just finish. We're not cutting  
10 people off.

11 Go ahead. Finish, Ms. Holt.

12 THE WITNESS: From an appropriation  
13 perspective, given the rules we have to follow and  
14 the accounting rules, for that year versus for that  
15 year only, have no practical difference. And so I  
16 just want to be clear, and perhaps I'm not, is that  
17 the money that we collect in a particular year and  
18 the authority to spend is limited to that year, and  
19 it can't be used, the appropriation authority cannot  
20 be used for the following year.

21 BY MR. KRISLOV:

22 Q I'm with you on that.

1 But, if you are constitutionally  
2 prohibited from reducing or diminishing a benefit,  
3 then the appropriation for one year could very well  
4 be, if the Constitution protects against that benefit  
5 being diminished --

6 THE COURT: It's a hypothetical, and  
7 you're talking to me about that one, and we'll argue  
8 that. I'll let you argue that.

9 I'm not going to ask -- and to be  
10 quite honest, without trying to insult you, Ms. Holt,  
11 or anyone else here, I don't care what her opinion is  
12 on it. I'm the giver of the law and the maker of the  
13 law today. And you can take it to a higher court.  
14 We're going to argue it today if you and I disagree.

15 But Ms. Holt's not in the position of  
16 deciding this case, I am. So you're asking a legal  
17 question for her to opine on; the answer of which,  
18 from her, I could care less about -- about which I  
19 could care less.

20 MR. KRISLOV: Okay. With that, I have  
21 no further questions of Ms. Holt.

22 THE COURT: I do. Have a seat, Mr.  
23 Krislov.

24 So tell me about the City's policy

1 that was instituted. And I don't know the answer to  
2 these questions, and I have no horse in this race.

3 But when you decided to phase things  
4 out over time, from 2013 to -- the middle of 2013  
5 first to the end of 2013, and then for four years  
6 thereafter, what notice did you give the retirees,  
7 the retirees who retired after August 23rd, 1989,  
8 because that's the group we're talking about?

9 And, secondly, as part of that, what  
10 efforts did the City make to help in the -- in a  
11 human -- in an HR point of view to be available to  
12 the retirees, to answer their questions, help them  
13 find ACA alternatives, other options? This goes to  
14 my heart question. What did the City do, if  
15 anything, to mitigate the situation and try and help  
16 the retirees, if it did or not. And I don't --  
17 honestly, I don't know the answer to it.

18 THE WITNESS: Okay. So the first  
19 notice that went out to retirees and employees came  
20 after the retiree health commission issued their  
21 report recommending that the City sort of get out of  
22 the business of providing retiree healthcare.

23 That happened -- that first notice  
24 happened sometime in the summer of 2013. And then

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1 that announced that we would be going through a  
2 phaseout period but that we would be maintaining the  
3 subsidies at their current levels to the end of 2013.

4 Then the retirees would have all  
5 received a package in the fall, you know, late summer  
6 or fall of 2013, announcing what the subsidy level  
7 would be for 2014 and again reiterating the changes  
8 that we would be making over time.

9 There was then a subsequent letter  
10 that went to them in the fall of 2014 and another one  
11 that went to them in the fall of 2015.

12 We have a benefits hotline that  
13 retirees can call and have questions answered. One  
14 thing that we did do over the course of this,  
15 starting in 2015, is instead of providing a  
16 one-size-fits-all healthcare program, our health  
17 plan, we actually provided for different plans this  
18 year that tried to balance, because as the subsidies  
19 were going down, we recognized that for some  
20 retirees, the increase in the premium was going to be  
21 difficult to maintain the plan that they've had  
22 before, and tried to give them four different options  
23 that allowed them to balance both -- if they have  
24 different healthcare needs, or healthcare needs and

also their financial needs, because they all had a  
different mix of deductibles and premiums, and, in  
fact, even provided a plan that would allow people to  
pay less than they had paid the prior year.

5 So it's been that. It's been the work  
6 that -- you know, deferring to Nancy Currier and her  
7 team, who manage benefits, and the questions that  
8 they've answered and the information that they've  
9 been providing to retirees to try to explain to  
10 people what their options are.

11 THE COURT: Thank you, Ms. Holt.

12 Any questions based upon that,  
13 Mr. Krislov?

14 MR. KRISLOV: Yes.

15 THE COURT: By the way, I noted for  
16 the record in my opinion of December 3rd that the  
17 retiree healthcare report -- is it the benefits --  
18 RHBC --

19 THE WITNESS: Yes.

20 THE COURT: -- came out January 11th,  
21 2013, for the record.

22 Go ahead, Mr. Krislov, just based upon  
23 my question alone.

24 BY MR. KRISLOV:

1 Q The chairman of the Retiree Health Benefits  
2 Commission, that was Mr. Amer Ahmad?

3 A He was the comptroller at the time. And,  
4 yes, I believe he was the chairman of the commission.

5 Q And his current residence?

6 A I don't know where he is currently.

7 THE COURT: I know where it is, Clint.  
8 It's in the federal penitentiary. What a surprise.

9 (Laughter.)

10 THE COURT: I would note, however, you  
11 haven't attacked the substance of that January 11th,  
12 2013 report made not only by him but by, I guess, a  
13 whole lot of folks, in your petition, but it's an  
14 interesting point.

15 BY MR. KRISLOV:

16 Q Whether that -- the letter that you're  
17 talking about is the May 2013 letter advising -- that  
18 went out to retirees -- I think it's an exhibit that  
19 we got here. And the package in two thousand -- when  
20 you say fall of 2013, '14, '15, you would not dispute  
21 that that went out in October of each year?

22 A I would dispute that. I believe it went  
23 out earlier. I certainly know this year it went out,  
24 I believe, in August or September. But it went out

1 in the late summer. I would agree that it went out  
2 late summer, early fall of each year.

3 Q And the four different plans that are  
4 offered, one has a very limited network, right?

5 A That's correct.

6 Q One has a very high deductible?

7 A Yes, that's correct.

8 Q And one has a combination of both a high  
9 deductible and a limited network?

10 A That's correct.

11 Q Okay. And you would not --

12 MR. KRISLOV: And that's -- I think we  
13 have no more questions of Ms. Holt.

14 THE COURT: Okay. Anything on that?  
15 RE-CROSS-EXAMINATION

16 BY MR. PRENDERGAST:

17 Q Do you recall the credentials, how many  
18 members there were of that commission?

19 A I believe there were somewhere between  
20 eight and ten members.

21 Q And do you remember -- recall the  
22 credentials of the people on that committee? Not of  
23 all of them, but it was a -- it had both academic  
24 advisors who were well known in the healthcare area.

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1 We had labor and union representation and other  
2 people who had both financial, as well as healthcare,  
3 qualifications to review the City's retiree  
4 healthcare plan and make recommendations based on  
5 both what --

6 MR. KRISLOV: Objection. The report  
7 speaks for itself.

8 THE COURT: Oh, no, no, no, sir. You  
9 attacked the credibility of the report by attacking  
10 the gentleman who's now in the school of hard knocks,  
11 as we say.

12 So you opened the door. He's entitled  
13 to rehabilitate.

14 MR. KRISLOV: Fair enough.

15 THE WITNESS: And so they were charged  
16 with, as I said, looking at both the current state of  
17 healthcare, as well as the options that would be  
18 available both today, as well as going forward and  
19 making a series of recommendations.

20 BY MR. PRENDERGAST:

21 Q The gentleman who was the chairman, do you  
22 have any knowledge as to whether any criminal  
23 difficulties that he had had anything to do with his  
24 work on the commission?

1 Do you have another question? I'm not  
2 going to let her comment on the credibility of that  
3 gentleman. You've already made your point. I  
4 understand that.

5 MR. KRISLOV: Well, Mr. Prendergast  
6 asked her if his wrongdoing had any connection to the  
7 committee, his work on the committee.

8 And the fact is, he put in false  
9 reports when he was in the Ohio State treasurer's  
10 office. And falsifying reports is a --

11 THE COURT: If you have any evidence  
12 that this report was false, I would have assumed you  
13 would have filed that in your petition, and you  
14 didn't, but that's okay.

15 If you want to attack the credibility  
16 of the other eight to ten members, try and do it. If  
17 you think that they were a mere rubber stamp for this  
18 guy who's in the finishing school, whatever federal  
19 penitentiary you want to call it, be my guest. Go  
20 ahead and try.

21 But this witness doesn't know any of  
22 that.

23 MR. KRISLOV: Okay. Well, let's try  
24 this one.

1 A To my knowledge, they did not.

2 REDIRECT EXAMINATION

3 BY MR. KRISLOV:

4 Q You did mention that on the membership of  
5 the committee, you said there were union  
6 representatives.

7 A They were labor representatives, yes.

8 Q And you know that the unions do not  
9 represent the retirees, right?

10 A That's my understanding.

11 Q Okay. And the -- and as far as his work on  
12 the committee, his credibility is of some importance,  
13 would you agree, his honesty?

14 THE COURT: You can argue that to me.  
15 I'm not going to let a witness comment on the honesty  
16 vel non of anybody else.

17 MR. KRISLOV: Well, she's already  
18 said --

19 THE COURT: No, you did. So that's  
20 sustained by the Court.

21 MR. KRISLOV: She already testified --

22 THE COURT: It's sustained. What do  
23 you want from me? You want to keep going? It's  
24 going nowhere. That question is sustained.

1 BY MR. KRISLOV:

2 Q You are aware that there were some people  
3 on the board who disagreed with the board's  
4 conclusion that the retiree healthcare should be  
5 terminated?

6 A I'm not aware of that.

7 Q And that the -- you're not aware of that at  
8 all?

9 A No. I know that they issued a report that  
10 had a range of options and recommendations to the  
11 City.

12 My assumption about the report was  
13 that since it was issued under all of their names,  
14 that everybody agreed with the variety of  
15 recommendations that were made.

16 BY MR. KRISLOV:

17 Q And, finally, was there someone on there  
18 who represented retirees?

19 THE COURT: If you know.

20 THE WITNESS: I don't recall.

21 MR. KRISLOV: Okay. No further  
22 questions.

23 MR. PRENDERGAST: May I?

24 THE COURT: Sure.

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1 MR. PRENDERGAST: Thank you.  
2 RECCROSS-EXAMINATION

3 BY MR. PRENDERGAST:

4 Q There were labor representatives on the  
5 committee, right?

6 A That's correct.

7 Q They represented people who are currently  
8 in labor unions?

9 A That's correct.

10 Q Labor unions with the employees of the  
11 City, correct?

12 MR. KRISLOV: Objection. Calls for a  
13 conclusion that she has no knowledge of, and she's  
14 not --

15 THE COURT: Really? The purpose of  
16 cross-examination in any examination is for you to  
17 determine what her knowledge is.

18 If you want to testify, and you are  
19 her conscience, you may so testify. That objection  
20 is utterly overruled, because you don't have  
21 firsthand knowledge of that.

22 So you may inquire, though.

23 Go ahead.

24 BY MR. PRENDERGAST:

1 MR. KRISLOV: Your Honor, could I have  
2 everything stricken after "yes"?

3 THE COURT: No. You ask a question,  
4 you get the answer.

5 MR. KRISLOV: Yeah, but, Your Honor,  
6 to take issue with you on this --

7 THE COURT: Don't bother. My ruling  
8 is the same. Your objection is noted for the record.  
9 You may do whatever you want with it, but let's move  
10 on.

11 Anything else on her firsthand  
12 knowledge as to who the labor unions represented?  
13 BY MR. KRISLOV:

14 Q You don't have firsthand knowledge as to  
15 who the labor unions repre- --

16 THE COURT: Asked and answered. She  
17 said yes, she does, and the employees of City of  
18 Chicago.

19 Next question.

20 BY MR. KRISLOV:

21 Q You would agree that they do not represent,  
22 because I think you said this before, they don't  
23 represent --

24 THE COURT: Then why ask it again?

1 Q The labor union representatives represented  
2 people who are in unions who are future retirees,  
3 correct?

4 A That is correct.

5 Q And that commission report had a profound  
6 impact on the pensions of future retirees, did it  
7 not?

8 A I would say it had a profound impact on the  
9 retiree healthcare of future retirees.

10 MR. PRENDERGAST: No further  
11 questions.

12 THE COURT: Go ahead, Mr. Krislov.  
13 You may attack her firsthand knowledge as to that  
14 subject matter of that report only, nothing more.

15 REDIRECT EXAMINATION

16 BY MR. KRISLOV:

17 Q The fact is, you don't know who they were  
18 representing on the board, do you?

19 A No. Our labor representatives represent  
20 the employees of the City of Chicago. We have well  
21 over 30 labor unions, all of whom represent different  
22 factions of our city employees.

23 The labor representative who are on it  
24 represent those employees.

1 BY MR. KRISLOV:

2 Q The people who were, then --

3 THE COURT: Asked and answered.

4 BY MR. KRISLOV:

5 Q -- retirees --

6 THE COURT: Asked and answered, Clint.

7 MR. KRISLOV: Okay, you --

8 THE COURT: I heard her testimony.

9 She did say that.

10 MR. KRISLOV: Okay. We're done.

11 THE COURT: Well, Ms. Holt, have a  
12 Merry Christmas.

13 THE WITNESS: Thank you, Your Honor.  
14 (Witness excused.)

15 THE COURT: Call your next witness.

16 MR. KRISLOV: Nancy Currier.

17 THE COURT: All right.

18 Ms. Court Reporter, do you need a  
19 break?

20 THE COURT REPORTER: Only if you do.

21 THE COURT: I don't. I'm good.

22 Hello.

23 THE WITNESS: Hi. How are you?

24 THE COURT: I'm very good. Would you

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1 raise your right hand, please.  
2 (Witness sworn.)  
3 THE WITNESS: I do.  
4 THE COURT: Very good.  
5 Would you have a seat, and would you  
6 speak up. Everyone's voices are starting to --  
7 THE WITNESS: And I have a very soft  
8 voice.  
9 THE COURT: Well, you're not going to  
10 today. Pretend that the person who needs to hear  
11 your testimony, me, is at the rear of this courtroom,  
12 and keep your voice up.  
13 Would you do that?  
14 THE WITNESS: I will do my best.  
15 THE COURT: Well, I can't ask for more  
16 than that.  
17 Mr. Krislov, Ms. Currier is your  
18 witness, and she's sworn.  
19 MR. KRISLOV: Always good to see you.  
20 Sorry it's under these circumstances.  
21 NANCY CURRIER,  
22 having been called as a witness and having been first  
23 duly sworn, was examined and testified as follows:  
24 DIRECT EXAMINATION

1 cover.  
2 MR. LAYDEN: I'm just asking the year  
3 since --  
4 THE WITNESS: I was --  
5 MR. LAYDEN: -- Ms. Currier didn't  
6 join the City until 1991.  
7 THE WITNESS: I was not the benefits  
8 manager at the time of that handbook.  
9 THE COURT: We're having a nice  
10 discussion.  
11 THE WITNESS: I'm sorry.  
12 THE COURT: You only answer questions  
13 that are put to you.  
14 THE WITNESS: Okay.  
15 THE COURT: You don't volunteer  
16 anything.  
17 Do you understand?  
18 THE WITNESS: Yes.  
19 THE COURT: All right. Next. Ask  
20 your question, Mr. Krislov.  
21 BY MR. KRISLOV:  
22 Q In order to be eligible for coverage under  
23 the City of Chicago Annuitant Health -- excuse me.  
24 The City of Chicago Annuitant Medical Benefits Plan,

1 BY MR. KRISLOV:  
2 Q You're familiar with the City of Chicago  
3 Annuitant Medical Benefits Plan, are you not?  
4 A I am.  
5 Q And you -- you need the -- according to the  
6 handbook that I have -- and I'll be glad to give you  
7 a copy of the one that I have. We can mark this  
8 Exhibit 2.  
9 THE COURT: Have you given it to the  
10 other side prior to today?  
11 MR. KRISLOV: Yes. It's in the  
12 attachment. They're part of the whole handbook.  
13 This would be just page two of the handbook.  
14 THE COURT: For purposes of this  
15 hearing, this is your Exhibit C?  
16 MR. KRISLOV: Yes.  
17 (Marked Plaintiffs' Exhibit No. 2 for  
18 ID.)  
19 MR. LAYDEN: Mr. Krislov, could we ask  
20 what year this is from?  
21 MR. KRISLOV: This is from -- this is  
22 the one that is the -- I think this is only handbook  
23 that's been attached to everything, which has Harold  
24 Washington at the lower, right-hand corner of the

1 as I understand it, you -- a person will be eligible  
2 for coverage if you are an annuitant of the City of  
3 Chicago. "Annuitant" means a former employee who is  
4 receiving an age and service annuity from one of the  
5 four retirement funds; is that accurate?  
6 A That's accurate.  
7 MR. PRENDERGAST: Counsel, just -- you  
8 probably thought you gave us that, but did you give  
9 me a copy of the exhibit?  
10 (Document tendered.)  
11 MR. PRENDERGAST: Thank you.  
12 BY MR. KRISLOV:  
13 Q Number two, the -- under the plan, the City  
14 is the insurer, is it not?  
15 A I wasn't the benefits manager at that time.  
16 Q Now.  
17 A Now, the City self-funds the medical plan.  
18 Q Meaning that the City acts as the insurer,  
19 right?  
20 A The City self-funds the insurance, correct.  
21 Q The City is the insurer?  
22 A The City self-funds the plan.  
23 Q Yes, or no, the City is the insurer?  
24 THE COURT: No, it's not a yes or no.

1 She gave you the answer that you asked. You asked a  
2 question, she gave you the answer.

3 If you two are going to spend the rest  
4 of the day fencing over semantics, we're going to be  
5 here -- I have no problem being here Christmas Day,  
6 but let's not fence on semantics and move on.

7 I understood her answer, and so did  
8 you, so let's move on.

9 MR. KRISLOV: Well, I think I have a  
10 right to get a yes or no to --

11 THE COURT: And I think you don't. I  
12 think you have a right to an answer that is an answer  
13 to the question. And if the witness does not accept  
14 the premise of your question, she can elucidate. She  
15 can explain, and she did. If you don't like it, I'm  
16 sorry. But you asked the question.

17 MR. KRISLOV: I believe I'm entitled  
18 to an answer to the question I asked, but we'll move  
19 on.

20 BY MR. KRISLOV:

21 Q The City doesn't pay an outside insurer to  
22 be the insurer, right?

23 A The City pays a third-party administer to  
24 pay the claims, and then we pay for the claims.

1 right?

2 THE WITNESS: Correct.

3 THE COURT: Answer accordingly.

4 THE WITNESS: Okay.

5 THE COURT: Next question.

6 MR. KRISLOV: Thank you, Your Honor.

7 BY MR. KRISLOV:

8 Q You're familiar with the rate changes that  
9 the City has announced for January 1, 2016, are you  
10 not?

11 A Yes, I am.

12 Q And you were involved in setting those rate  
13 changes?

14 A Yes.

15 Q And those rate changes result directly from  
16 reduction in the City's appropriation for retiree  
17 healthcare?

18 A The increases in the premium are a result  
19 of the reduction in the subsidy, as well as the  
20 projected cost of the medical care in 2016.

21 Q Okay. Let me give context, because I think  
22 I understand how this occurs, but perhaps we can do  
23 it -- in the past, under the settlement, what  
24 happened was the City would have the Segal Group

1 MR. KRISLOV: Would you read the  
2 question again?

3 THE COURT REPORTER: Your Honor?

4 THE COURT: Ms. Currier, Mr. Krislov  
5 is asking for a yes-or-no answer. It didn't ask for  
6 an explanation as to the process. I took your answer  
7 as yes. You pay the claims. You have a third-party  
8 administer, but the -- it's Blue Cross.

9 But Blue Cross doesn't dip into their  
10 own pocket. You do. The City, does right?

11 THE WITNESS: Correct.

12 THE COURT: Then answer the question.  
13 Let's not fence.

14 Do you understand me?

15 THE WITNESS: Yes, I do.

16 THE COURT: If you can answer the  
17 question yes or no, do it.

18 THE WITNESS: Okay.

19 THE COURT: We don't want -- I don't  
20 want -- if I asked you what day it is today, you  
21 wouldn't say, "It's cold outside, it's raining, I  
22 don't want to be here, and I want to go shopping and  
23 take care of my family instead of talking to  
24 Mr. Krislov." The answer would be "It's Wednesday,"

1 estimate what costs were likely to increase in the  
2 coming year, and then, for want of a better term,  
3 reverse engineer from that back to what that amount  
4 would then, taking into consideration the City's  
5 subsidy, or contribution, or what the City paid, its  
6 percentage, the pension fund subsidy, and the  
7 annuitants would pay the rest, right?

8 A Correct.

9 Q For two thousand and -- was that done  
10 for -- the rest of 2013, they just continued the  
11 rates?

12 A Correct. We did not reset the rates for  
13 July 1st, 2013.

14 We reset the rates January 1st,  
15 2014; January 1st, 2015; January 1st, 2016.

16 Q Okay. Were those done with the same -- by  
17 the same calculation mode, or is it just that you set  
18 the rates?

19 A Those were done with the same methodology.

20 Q Okay. So you did use the Segal methodology  
21 for each of those years?

22 A Yes, Segal projects a cost.

23 Q And the same thing for 2016?

24 A Correct.

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1 Q Okay. And so there is -- okay.  
2 You are also aware of the  
3 reconciliation process that took place during the  
4 settlement period?  
5 A Yes, I am.  
6 Q That's where we met.  
7 A Yes.  
8 Q And during that ten years, you would agree,  
9 would you not, that every single one of those years,  
10 when audited and reconciled, resulted in a refund to  
11 retirees?  
12 A I believe it was every year.  
13 Q Okay. And you would not dispute that the  
14 total was an average of slightly in excess of \$5  
15 million a year?  
16 A I think it actually went up and down. I  
17 couldn't --  
18 Q Okay. The aggregate -- you would not  
19 dispute that the aggregate, whether you call it an  
20 overcharge or a refund or reconciliation, that  
21 totaled \$51 million over ten years?  
22 A That sounds reasonable.  
23 Q Okay. The special disenrollment, re-enroll  
24 ment plan --

1 (Document tendered.)  
2 BY MR. KRISLOV:  
3 Q As I understand, this was voted on by the  
4 benefits committee of the Chicago City Council,  
5 right?  
6 A It's the benefits committee for the City.  
7 Q Okay. And you're on it?  
8 A Yes, I am. The benefits manager is on it,  
9 yes.  
10 Q Okay. Yeah, you're on it by your office.  
11 This was -- why did this pop up? Why  
12 did this occur?  
13 A Apparently, there was -- I mean, there's  
14 been a concern that people that disenrolled for 2016  
15 because of the rates wouldn't be allowed to come back  
16 in without proving good health.  
17 So we decided -- we had a discussion.  
18 We decided that we would give them an opportunity to  
19 re-enroll in the plan without providing proof of good  
20 health.  
21 Q And when was -- and when was this  
22 considered and done?  
23 A It was done on Friday, December --  
24 Q This past --

1 A Amendment?  
2 Q The -- I'm not sure you're aware -- I don't  
3 know, but I presume you are.  
4 The provision under which the City --  
5 sorry. This is Exhibit 6 to the City's submission.  
6 It says, amendment -- this is December 18th  
7 Amendment to the City of Chicago Non-Medicare  
8 Eligible Retiree Healthcare Plan and Medicare  
9 Supplement Retiree Healthcare Plan special  
10 Disenrollment and Reinstatement Periods.  
11 Are you familiar with that?  
12 A Yes, I am.  
13 MR. PRENDERGAST: Your Honor, if  
14 counsel's going to question her on this document,  
15 which is attached to our response, can he at least  
16 have her use my copy so she can see the document?  
17 THE COURT: If necessary. Are you  
18 going to question Ms. Currier about the substance of  
19 this document, Mr. Krislov?  
20 MR. KRISLOV: I guess so. I'm glad to  
21 give her a copy.  
22 THE COURT: Here. Take mine. I've  
23 read it. I'm aware of the substance.  
24 Go ahead.

1 A December 18th, yes.  
2 THE COURT: So now folks can opt back  
3 in without regard to their -- any subsequent  
4 healthcare problems or anything until September '17,  
5 two thousand -- September 2017; is that correct?  
6 THE WITNESS: Right. I believe  
7 it's --  
8 MR. KRISLOV: I believe it's '16.  
9 THE COURT: I'm so sorry.  
10 MR. KRISLOV: It's September '16.  
11 THE WITNESS: Through September  
12 30th, 2016.  
13 THE COURT: Okay. It was my  
14 understanding that this has been extended to 2017,  
15 no?  
16 MR. KRISLOV: No.  
17 THE COURT: Okay. Thank you.  
18 BY MR. KRISLOV:  
19 Q This has not been passed by the Chicago  
20 City Council, has it?  
21 A It doesn't need to be. It's been signed by  
22 the people that need to sign it.  
23 Q And it also -- as I read it, it says that  
24 -- under number three --

[AS READ:

The annuitant may reinstate coverage for any person who is covered on December 1, 2015, with the following exceptions: (A) If during the time of absence from the plan the annuitant's dependent reaches the plan's limiting age, the dependent is not eligible for reinstatement.]

Right?

A That's correct.

Q So if you drop their coverage, and their child passes the age, they can't come back in for the expenses that the child would have incurred during that drop period, right?

A Well, the child has reached the limiting age. They'd no longer be eligible to be covered by the plan.

Q But they wouldn't be able to come back in for the drop period, right?

A No. It's prospective coverage.

Q It's only prospective?

A Uhm-hmm.

Q Second:

[CONTINUING:

If during the time of absence from the

United Healthcare has dropped it's PPO individual purchasable plans?

A I heard something about United Healthcare, not all the specifics.

Q And you heard about Blue Cross dropping its individual purchase PPO plans, right?

A Correct.

Q And so the fact of the matter is that if they drop the City coverage because they can't afford it, they may, indeed, wind up in an inferior plan?

A I don't think all those -- I don't agree that those plans are inferior.

Q You don't agree that any plans are inferior or --

A I'm sure there are some inferior plans, and I'm sure there are some that are superior.

Q And have you checked that out?

A We have done some research on that, my team and I.

Q Did you know that --

A There are some advantage to those ACA plans. They cover some things that we don't cover in the standard medical plan that we offer.

They have drug copayments that go into

plan the annuitant divorces his or her spouse, the former spouse is not eligible for reinstatement.]

A That's correct. They're divorced. They're not eligible under the plan anyway, a divorced spouse.

Q But if they had been on the plan, they would remain?

A No. You can't cover a divorced spouse. They're not eligible.

Q And once again, it would not cover the drop period?

A Correct. Its prospective coverage. They can come back prospectively.

Q And the other thing is, this doesn't -- this doesn't -- you have no idea whether the people, if they decide to drop the City coverage because they can't afford it, and so they sign up with another plan, you have no control over whether they can drop that plan without penalty?

A You can drop an ACA plan without penalty.

Q At any time?

A Yeah. I believe within 14 days' notice, you can drop it.

Q And you're also aware that the ACA -- that

the out-of-pocket limit, for instance. Our drug copayments do not.

Q And some of their copay and some of their out of pockets are generally as much as \$6,000 for an individual; \$12,000 for a family?

A It depends on the plan. There's different levels in the ACA.

Q And you would not dispute that the plan that was in effect -- and you're familiar with the plan that was in effect in 1987, are you not?

A No, I'm not.

Q Not at all?

A No.

Q And at least you would concede that if that plan has a \$1,000 deductible, that cost of \$55 a month or \$21 a month paid for by whomever, that that is a superior plan to one that you have to pay \$2,200 a month for, would you agree?

A Depends what that plan covered. I can't speak to what the plan covered in 1989.

Q Okay. But when we talk about saving money by going into the ACA, you're focusing on premium cost, correct?

A This premium cost that you have to look at,

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1 in the ACA plans, you can see a doctor and pay a  
2 copayment. You don't have to meet the deductible.  
3 So there are some advantage to some of those ACA  
4 plans, like I said.

5 Q If you can --

6 A So there's always a tradeoff between  
7 premium and out-of-pocket deductibles.

8 Q Okay. The -- let's see.

9 Now, when you say in your view --  
10 you're familiar with your affidavit that was  
11 submitted as Exhibit 5 to the City's submission?

12 THE COURT: Ms. Currier, can I have  
13 that back? Do you need to see your affidavit, or --

14 THE WITNESS: Well, it depends what I  
15 can remember.

16 THE COURT: Well, we'll both look at  
17 it together, unless you have an extra copy.

18 (Document tendered.)

19 THE WITNESS: Thank you.

20 THE COURT: Take a look at that, and  
21 tell me if that's the affidavit that you signed.

22 THE WITNESS: Yes, it is.

23 THE COURT: Mr. Krislov, you've  
24 tendered to the witness Plaintiffs' Exhibit D for

1 your position is that the City didn't have any  
2 obligation under the explicit terms of the statute to  
3 make a contribution, right?

4 A That's what this is saying, yes.

5 Q Okay. Are you a lawyer?

6 A No, I'm not lawyer.

7 MR. KRISLOV: Okay. So I would move  
8 to strike her conclusions as to -- I think these  
9 conclusions require a legal opinion, but Your Honor  
10 can deal with that later.

11 THE COURT: Okay, I will. Motion to  
12 strike is denied. But I'll certainly take into  
13 account, in terms of the weight of what she's saying,  
14 that which you just elicited from the witness stand.

15 BY MR. KRISLOV:

16 Q And when you say Exhibit 9 is incomplete,  
17 you say that the --

18 THE COURT: Plaintiffs' Exhibit 9, you  
19 mean?

20 MR. KRISLOV: Correct.

21 BY MR. KRISLOV:

22 Q Sorry. You refer at your paragraph seven  
23 to Plaintiffs' Exhibit 9, which is our spreadsheet  
24 and the statements of the retirees as to their -- and

1 purpose of identification, yeah?

2 MR. KRISLOV: No, I think -- yes.

3 It's now our Exhibit D, but it is the City's Exhibit  
4 5 to its submission.

5 Either way, we have the same document.

6 THE COURT: It's the Currier affidavit  
7 that's part of the City's submission, which you have  
8 now tendered as your Exhibit D.

9 Proceed.

10 BY MR. KRISLOV:

11 Q Your comparison of -- at page -- I guess  
12 it's paragraphs four through six. What I think  
13 you're saying is that their out-of-pocket costs, if  
14 all that they get is the subsidy that the Funds  
15 provided -- if the City only provided today the  
16 subsidy that the Funds provided under the 1983  
17 and '85 amendments, that the retirees would have to  
18 pay more than -- would have to pay less in 2016 than  
19 they would have had to pay if 2016 only had the  
20 subsidy obligations of the '83 and '85 amendments?

21 A I believe that's what I'm saying, yes.

22 Q Okay. But for purposes of -- and you're --  
23 aren't you comparing apples to oranges there?  
24 Because in the '83 and '85 amendments, the City --

1 I think what you're referring to is a comparison of  
2 their premium to their annuity, right?

3 A Correct.

4 Q Okay. And you're saying that it's  
5 incomplete because it doesn't take into account other  
6 sources of income that retirees or their spouses may  
7 have?

8 A Correct.

9 Q Okay. Now, it is not your -- it is not  
10 your position that the retirees are entitled to  
11 healthcare only if they have a certain amount of  
12 income or less, is it?

13 A No.

14 Q Their entitlement -- if they have an  
15 entitlement --

16 A I'm not -- I wouldn't agree with the word  
17 "entitlement." They're eligible for coverage under  
18 the plan if they're an annuitant of one of the four  
19 city pension plans at the current time.

20 Q Okay. And their entitlement to partici- --  
21 sorry. Their right to participate under the plan is  
22 not dependent on making more or less income. They  
23 have a right --

24 A Right. If they're an annuitant of the

1 plan --

2 Q If they're -- sorry. If they're an  
3 annuitant --

4 A Right. If they're receiving an annuity of  
5 one of the four pension plans --

6 Q Then you're eligible to be a participant in  
7 the annuitant healthcare plan?

8 A Correct.

9 Q Regardless of your income?

10 A Correct.

11 Q Okay. So their entitlement isn't  
12 determined by their income.

13 What you're saying is that the -- in  
14 evaluating whether they can afford these premiums or  
15 whether they should apply for a means test cap shows  
16 that the -- that they are not being subjected to an  
17 unfair burden, right?

18 A That's right. We don't know the family  
19 income.

20 Q Okay. And you don't have a right to demand  
21 that, do you?

22 A No. People can apply for a means test if  
23 they want to.

24 Q Okay. How many people have applied -- you

1 What you're saying is, since these  
2 people are on a list, your conclusion is that they  
3 must have other income, otherwise they'd have  
4 applied, right?

5 A That's the statement, yes.

6 Q And have you reviewed -- have you done any  
7 statistical analysis to determine if people actually  
8 understand their ability to do this?

9 A Well, we get a fair number of applications  
10 every year, so I do believe that -- and we do tell  
11 them in the mailing that we send out in the fall to  
12 tell them about what's coming up for the next year,  
13 we tell them about the means test, and we also do a  
14 means test mailing to a good third of the annuitants,  
15 I believe.

16 Q And -- but you say that -- how do you pick  
17 that third?

18 A I just -- that was just a pick. We pick --  
19 we base it on everybody's annuity below a certain  
20 amount. I don't know the number off the top of my  
21 head.

22 Q So you'll know -- the City knows what each  
23 person's annuity is, right?

24 A Yes.

would know how many people have applied?

A I would have to research that. I don't  
know --

Q You have no idea?

A I think it's around a thousand, but I don't  
know. Over the ten-year period -- or we've had it in  
effect longer than that since the settlement plan --  
we've had a means test. So I don't know the number  
of individuals that have applied, no.

Q Okay. And you don't know whether any --  
you don't know if any of the people have applied for  
2015 or '16?

A The number? I don't know off the top my  
head, no.

Q Ballpark?

A (No response.)

Q No idea?

A I'd be guessing.

Q Okay. And you say that the fact that they  
have not received cap premium coverage under the  
City's means test suggests that these retirees have  
sources of income beyond their annuities which would  
disqualify them from receiving cap premium costs and  
other benefits pursuant to the City's means test.

1 Q And so the City sends out to one third of  
2 the people --

3 A I'm just speculating it's about a third.  
4 But it's everybody below a certain number.

5 Q Below a certain annuity or --

6 A I know it's -- we probably go to, like, 300  
7 percent of the federal poverty level, according to  
8 the annuity, because you can apply if it's  
9 250 percent or less. I mean, you can apply  
10 regardless. But it goes up to 250 percent now.

11 So go over that.

12 Q Is it possible -- you would agree, would  
13 you not, that it's possible that a number of people  
14 don't apply for the means test because they're not  
15 really aware of it?

16 A I don't know.

17 Q Okay.

18 A They've been notified many, many, many  
19 times.

20 Q Well, if they've gotten a notice, then they  
21 understand, I mean -- right?

22 A Correct.

23 Q And over the years, there are, currently,  
24 about what, 22,000?

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1 A There's about 22,000.  
2 Q Retirees on the City's annuitant healthcare  
3 plan?  
4 A Correct.  
5 Q And about a thousand over ten years --  
6 A It's probably more than that individually.  
7 I'd rather research that number for you than guess.  
8 Q But you don't know that?  
9 A I don't know that.  
10 Q So your conclusions as to what's motivating  
11 them -- and you're just talking about -- sorry.  
12 Your conclusions as to what's  
13 motivating them, your belief that they have sources  
14 of income beyond their annuities which would  
15 disqualify them from receiving cap premium costs and  
16 other benefits pursuant to the City's means test, you  
17 haven't done any study to, you're just saying that --  
18 A I don't have access to everybody's family  
19 income, no.  
20 Q Nor to their -- you haven't done a study to  
21 find out their motivation in not applying?  
22 A No, I haven't.  
23 Q So you don't know whether they're not  
24 applying because they don't really know and

1 no.  
2 THE COURT: Ms. Currier --  
3 THE WITNESS: Sorry. Sorry.  
4 THE COURT: It's called English. Let  
5 me give you the question.  
6 Has it been audited and reconciled for  
7 the last half of 2013? Yes or no?  
8 THE WITNESS: Yes.  
9 BY MR. KRISLOV:  
10 Q Who audited it?  
11 A Shurong Tong. She's the manager of audit  
12 and finance in the benefits office.  
13 THE COURT REPORTER: Excuse me, Your  
14 Honor. I did not hear the answer.  
15 THE COURT: Ms. Currier, would you  
16 mind keeping your voice up just a touch more, please.  
17 THE WITNESS: Shurong Tong, T-o-n-g.  
18 BY MR. KRISLOV:  
19 Q Is she a CPA?  
20 A Yes, she is.  
21 Q And she provided an audit?  
22 A Not an official audit. She looked at the  
23 numbers. She reconciled the numbers.  
24 Q Okay. So is there a report to that effect?

1 understand --  
2 THE COURT: It's been asked and  
3 answered, Clint. That was answered about 90 seconds  
4 ago.  
5 MR. KRISLOV: Okay. And you believe  
6 we've got an affirmative one to that?  
7 THE COURT: Absolutely.  
8 MR. KRISLOV: Okay.  
9 THE COURT: I'm sorry you didn't hear  
10 it.  
11 MR. KRISLOV: I try, Your Honor, but  
12 thank you.  
13 BY MR. KRISLOV:  
14 Q You have not audited and reconciled the two  
15 thousand -- the actual expenditures versus premium  
16 charges for the last half of 2013, right?  
17 A We looked at it, yes.  
18 Q You haven't audited -- it's not been  
19 audited and reconciled, has it, the last half of  
20 2013?  
21 A We looked at it, yes.  
22 THE COURT: You looked at it. The  
23 question is has it been audited?  
24 THE WITNESS: Not an official audit,

1 A No, there is not a report.  
2 Q Did she do a report on that?  
3 A No, she did not.  
4 Q So she just looked at it --  
5 A There's no official report on that, Clint.  
6 We weren't required to do a reconciliation past June  
7 30th.  
8 THE COURT: So the answer is now "no"?  
9 THE WITNESS: The answer is no.  
10 BY MR. KRISLOV:  
11 Q Right. Okay. So for 2014, same question,  
12 same answer.  
13 A No, we did not do a reconciliation for  
14 2014.  
15 Q Or an audit?  
16 A Or an audit, no.  
17 Q And for 2015, we're --  
18 A We're not done.  
19 Q -- in your view, there won't be one done?  
20 A Correct.  
21 Q Okay. So the actual -- and for 2016, you  
22 don't anticipate doing that, either?  
23 A Correct.  
24 Q And you would agree that -- you would not

1 dispute that for every year that has been subjected  
2 to an audit, there has been a refund because the  
3 charges were more than would reflect the actual,  
4 right?

5 A Correct.

6 MR. KRISLOV: Okay. No further  
7 questions of this witness.

8 THE COURT: City.

9 MR. LAYDEN: Yes, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. LAYDEN:

12 Q Good morning, Mrs. Currier.

13 Let's start with the means test.

14 Mr. Krislov asked you some questions about that.

15 Does your office get inquiries from  
16 retirees about the means test?

17 A Yes.

18 Q And when you get an inquiry from a retiree  
19 about the means test, what does your office do?

20 A We mail out an application.

21 Q And do they sometimes ask you questions on  
22 the telephone about the means test?

23 A Yes. My assistant is the one who actually  
24 handles all the means test applications, inquiries.

1 A We send a package every year that has  
2 charts to show what the benefits are for the next --  
3 for the following year, the rates that would apply to  
4 that individual, a letter from myself that has all  
5 the information about the means test. There's  
6 usually several pieces of information in there.

7 In addition, we do a mailing of means  
8 test applications.

9 Q Can you briefly explain how the City's  
10 means test works for retirees.

11 A The person applies. They have to fill out,  
12 I believe it's a 4506T, so we can get a transcript  
13 from the IRS.

14 So once we get the transcript from the  
15 IRS, we do a calculation to compare the adjusted  
16 gross income to what the premium would be. And if  
17 they meet the premium test -- sometimes they meet the  
18 premium test, and they get a reduction in the  
19 premium, or -- and/or they could get premium  
20 copayments.

21 Sometimes people don't get the premium  
22 reduction, but they do qualify for copayment  
23 reductions at mail order.

24 Q At what level of income does a retiree have

1 Q And does your office try to work with  
2 retirees to understand the means test?

3 A Yes.

4 Q And does your office maintain a hotline  
5 that the retirees can call?

6 A We have a benefits --

7 MR. KRISLOV: Your Honor, I would  
8 object to doing this as a leading question.

9 THE COURT: It's cross. He may lead.

10 MR. KRISLOV: But it's cross of a  
11 hostile witness. I don't think he's entitled to do  
12 it this way.

13 THE COURT: You're entitled to your  
14 opinion. Mine's the one that counts.

15 Objection overruled.

16 You may go on.

17 BY MR. LAYDEN:

18 Q Ms. Currier, just so I understand, does  
19 your office annually send out information to retirees  
20 about the City's means test?

21 A Yes, we do.

22 Q And is it a -- what kind of --

23 A We send --

24 Q What kind of -- excuse me.

1 to have to qualify for the City's means test,  
2 Ms. Currier?

3 A Less than 250 percent of an adjusted gross  
4 income.

5 Q Is that of the federal poverty level.

6 A Of the federal poverty level, correct.

7 Q And does the Affordable Care Act have  
8 similar provisions for people at certain income  
9 levels?

10 A The federal government's means test  
11 actually goes to 400 percent of the federal poverty  
12 level, and they provide premium assistance, as well  
13 as reductions in plan out of pockets and deductibles.

14 Q So with the Affordable Care Act, are more  
15 people able to qualify for these reductions in  
16 premiums?

17 A I would think so, based on the fact that it  
18 goes up to 400 percent of the federal poverty level?

19 Q And is the percent of income under the ACA  
20 lower or higher than the City's means test?

21 A The percent of income that they can get  
22 capped at?

23 Q Yes.

24 A Yes. It's better under the federal

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1 government.

2 Q So there's more generous subsidies under  
3 the ACA?

4 A Correct.

5 Q Do you have, I think it's Exhibit 3, the  
6 special disenrollment and reinstatement --

7 A I think the judge took it back.

8 THE COURT: Exhibit 3 is the Illinois  
9 Revised Statutes. Is that what you want?

10 MR. LAYDEN: No, no. I wanted to give  
11 back the SBDR.

12 THE COURT: Oh, yes. That is  
13 Exhibit 6.

14 (Document tendered.)

15 BY MR. LAYDEN:

16 Q Ms. Currier, I wanted to ask you a question  
17 about something Mr. Krislov raised.

18 Mr. Krislov asked you about the  
19 conditions set forth in paragraph 3A and 3B.

20 Do you see that?

21 A Yes.

22 Q Those conditions there about a divorce from  
23 a spouse and an annuitant's dependent hitting the age  
24 limit, are those requirements that already exist in

1 retirees can pay lower premiums as compared to the  
2 premiums that they currently pay under the City's  
3 2015 plan?

4 A Yes, there are plans out there.

5 MR. LAYDEN: Your Honor, this is  
6 Exhibit C to our opposition. Would you like a copy?

7 THE COURT: That's probably a good  
8 idea.

9 (Document tendered.)

10 MR. LAYDEN: Your Honor, if it's okay,  
11 we'll mark this as City's Exhibit No. 1.

12 THE COURT: Sure.

13 (Marked City Exhibit No. 1 for ID.)

14 BY MR. LAYDEN:

15 Q Can you identify this exhibit, Ms. Currier?

16 A Yes. This is some research we did on some  
17 of the plans that are available, or the number of  
18 plans that are available under Get Covered Illinois.

19 Q And was this an exhibit that was attached  
20 to your affidavit?

21 A Correct.

22 Q All right. I'd like to review this for a  
23 moment.

24 Why is there a vertical column for the

1 the City's current plan?

2 A Yes, they do.

3 Q So this isn't -- is this a new --

4 A No. When you get divorced, you're supposed  
5 to take your divorced spouse off.

6 When your child reaches the limiting  
7 age, they come off the plan. They're no longer  
8 eligible for coverage.

9 Q So these are conditions that already  
10 existed under the City's plan?

11 A Correct.

12 Q Now, Ms. Currier, staying with the plan,  
13 then, that we're talking about here, am I right, this  
14 has been fully approved by the benefits committee?

15 A Correct.

16 Q So this is in effect now?

17 A Correct.

18 Q So I want to talk about non-Medicare  
19 eligible retirees for a minute.

20 Are non-Medicare eligible retirees  
21 able to obtain coverage from sources beyond the City?

22 A Yes. They can get coverage under the  
23 Affordable Care Act.

24 Q And are there plans under the ACA where

1 age of retirees?

2 A Under the ACA, the age factors into the  
3 calculation on the premium.

4 Q Okay. Now how about the vertical column  
5 for smoking status?

6 A Smoking status also plays into the premium.

7 Q And can you explain the fourth column  
8 that's labeled "Number of Exchange Plans Available."

9 A According to our research, there's 69 plans  
10 available for 2016 through the state of Illinois -- I  
11 mean, through the Get Covered Illinois, Illinois  
12 exchange.

13 Q Are these 69 plans that are available to  
14 non-Medicare eligible retirees under the ACA?

15 A Correct.

16 Q And can you explain the next vertical  
17 column that's titled "Lowest Available Exchange Plan  
18 Premium."

19 A For the age category, these are the  
20 premiums that are available on the exchanges in  
21 Illinois. These are some of the premiums available  
22 in some of the plans.

23 Q And where was this information obtained  
24 from?

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1 A Get Covered Illinois plan comparison tool.  
2 Q So is the lowest cost in premium plan under  
3 the ACA less than the lowest cost in premium plan  
4 under the City's plan?  
5 A Yes, it is.  
6 Q So if a retiree was concerned about  
7 premiums under the 2016 plan, he or she could seek  
8 coverage under the ACA and obtain coverage with lower  
9 premiums for 2016?  
10 A Correct.  
11 THE COURT: Is that for every  
12 individual retiree's case? Do you have firsthand  
13 knowledge that any one of these people can actually  
14 do that from any given plan?  
15 Did you audit every retiree to know  
16 that that's the case, or is this just a  
17 generalization, Ms. Currier?  
18 THE WITNESS: This is from some  
19 research we did on the website, Get Covered Illinois.  
20 I can't --  
21 THE COURT: You've answered my  
22 question. Thank you.  
23 BY MR. LAYDEN:  
24 Q Let's talk about the research.

So you took somebody who has an age of  
55, correct?  
A (Nodding.)  
Q And then you took -- another thing you did  
is you looked at their smoking status, correct?  
A Correct.  
Q Then you went to an ACA -- the ACA website,  
correct?  
A Correct.  
Q And you put in that data.  
A (Nodding.)  
Q And as a result of that, you got the  
corresponding premium associated for coverage for  
that person under the ACA, correct?  
A Correct.  
Q You did that for each age, each smoking  
status identified on this exhibit, correct?  
A Correct.  
MR. KRISLOV: Your Honor, can I -- I  
mean, I'm letting him go on in the --  
THE COURT: That's nice of you, but  
I'm the one who lets him.  
MR. KRISLOV: I understand, but I  
don't want --

1 THE COURT: What's your objection,  
2 without telling me a story? Do you have an  
3 objection?  
4 MR. KRISLOV: Yes.  
5 THE COURT: What is it?  
6 MR. KRISLOV: I have an objection that  
7 whether -- I'd like voir dire to determine who put  
8 this together.  
9 THE COURT: Denied. You may cross.  
10 MR. KRISLOV: Okay.  
11 THE COURT: You may redirect.  
12 MR. KRISLOV: As long as I've got  
13 everything on cross, I'll just let them go.  
14 THE COURT: Well, that's nice of you.  
15 You may redirect. I'm not stopping you from  
16 inquiring into anything they elicit, as I didn't last  
17 time.  
18 Go ahead.  
19 Your objection's overruled.  
20 Proceed.  
21 BY MR. LAYDEN:  
22 Q So based on that research, you looked at  
23 the fifth vertical column here that's titled "Lowest  
24 Available Exchange Plan Premium"?

1 A Yes.  
2 Q And are those the premium that you found  
3 based on the research that you performed.  
4 A Yes.  
5 Q And then if you look at the second to last  
6 vertical column that says "Lowest Available City  
7 Retiree Plan Premiums," are those the current  
8 available plan premiums to retirees under the City  
9 plan?  
10 A For non-Medicare eligible --  
11 THE COURT: One second, please.  
12 Whoever's talking, stop. If you can't  
13 be in this courtroom without talking, that's okay.  
14 Just leave and talk. But I'm trying to listen, read,  
15 understand. And the constant murmuring in the  
16 background is presenting a problem to me.  
17 So I would really appreciate it if you  
18 stopped talking, whoever it is -- whomever it is.  
19 Okay. Go ahead.  
20 BY MR. LAYDEN:  
21 Q Besides lower-costing -- besides the  
22 availability of lower-costing premiums under the ACA,  
23 are there any other advantages to coverage under the  
24 ACA as compared to the City's plans?



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1 A As compared to the City's standard plan,  
2 for example, the ACA plans do have some advantages.  
3 They cover preventive care. They have  
4 office visits. You can go to the doctor's office and  
5 pay a copayment and not have to meet the deductible.

6 The drug copayments go into the out of  
7 pocket, which they don't do on any of the City plans  
8 for retirees.

9 They cover immunizations. There's  
10 well-baby care that they cover.

11 Q How about for dental services and vision  
12 services for children under the ACA? Is that  
13 covered?

14 A They cover basic dental and basic vision  
15 services under the ACA for children under 19.

16 THE COURT: One second.

17 What is it that you didn't understand  
18 about me saying not talking and laughing? You, young  
19 lady? You two were just talking.

20 MR. KUGLER: If that was the --

21 THE COURT: I don't care who it was or  
22 what you were saying. It applies to attorneys, it  
23 applies to the folks in this courtroom. Next time,  
24 you're getting kicked out and be held in contempt of

1 court. Happy Christmas. CVLS will get a donation  
2 from you, and I mean it.

3 Do you understand, you, young lady?

4 UNIDENTIFIED GALLERY MEMBER: Yes.

5 And I apologize.

6 THE COURT: All right. Don't do it  
7 again.

8 Proceed.

9 BY MR. LAYDEN:

10 Q I was asking you, Ms. Currier about, under  
11 the ACA, are dental services and vision services for  
12 children covered?

13 A Under the age of 19, basic vision and basic  
14 dental are covered.

15 Q And are dental services and vision services  
16 for children under the City's plan covered?

17 A Dental and vision aren't covered for anyone  
18 under the City's retirement plan.

19 Q And does the City standard plan have a  
20 lifetime maximum?

21 A Yes, it does. \$1.5 million.

22 Q Could you explain what a lifetime maximum  
23 is.

24 A Once the plan has paid out \$1.5 million,

1 you're no longer eligible for coverage.

2 Q And does the ACA plan have a lifetime  
3 maximum?

4 A No, it does not.

5 Q And in terms of the out-of-pocket expenses  
6 between the ACA and the City's plan, are there  
7 differences?

8 A There are differences, and it really  
9 depends on how a person utilizes or what their  
10 medical needs are in terms of whether or not they'll  
11 ever meet their deductible or their out-of-pocket  
12 expense limit.

13 Q Mr. Krislov asked you some questions about  
14 whether or not some of the ACA plans have higher  
15 deductible and out-of-pocket limits, right?

16 A Correct.

17 Q And just because a plan under the ACA has a  
18 higher deductible or out-of-pocket limit, does that  
19 mean that a retiree who has coverage under that plan  
20 will, in fact, pay more in out-of-pocket and  
21 deductible expenses?

22 A No, it does not mean that.

23 Q Can you explain how that works?

24 A Well, it depends. If somebody's just going

1 to the doctor, and they just go, like, three times a  
2 year and they're in the ACA plan, they pay a  
3 copayment, then that would be it.

4 Or if they had prescription drugs,  
5 they're getting them generic or something, they'd pay  
6 those copayments, and that would be it. Copayments  
7 and the doctors' bills.

8 Q Let's talk about the difference of the  
9 copayments and the deductibles.

10 Under the ACA, how does a copay work?

11 A So if you go to the doctor's office, you  
12 would generally pay a copayment, \$30, \$40, \$50,  
13 whatever they set their copayment at. Depending if  
14 it's the primary care doctor or specialist, there  
15 would be different copayment levels. You would not  
16 have to meet the deductible.

17 Q And under the City's standard plan, do you  
18 have to meet the full deductible before the cost of  
19 going to the doctor is paid for under the plan?

20 A Correct.

21 Q One of the things that you talked about is  
22 that the ACA plan covers preventive care, right?

23 A Correct.

24 Q Can you explain what kind of things are

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1 covered under preventive care under the ACA that are  
2 not covered under the City's plan?

3 A Screening for detection of diabetes;  
4 cholesterol, your screening for cholesterol; your  
5 annual exam, a woman's annual gyne exam, those types  
6 of care are preventive, and they're not covered in  
7 the City's plan; they're covered in the ACA plans.

8 Q 100 percent under the ACA plan?

9 A Yes. I believe there's no copayment in  
10 those plans for preventive services.

11 Q Now, does the City also offer different  
12 plan types?

13 A For the non-Medicare people, we have four  
14 plan types: Two basic plan designs on two different  
15 networks.

16 Q And can we talk a little bit about the  
17 different networks for a minute.

18 Is one of the networks called your PPO  
19 network?

20 A Correct. One is on a PPO network.

21 Q Is another network called the Choice  
22 network?

23 A And we have the Blue Choice network, which  
24 is a select group of hospitals and fewer doctors in

1 that network.

2 Q Can you describe the difference between the  
3 breadth of the networks between the PPO plan under  
4 the City and its Choice plan.

5 A In terms of the size of the network?

6 Q Yes. How many doctors are under the City's  
7 PPO plan?

8 A There's a -- on the comparison chart that  
9 we sent out with the 2015 and 2016 annual mailing,  
10 there's the exact -- there's the number of primary  
11 care physicians, the number of specialists, and the  
12 number of hospitals in each network.

13 I don't have that sheet in front of  
14 me, but I believe it's 10,000 primary care and 15,000  
15 specialists in the PPO, 200-some-odd hospitals. And  
16 in the Choice, the Select network, there's 96  
17 hospitals and a similar number of specialists, I  
18 think 14,000. And I believe primary care is between  
19 4- and 5,000.

20 Q And what are some of the hospitals under  
21 the City's Choice network plan?

22 A Some of those hospitals are Loyola,  
23 Resurrection, Little Company of Mary, La Rabida  
24 Children's.

1 I can't think of any more right off  
2 the top of my head.

3 Q And are there lower premiums under the  
4 City's Choice network plan as opposed to its PPO  
5 network plan?

6 A Yes, it is.

7 Q And in addition to differences in networks,  
8 you said there are two different plans, I believe a  
9 standard and a value plan.

10 A Correct.

11 Q Can you briefly describe the difference  
12 between the City's standard plan and its value plan?

13 A Sure. The value plan has higher  
14 deductibles, higher out-of-pocket limits. It has  
15 office visit copayment. It covers preventive care.  
16 There's different copayments based on the service.  
17 And all four plans have the same drug coverage.

18 Q Has the City always had four plan  
19 alternatives for non-Medicare eligible retirees?

20 A No. Prior to 2015, there were two plan  
21 alternatives. There was the Medicare supplement, and  
22 there was a non-Medicare -- a plan for non-Medicare  
23 eligible retirees.

24 Q And, Ms. Currier, why did the City come up

1 with four plan alternatives for non-Medicare eligible  
2 retirees starting in 2015?

3 A To provide people with alternatives, and to  
4 provide some plans that have lower premiums.

5 MR. LAYDEN: I think we're done, Your  
6 Honor.

7 THE COURT: Okay. Mr. Krislov,  
8 redirect.

9 REDIRECT EXAMINATION  
10 BY MR. KRISLOV:

11 Q The Choice plan is the one with the --

12 A Blue Choice.

13 Q Blue Choice has the more limited network?

14 A Yes.

15 Q And that doesn't include Advocate?

16 A No, it does not.

17 Q Northshore?

18 A I don't know about Northshore.

19 Q Northwestern?

20 A No, Northwestern is not in there.

21 Q University of Chicago?

22 A No.

23 Q And Rush?

24 A No.

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1 Q Okay. Those five are the premier hospital  
2 groups in town right now, right?

3 A Those are some of the premier.

4 Q The -- and for someone who makes the bad  
5 choice to happen to move out of the Chicago area --  
6 you can retire anywhere in the country, right?

7 A Correct.

8 Q And you're still free to move from --

9 A You can move out of the country, I believe.

10 Q Even in.

11 But let's say they stay in the country  
12 so we keep this a domestic problem.

13 That Choice network would be utterly  
14 worthless to the people, right?

15 A Right. It's for the people in -- I believe  
16 it's a six-county region.

17 Q Okay.

18 A In Illinois.

19 Q And only for those hospital groups within  
20 that network?

21 A Correct.

22 Q And -- oh, also, for the rates with -- for  
23 the rates for a single person without Medicare, that  
24 would not include their children, right?

A Correct. That's single person.

Q Right. So if they wanted to have their  
kids covered for -- what did you talk about? Dental  
and other preventive care?

A Right.

Q They would be extra. They'd have to pay  
extra for that?

A Correct.

Q Yeah. So that's not in the -- and if they  
wanted their spouse in, too, that's not in these  
rates either? This is just --

A Which chart are you referring to, Mr.  
Krislov?

Q The one that you've been -- the one that  
you've testifying for --

A This one with the --

Q Yes. This is -- this just --

A This is a single person at age 55.

Q Right. So if they want dependent or spouse  
coverage, that's an additional charge?

A Correct.

Q Okay. And so we could agree -- oh, let me  
ask you. Who put this chart together?

A My team.

1 Q Your team being?

2 A The people in the benefits office.

3 Q Okay. But you did not -- this wasn't  
4 your -- did you put this -- physically, who put the  
5 chart together?

6 A People on my team --

7 Q People -- representatives --

8 A -- put this chart together.

9 Q You did not --

10 A I reviewed the chart.

11 Q You reviewed the chart, but have you  
12 compared it to the actual data? I presume you took  
13 this as your people do an accurate job, and you  
14 generally rely on them?

15 A I rely on them, yes.

16 Q Okay. As far as the deductible that will  
17 vary, you aren't saying -- your focus -- sorry.  
18 Strike all that; start fresh with you.

19 What these figures focus on is the  
20 premium?

21 A Correct.

22 Q It does not address, for any given policy,  
23 or individually, or in the group, what the  
24 deductibles are for those policies, the chart

1 doesn't?

2 A The chart does not.

3 Q The chart doesn't talk about out of pocket?

4 A No, it does not.

5 Q Doesn't talk about networks?

6 A No, it does not.

7 Q So all this chart deals with is just the  
8 premium?

9 A Correct.

10 Q And you would agree, as we all in the room  
11 would agree, I think, that the evaluation of a  
12 particular policy is not just based on the premium.  
13 It would be based on the premium, of course; the out  
14 of pockets; the deductibles; the network is certainly  
15 important as well; the lifetime maximum. All sorts  
16 of stuff, right?

17 A Yes, including your own health status.

18 Q Including your own health status, although  
19 for these purposes, I guess -- so why would it matter  
20 if your health status -- because you can't be rated  
21 under the Affordable Care Act, right?

22 A Well, you know yourself how many times  
23 you're likely to go to the hospital. You should have  
24 a good idea how many visits to the doctor you're

1 going to use, whether you're sickly, whether you're  
2 healthy.

3 Q Fair enough. Okay.

4 A How many drugs you use. You know how many  
5 you're using in the fall that you're probably going  
6 to have to use in the following year.

7 Q Sure. Your health condition factors into  
8 the equation as well, based on what you need?

9 A Correct.

10 MR. KRISLOV: I think we're done with  
11 Ms. -- oh, sorry. Almost.

12 BY MR. KRISLOV:

13 Q The -- in order to get the cap, the means  
14 test cap, you have to -- I take it from your  
15 testimony, you have to fill out a form 4506T, which  
16 gives the City a transcript of your tax returns.

17 A Correct.

18 Q You full tax return?

19 A No, just the transcript. Just a basic  
20 transcript of your tax return. It's not the full  
21 thing.

22 Q It's got all of your revenue from all  
23 sources. It must have --

24 A It's got your adjusted gross income on

1 BY MR. LAYDEN:

2 Q Ms. Currier, going back to this exhibit,  
3 the one that has the comparison of the ACA premiums  
4 and the City premiums.

5 Mr. Krislov asked you some questions  
6 about whether the premium would go up under the ACA  
7 if a particular person applying had a spouse or  
8 dependent.

9 Do you remember that question?

10 A Correct.

11 Q And if they had a spouse or dependent, the  
12 premium would be greater than what's reflected here?

13 A This is just for single coverage.

14 Q So the premium could go up under the ACA if  
15 they added a dependent or a spouse; is that right?

16 A Correct.

17 Q And, similarly, if you were doing an apples  
18 to apples comparison, and you looked under the City  
19 plan, and they're adding a spouse or dependent, do  
20 their premiums go up?

21 A Correct.

22 MR. LAYDEN: Nothing further, Your  
23 Honor.

24 THE COURT: Ms. Currier, I release

1 there, so I know we get that. But it -- I don't  
2 believe it's the full thing. It's the transcript of  
3 it.

4 Q Okay. So whatever comes in the transcript,  
5 whatever data the IRS sends out in respect to the  
6 request for a person's transcript, and you're  
7 essentially looking for -- you get, whether you're  
8 looking for it or not, you get all that person's -- a  
9 summary of all that person's reports to the IRS?

10 A Right. But we just look at the AGI. We're  
11 not examining sources of income.

12 Q Well, but it might be a concern for a  
13 retiree to give you all that information if you --

14 A If they apply for a means test under the --  
15 excuse me. You didn't ask me that question.

16 Q That's okay.

17 That's the only way they get that is  
18 if you get a transcript of their --

19 A Correct.

20 MR. KRISLOV: Okay. Okay. Then I'm  
21 done.

22 THE COURT: Recross.

23 MR. LAYDEN: Just a few, Your Honor.

24 RE-CROSS-EXAMINATION

1 you.

2 THE WITNESS: Thank you.

3 THE COURT: Thanks for coming in. I  
4 appreciate it. Please have a happy holiday. Thank  
5 you.

6 (Witness excused.)

7 THE COURT: Any other witness you'd  
8 like to call?

9 MR. KRISLOV: No, Your Honor.

10 THE COURT: Any witness that the City  
11 would like to call?

12 MR. PRENDERGAST: Your Honor, the City  
13 doesn't have any witnesses.

14 I take it that the affidavits that  
15 have been questioned here are in evidence.

16 THE COURT: They are.

17 MR. PRENDERGAST: Okay. And I take it  
18 that the Court is looking at the exhibits attached to  
19 their --

20 THE COURT: I have.

21 MR. PRENDERGAST: -- submissions and  
22 ours as in evidence for purposes of this hearing.

23 THE COURT: I'm considering them all  
24 in evidence for purposes of this hearing.

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1 Any objection to that, Mr. Krislov?  
2 MR. KRISLOV: No objection.  
3 THE COURT: All right. And the Funds,  
4 any witnesses the Funds would like to call to the  
5 stand?  
6 MR. BURKE: Judge, we have no  
7 witnesses.  
8 MR. KENNEDY: Judge, the Laborers'  
9 Fund has no witnesses.  
10 MR. KUGLER: No witnesses, Your Honor.  
11 THE COURT: Very good. Both sides --  
12 or all sides rest.  
13 Are you ready to argue?  
14 MR. KRISLOV: Judge, if we can have  
15 five minutes before we do the argument.  
16 THE COURT: Ms. Court Reporter, how  
17 much time would you need?  
18 THE COURT REPORTER: Five minutes will  
19 be fine, Judge.  
20 THE COURT: We'll see you all at five  
21 after 1:00.  
22 (Brief recess.)  
23 THE COURT: Are we ready to proceed?  
24 MR. KRISLOV: We are, Your Honor.

1 the Constitution --  
2 THE COURT: I said all people who  
3 retired.  
4 MR. KRISLOV: No, you didn't say  
5 either. What you said is all people who --  
6 THE COURT: Let's stop right there.  
7 MR. KRISLOV: Yes.  
8 THE COURT: On page ten of my opinion,  
9 and I quote, I said:  
10 [AS READ:  
11 The 1983 and 1985 amendments were in  
12 effect when the Korshak subclass, the Window  
13 subclass, and subclass 3 entered into the Funds'  
14 retirement system. There does not appear to be any  
15 dispute between the parties that the 1983 and 1985  
16 amendments apply to these subclasses.  
17 The Court notes that in its May  
18 15th, 2013, letter, the City states that it would  
19 continue to provide a healthcare plan with a  
20 continued contribution from the City for the  
21 lifetime of the annuitants who retired prior to  
22 August 23rd, 1989.  
23 I then concluded:  
24 [CONTINUING:

1 THE COURT: All right, Mr. Krislov.  
2 You're the movant. You may argue.  
3 MR. KRISLOV: Your Honor, while I  
4 might think that we're entitled to summary judgment,  
5 all we're looking for today is a preliminary  
6 injunction to block the change in rates from going  
7 into effect January 1st.  
8 And if you want -- I know, because of  
9 our conversation with my colleagues on the other side  
10 we had yesterday, who we're asking for it for is a  
11 little -- differs a bit. So let's put them into two  
12 categories.  
13 THE COURT: Differs from what?  
14 MR. KRISLOV: Differs a little bit  
15 from what I --  
16 THE COURT: What you filed in your  
17 motion?  
18 MR. KRISLOV: No, no. I mean, I --  
19 what I filed in the motion.  
20 Our view is that all people who were  
21 pre- -- were participants, meaning their hire date  
22 was before August 23 of 1989, are covered by your  
23 decision which holds that their interest is protected  
24 by the Constitution, their benefit is protected by

1 Therefore, Count 1 clearly states a  
2 cause of action for declaratory relief as to the  
3 City's and Funds' obligations under the 1983 and  
4 1985 amendments. The exact nature of these  
5 obligations, however, I said, is not properly  
6 decided on a 2-615 motion.]  
7 But all of those amendments dealt with  
8 folks, per your complaint, who retired before  
9 August 23rd, 1989, as I said.  
10 And I think my ruling was clear that  
11 not only for that reason, but for the reason that the  
12 1989 and the years thereafter amendments, were all  
13 time limited, I specifically said they did not apply.  
14 Not because I want it that way, but because that's  
15 what the law requires, I said, and I concluded, for  
16 the reasons enunciated in there, which I'll go  
17 through again.  
18 So it's clear to me that the parties  
19 who were -- who are covered under the 1983 and 1985  
20 amendments is every retiree who retired prior to  
21 August 23rd, 1989, and those are the ones who have  
22 the lifetime benefits to be supplied by the City;  
23 that the City -- another discussion -- does not claim  
24 that they're not going to give. They claim they

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1 don't have to, but they claim they're going to, so --  
2 as I understand their position.

3 But everyone after that date, per my  
4 ruling, is covered by the 1989, the 1997, and the  
5 2003 amendments to the Illinois Pension Code, which I  
6 said at page 11 were time limited at creation. I  
7 also added, for good reason. They were enacted  
8 solely to codify the time-limited settlement  
9 agreements between the parties, to wit, these folks'  
10 unions who bargained in good faith with the City, and  
11 they bargained for time limitations. They were time  
12 limited by their own terms.

13 Regardless of the basis of it  
14 factually, the only important thing is what the  
15 legislature did. This Court, I, even though I'd like  
16 to be, I am not a super-legislature. I cannot change  
17 the terms of enactments decided by the Illinois House  
18 and Senate.

19 By the express terms of the amendments  
20 in 1989, 1997, and 2003, they were time limited, and  
21 that's at creation, and by their express terms.  
22 Therefore, I said the amendment specifically did not  
23 provide the annuitants with lifetime or permanent  
24 healthcare benefits.

1 Not my doing, just my read of the  
2 statutes, which are clear and don't require any  
3 interpretation.

4 Because they were time limited at  
5 creation, I have to enforce the specific terms of  
6 those amendments, which means that they were time  
7 limited, non-permanent, non-lifetime, and they lapsed  
8 on their own accord. Therefore, there's nothing to  
9 diminish or impair.

10 It's true, the pension clause  
11 grants -- guarantees a right to have pension  
12 benefits, but not -- to be not diminished or  
13 impaired, but it doesn't -- as I've said, it doesn't  
14 magically create a right to receive a lifetime  
15 benefit, a forever friend in healthcare.

16 My politics aside, and what I think  
17 should be done aside, it doesn't serve to magically  
18 create a right to receive benefits that have not been  
19 specifically granted, and that's what I said.

20 So that's why I found that although  
21 Count 1 does state a cause of action for everyone,  
22 August 23rd, 1989, and before, who retired that  
23 date, it does not -- it does not state a cause of  
24 action for declaratory relief as to obligations under

1 the '89, '97 and 2003 amendment.

2 You may disagree, and I know you do,  
3 and I know that's going to be subject to review, most  
4 likely, but that's my ruling, and that's what I held.

5 So your objection to the contrary, or  
6 your read to the contrary, you're wrong, much to my  
7 regret. But that's the way of the law.

8 MR. KRISLOV: I don't want interrupt  
9 you, but do I get a chance to talk?

10 THE COURT: Thanks for that. I  
11 appreciate it.

12 MR. KRISLOV: I don't want start until  
13 you're done.

14 THE COURT: Ball's in your court.

15 MR. KRISLOV: Here's where your  
16 decision is right, but your interpretation is wrong,  
17 with all due respect. And I do, frankly, enjoy  
18 practicing before you, because it may be combative,  
19 and I apologize for my seeming -- or my coming off as  
20 combative with you at times.

21 THE COURT: I don't feel that.

22 MR. KRISLOV: I enjoy the interplay  
23 with you.

24 Here's where your -- the statement you

1 just made is right, that the people who can claim --

2 THE COURT: Well, let me ask you a  
3 question before you opine on whether I'm right or  
4 wrong.

5 That's my decision.

6 MR. KRISLOV: If I can --

7 THE COURT: You have not filed a  
8 motion for reconsideration -- let me finish -- a  
9 motion for clarification. The City has; you could  
10 have, you did not.

11 If you think of this as a motion -- as  
12 we said yesterday in our conversation with all the  
13 parties, if you think of this as a motion for  
14 reconsideration of my decision, then you should have  
15 stylized it that way. I'm not going to review my  
16 decision. I think I'm right for the reasons  
17 enunciated, much to my regret. But I am bound to  
18 follow the law, and that's my decision.

19 It's not an interpretation of my  
20 decision, Clint. It's my decision. If you don't  
21 like it, you know what to do. Not that. You know  
22 what to do. You can appeal me, and you will. But  
23 that's my decision.

24 MR. KRISLOV: On the preliminary --

1 THE COURT: I haven't interpreted  
2 anything.

3 MR. KRISLOV: Do I get a closing  
4 argument?

5 THE COURT: Yeah, sure.

6 MR. KRISLOV: Okay.

7 Your Honor's decision that people who  
8 were -- Your Honor's decision, I believe, and I was  
9 interpreting until maybe yesterday and this morning,  
10 was that people who could claim protection because  
11 they were participants under the 1983 and 1985  
12 amendments have a protected benefit. That is what  
13 Buddell says. It is participants. It is not that  
14 you retired before that date. It's that you were a  
15 participant in the Fund on that date.

16 And in that respect, what we're  
17 talking about is the people who were participants in  
18 the -- one of the four pension funds, meaning a hire  
19 date before August 23rd of 1989. That's what this  
20 battle is about.

21 If it were just over the retirees, the  
22 people who -- the Korshak and Window classes who  
23 retired by that date, there would not be a dispute,  
24 because the City says they're going to honor that.

1 participated during the '83 and '85 amendment period,  
2 not necessarily retired by August 23rd.

3 MR. KRISLOV: Right.

4 THE COURT: Then is it your corollary  
5 position that it's the Funds who are responsible for  
6 those participants' health benefits?

7 Because you've already --

8 MR. KRISLOV: Not only --

9 THE COURT: Let me finish.

10 MR. KRISLOV: Yes.

11 THE COURT: You've already taken the  
12 position, you've conceded here in court during our  
13 last argument, for one, that you were not going  
14 against the City on the '83 and '85 amendments; you  
15 were going against the Funds. So if that's the case,  
16 isn't it also true that it's the Funds who are  
17 responsible for the participants, the folks who  
18 started to participate during the '83 and '85  
19 amendment period?

20 MR. KRISLOV: Yes, but not solely.

21 Because if you read Kanerva, Kanerva talks about a  
22 group healthcare plan that the state adopted. It was  
23 not a pension plan -- it was not a Pension Code plan.  
24 It was a group health plan that the state provided to

1 And that was the class that I represented then.

2 But here's what Buddell says -- and we  
3 do have that in our motion. Buddell says that you  
4 are protected throughout your participation -- from  
5 your participation. And Kanerva basically says that  
6 as well.

7 Kanerva says that the benefits flow  
8 from your being a participant in the Funds. They do  
9 not -- they're not limited. The City's whole  
10 argument, really, in response to our motion is that  
11 all you should enforce is what the four corners of  
12 the Pension Code imposes on somebody.

13 And on the '83 and '85 statutes, I  
14 have acknowledged that the Pension Code provisions  
15 say that the Funds are obligated to get coverage for  
16 their participants. That was fulfilled by the City  
17 providing that coverage.

18 Now, the other thing that is from  
19 Kanerva is that Kanerva --

20 THE COURT: So let me stop you there  
21 for a second.

22 MR. KRISLOV: Yes.

23 THE COURT: With regard to your  
24 argument that it's participants who -- it's folks who

1 its former employees, conditioned on their being  
2 annuitants, or eligible to become annuitants --

3 THE COURT: So how does that play here  
4 where the statutes say it's the Funds that shall  
5 supply, and it's the City that shall just finance it  
6 through tax levies, but it's the Funds that shall  
7 supply -- and you conceded that it was the Funds who  
8 should do so and not the City.

9 MR. KRISLOV: No, I didn't say not the  
10 City. I conceded --

11 THE COURT: You did, actually.

12 MR. KRISLOV: No. I said that the  
13 statute does not require the City to provide the  
14 healthcare coverage, but Kanerva says where the City  
15 does that. I mean, the City does this by ordinance.  
16 The state does it by state statute. You don't have  
17 to have it in the Pension Code.

18 But Kanerva is absolutely clear.

19 That's where you and I differ. Kanerva says that the  
20 state provided benefit to people who are participants  
21 in the Funds, in one of the state retirement funds --  
22 that's all that makes you eligible to participate in  
23 the state group health benefit -- that that is  
24 protected as well by Article 13, Section 5.

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1 And so the City, having provided the  
2 -- what it's providing now, the annuitant -- the City  
3 of Chicago Annuitant Health Benefit plan, that by  
4 doing that, that is a benefit which is limited in its  
5 eligibility to -- conditioned on people who are  
6 receiving an annuity or will receive an annuity from  
7 one of the four Funds.

8 It is the same thing. The City having  
9 signed onto that deal, the City having created a  
10 retirement benefit of the annuitant healthcare plan  
11 is obligated to continue providing that without  
12 reduction. That's what Kanerva says Article 13,  
13 Section 5 protects.

14 THE COURT: What's the effect --  
15 taking your position, what is -- as gospel, excuse  
16 me -- what is your position with regard to the  
17 effect, then, of employees who began after  
18 August 23rd, 1989, where their -- wherein the  
19 amendment stated that it was time-limited benefits?  
20 Brand new employees. What's your position about  
21 that? Once given, they're lifetime, regardless of  
22 time limitations?

23 MR. KRISLOV: They're a different --  
24 they're in a different category for three reasons.

1 THE COURT: Well, first -- I'm not  
2 interested in what category. I'm interested in your  
3 conclusion. What's your position?

4 MR. KRISLOV: We will show in our  
5 amendment that we think the City's --

6 THE COURT: I don't have an amendment  
7 before me.

8 MR. KRISLOV: I know. I know.

9 THE COURT: I'm asking you what your  
10 position is now, today, on your motion for  
11 preliminary injunction.

12 MR. KRISLOV: Well, for the motion for  
13 a preliminary injunction, if we limit it to the  
14 showing of likelihood that you said that people have  
15 under the '83 and '85 amendments, that would be --  
16 there is an exceedingly strong entitlement to people  
17 who were participants on that date.

18 To people who were not participants on  
19 that date, I would agree the '89, not the '97, but  
20 the '89 and the 2003 settlements we are bound by and  
21 that they were settlements that for people who were  
22 in the class on the settlement date, those were  
23 negotiated for those periods of time with a revival  
24 of whatever rights.

1 The 1997 was a different bird because  
2 we were temporarily out of it because that was during  
3 the period when Judge Green had refused to reinstate  
4 the case, but before the appellate court ordered the  
5 case reinstated. So no one knows exactly what the  
6 effect -- and it wasn't a union-negotiated deal, any  
7 of these three.

8 The '89 was imposed over our strenuous  
9 objections. Went up to the Supreme Court. While we  
10 disagree with the due process of it, I concede we are  
11 bound by it. The pre-'89 class is bound by it.

12 THE COURT: So the post-'89 class, you  
13 agree, then, are subject to the time limitations,  
14 and, therefore, Kanerva does not apply?

15 MR. KRISLOV: Here's the -- with an  
16 asterisk.

17 Somebody who just came into -- let's  
18 say they were hired in 2004. They did not agree to  
19 waive their rights. They're sort of stuck with -- I  
20 understand --

21 THE COURT: What rights?

22 MR. KRISLOV: Well, whatever rights  
23 they have as a participant --

24 THE COURT: What rights do they have

1 in 2004? Every right they have to any healthcare  
2 benefits are time limited by the statute. It's not a  
3 right. It's not a right. It was given by the City  
4 with a time limitation.

5 MR. KRISLOV: Sorry. I was referring  
6 to whatever benefits they had --

7 THE COURT: Well, you think of things  
8 in terms of rights and entitlements, and I don't  
9 think that's the right way to think of this.

10 MR. KRISLOV: Well, they had a --  
11 their rights are to have the protection of whatever  
12 interest is protectable under the Pension Code.

13 THE COURT: That's what I'm asking  
14 you.

15 MR. KRISLOV: I understand Your  
16 Honor's conclusion that people who started during a  
17 time-limited statute, that that only covers that  
18 period, think there is an argument to be made, and I  
19 will make it in our amended complaint, that whatever  
20 is provided during the period service as a floor, and  
21 that it can't be that -- it could be increased, but  
22 it can't be decreased.

23 For purposes of today, the core that  
24 deals with virtually every -- maybe not everybody,



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1 but the bulk of the people who's -- who are concerned  
2 today, and the City as well, I think would not  
3 dispute this --

4 THE COURT: Isn't the bulk of the  
5 people those who retired before August 23rd, 1989?

6 MR. KRISLOV: No. Those who retired  
7 -- those who started working before August 23 of  
8 1989.

9 THE COURT: I see.

10 MR. KRISLOV: That's the bulk of the  
11 22,000 people. If you think about it, if they  
12 started working for the City before August 23rd of  
13 '89, police and fire people could not start retiring  
14 on full benefits until 2009.

15 So the earliest of the subsequent  
16 people -- or the earliest of the hired people  
17 wouldn't have started retiring until six years ago.  
18 And for municipal and laborers, probably most of them  
19 are still working for the City.

20 But here's -- and this is where I  
21 think it's fundamental. And I think if you reread --  
22 if you read Kanerva, if you read Buddell, the deal is  
23 your rights are determined from when you became a  
24 participant to when you die. And so limiting it to

1 done it, because I don't think we have it -- I don't  
2 think that we were aware of the City's.

3 THE COURT: Okay, so we're just not  
4 going to play it on the run here. We're going to  
5 deal with what you've raised.

6 MR. KRISLOV: So in any event, if you  
7 accept -- because I think if you read Buddell, you  
8 must, that the protections apply for whatever the  
9 plan -- whatever plan the City provided when you were  
10 -- while you were a participant, date of hire to date  
11 of death. That's what's protected, and that's what  
12 Kanerva says is protected.

13 Now, what I think you have done in  
14 your decision is satisfy that there is a clearly  
15 ascertainable right that requires protection.  
16 Irreparable injury, the forcing them off of their  
17 coverage. It's one thing to say, well, they're going  
18 to have to pay more, but we can pay you back. Some  
19 people will forego their coverage because they can't  
20 afford it, and some people will wind up in lesser  
21 plans, and some people will drop coverage altogether,  
22 or have to do whatever.

23 This is -- going without your  
24 healthcare is an irreparable injury. And the City

1 the retirees would also -- the City's effort to limit  
2 it to the pre 8-23-89 retirees would violate the  
3 Illinois Constitution's protections of equal  
4 protection.

5 The City cannot make a distinction  
6 between who gets protections under Article 13,  
7 Section 5.

8 THE COURT: Well, that's something you  
9 haven't raised --

10 MR. KRISLOV: Well, we've raised  
11 the --

12 THE COURT: -- the equal protection  
13 argument between classes.

14 MR. KRISLOV: Right. No, we haven't,  
15 except that it's only -- well, we raise that in our  
16 reply because the City says --

17 THE COURT: I'm talking about in your  
18 complaint.

19 MR. KRISLOV: In our complaint, we  
20 assert that everybody -- I believe that we assert  
21 that everybody is covered.

22 THE COURT: I'm talking about an equal  
23 protection argument.

24 MR. KRISLOV: No, I don't think we've

1 can't always recover. If it turns out that the City  
2 wins in the end, there is no limitation period on the  
3 City going back after, or the pension funds going  
4 back after somebody who didn't pay the appropriate  
5 amount.

6 All it really had -- and there's --  
7 so -- and giving you back money, and even with  
8 interest after you lose your healthcare coverage, is  
9 not an adequate remedy at law. We have a likelihood  
10 of success on the merits, because Kanerva -- this is  
11 the City parallel to Kanerva, period. It is --

12 THE COURT: I know you say that, but I  
13 am still stuck in terms of a distinction between the  
14 subclasses of plaintiffs. And there's a distinction  
15 between them. You would like to paint with a large  
16 brush, and I understand that. That enures to your  
17 benefit to do that.

18 But I have to shoot with a rifle, not  
19 a shotgun, and it seems to me that there is a  
20 distinction between the subclasses. You just  
21 conceded, actually, that there are. That folks who  
22 were -- even under your theory folks that were hired,  
23 who entered into the program post-August 23rd,  
24 1989, may, during the time-limited aspects -- are not

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1 covered by this preliminary injunction. And yet you  
2 seek to have an order which does cover that.

3 How do you jibe that?

4 MR. KRISLOV: Because we acknowledge  
5 that their entitlement is a little different. You  
6 know, call it scalpel, call it rifle, shotgun, we  
7 acknowledge that their entitlement is a little -- is  
8 different than the pre-8-33-89 hires.

9 We do think that when it comes down to  
10 it, the City's determination in the 2013 letter,  
11 where it says the settlement's over, we're  
12 unilaterally going to extend your plan -- extended  
13 term and benefits of the settlement through the end  
14 of the year, once the City unilaterally chose to do  
15 that, it was stuck with that permanently, and that it  
16 says --

17 THE COURT: Really?

18 MR. KRISLOV: Yes.

19 And that it says, but we're going to  
20 phase you out between now and 2017 --

21 THE COURT: What analogy in life or  
22 law do you have by which you could argue that if I  
23 give you the right to enter into my theater free of  
24 charge until December 31st of this year, I have

magically given you the right to enter into my  
theater forever?

MR. KRISLOV: If you as a public  
employer gives me a benefit that is --

THE COURT: That's time limited by its  
own terms.

MR. KRISLOV: Well, it's not time  
limited by its -- the mere fact that it's --

THE COURT: Yes, it is, Clint. We all  
know it's time limited. It is time limited. It's  
time limited by its specific terms, and it's time  
limited by the legislation.

I can't rewrite legislation, and I'm  
not going to, to give you a preview.

But tell me, what right do you have  
under the law to claim that something that's time  
limited is for life?

And if that's the case, and if you are  
going to argue that, wouldn't the City be entitled to  
some sort of reformation because they didn't know  
that? There wasn't a meeting of the minds? There  
was no deal? Because they didn't know they were  
giving it for life.

And there's no law saying that they

1 were giving it for life when they gave it for only  
2 six months to 2013, or another two years. You know,  
3 what's right is right. That's the opposite side of  
4 the coin.

5 And if that's the case, the City, or  
6 any municipality, will never give anybody anything  
7 for fear of being stuck with an argument that you're  
8 giving, that if I give it to them for a limited  
9 period of time, that's it. We're stuck forever.

10 And that seems to me not to be in the  
11 interest of these folks or public policy, because  
12 it's in these folks' interest to have the City give  
13 them something. But when they say they're giving  
14 them something for a specific period of time, it's --  
15 it would be Kafkaesque to have something for a  
16 specific period of time end up being forever.

17 So tell me, what law do you have to  
18 support the proposition that a time-limited grant is  
19 a forever grant?

20 MR. KRISLOV: Article 13, Section 5  
21 says --

22 THE COURT: It doesn't grant anything.  
23 It just protects that which is given, and if it was  
24 given in a time-limited way, that's what it protects.

1 MR. KRISLOV: And we'll find out from  
2 the appellate court whether giving it in a time  
3 limited way was effective under that letter.

4 Because when the City says, we're  
5 going to extend things to the end of the year, and  
6 then we're going to phase them out and drop you off  
7 by the end of 2016 --

8 THE COURT: Sure. Of course. You're  
9 going to have a reviewing panel review my decision.  
10 So this really is, really, a motion for  
11 reconsideration.

12 MR. KRISLOV: No.

13 THE COURT: But I'm not going to  
14 change that, because I think it's right.

15 MR. KRISLOV: It's fine.

16 THE COURT: Much to my regret, but  
17 there's nothing I can do about that, because I'm  
18 duty-bound to follow the law.

19 MR. KRISLOV: I understand how Your  
20 Honor interprets that --

21 THE COURT: And that's what I will do.

22 MR. KRISLOV: I understand that. But  
23 that doesn't require -- that doesn't require you to  
24 do that with respect to the people who were hired

1 before August 23 of '89.

2 THE COURT: I'm going to listen to  
3 what the City has to say about that, in this, your  
4 motion to reconsider.

5 MR. KRISLOV: It's not a motion to  
6 reconsider.

7 THE COURT: It is, because I've  
8 already excluded those folks, but you think I'm  
9 wrong. Now you're arguing they should be included  
10 it.

11 MR. KRISLOV: No, with all due  
12 respect, Your Honor, your decision says that people  
13 claiming their entitlement under the '83 and '85  
14 amendments. And that means people who were  
15 participants during that time.

16 THE COURT: Okay.

17 MR. KRISLOV: Not people who had  
18 retired before that.

19 THE COURT: All right. Maybe the City  
20 will agree. Who knows. But let's hear what they  
21 have to say.

22 MR. KRISLOV: In any event, the City's  
23 argument is basically that all that you can enforce  
24 are what is specified in the Pension Code, and that's

1 that they were members of on August 23rd, 1989, is  
2 one the four funds. It is not -- they don't have to  
3 be a retiree by that date to be protected.

4 THE COURT: I understood that. I  
5 understand your position on that. But now we're  
6 going to the other question I asked you, the folks  
7 who joined afterwards.

8 MR. KRISLOV: For the people whose  
9 first hire was afterwards, I don't think that they  
10 can claim -- if a date limitation is effective --

11 THE COURT: Subject to my being right  
12 about that.

13 MR. KRISLOV: Subject to your being --  
14 subject to -- you know, and we'll probably challenge  
15 that in the appellate court.

16 THE COURT: Sure.

17 MR. KRISLOV: If the date limitation  
18 is effective, their entitlement really stems more  
19 from the 2013 extension by the City, and the City --

20 THE COURT: Which you think giving it  
21 for six months meant that, willy-nilly, it magically  
22 becomes life, yes?

23 MR. KRISLOV: I would delete the term  
24 "willy-nilly," and "magically." I would say that

1 not right. That's not what Kanerva says.

2 Kanerva dealt with a group health  
3 benefit that was outside the Pension Code, and they  
4 acknowledge that in their decision. They say that --

5 THE COURT: Well, we're not talking  
6 about what was granted or not granted. We're just  
7 talking about the time limitation. And the reason  
8 we're talking about that is because the first  
9 aspect -- there's four aspects before I can grant the  
10 issuance of a motion for preliminary injunction, and  
11 that is that there is an ascertainable claim of  
12 relief.

13 MR. KRISLOV: Right.

14 THE COURT: And it seems to me that  
15 you're acknowledging that there's an argument, if you  
16 agree with what I said, that these folks who joined  
17 the program after August 23rd, 1989, were not  
18 members, and, therefore, have no standing for this  
19 preliminary injunction, right?

20 MR. KRISLOV: Is "program" meaning the  
21 healthcare program or the retiree --

22 THE COURT: Yeah, the one that's the  
23 subject of your class action.

24 MR. KRISLOV: No, no. The program

1 when the public employer grants a benefit --

2 THE COURT: For a day, it becomes for  
3 life; for six months, it becomes for life.

4 MR. KRISLOV: If it is done for  
5 partici- -- if eligibility is determined solely by  
6 their being a participant in one of the Funds, that  
7 may be the result.

8 THE COURT: Okay.

9 MR. KRISLOV: If they said, instead,  
10 we will grant people who work for us -- who no longer  
11 work for us, we'll grant them a benefit. We'll give  
12 them \$1,000. We'll give them whatever.

13 THE COURT: Not the case here.

14 MR. KRISLOV: If eligibility is not  
15 referenced to their participation in the Funds, then  
16 the City can probably turn it on and turn it off.

17 Once you make eligibility determined  
18 by their being a participant in the Funds, but by  
19 definition, they do that. They're stuck. And that,  
20 I think, is what Kanerva says.

21 THE COURT: That's where you and I  
22 disagree.

23 MR. KRISLOV: Maybe so.

24 THE COURT: No, it's clearly so.

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1 MR. KRISLOV: All right. We disagree  
2 about other things, too.

3 THE COURT: Probably not many, but  
4 that one we do.

5 MR. KRISLOV: Okay. So anyway, if I  
6 can go back to the pre-August 23, '89, participants.

7 THE COURT: Folks who were  
8 participants in the program before that date.

9 MR. KRISLOV: Participants in their  
10 pension fund.

11 THE COURT: That's what I meant.

12 MR. KRISLOV: They are the ones who  
13 are protected for, and the benefit that's protected  
14 is the annuitant healthcare plan.

15 THE COURT: I understand.

16 MR. KRISLOV: That's what's protected.  
17 And that's why, for those people who are the bulk of  
18 the people -- if you said we would grant an injun- --  
19 we can grant a preliminary injunction only for those  
20 people whose hire date precedes August 23rd of '89,  
21 for preliminary injunction purposes, that's fine.

22 And the Funds can't tell you that  
23 that's a prob- -- all that you have to do is tell the  
24 Funds that they are not to withhold at the higher

1 that the rates were higher than were appropriate,  
2 every year, the settlement -- the audit  
3 reconciliation resulted in an average of \$5 million  
4 being returned to retirees.

5 THE COURT: Sure. But if you have  
6 limited benefits, what's there to reconcile?

7 MR. KRISLOV: If the benefits of  
8 the --

9 THE COURT: If the benefits are time  
10 limited, and the City can do -- if I'm right, and the  
11 City can do whatever they want with regard to that,  
12 including nothing as of December 31st, 2013, and  
13 give no extensions -- they did -- but then what's  
14 there to reconcile after 2013?

15 MR. KRISLOV: If the rates are not  
16 reflective -- what they said is they do a ballpark.  
17 They do an estimate based on the same reports -- the  
18 same estimate that they've done in the past. The  
19 rates they're charging them are excessive. They're  
20 more than would be done if they did the rates in an  
21 audited, reconciled fashion.

22 The rates that they want to impose are  
23 suspect as it is. The City says -- and the City  
24 artfully changed things from at least 50 percent

1 rates beginning January 1st. That is the sum --  
2 the total sum that you have to do.

3 The other thing is that the City  
4 cannot just pick -- I told you, I argued that the  
5 City cannot just pick which among those people it  
6 will honor under Article 13, Section 5 between the  
7 pre-'89 retirees and the pre-'89 hires. The City  
8 also -- the City paints this as a subsidy, and it's  
9 not.

10 The City, as --

11 THE COURT: I've talked about that.  
12 That's just semantics. We know what it is.

13 MR. KRISLOV: Right, but it's  
14 important to say that, to recognize that it is the  
15 City who's the insurer, and that's how it comes into  
16 its obligation in a secondary fashion, which is, by  
17 agreeing with the Funds. The Funds should have, and  
18 their obligation was to go out and find coverage for  
19 their participants, which they did by the City's  
20 agreement. And the City, once having entered into  
21 that, is stuck with it.

22 Further, the new rates are as suspect  
23 as the old rates were. We have been coming back for  
24 the ten years of the settlement, after we discovered

1 to -- or at least 55 percent to as much as 50  
2 percent. And it may still be, we don't know the  
3 legitimacy of the rates, but based on the past, the  
4 future rates are no more reliable than the past ones.

5 The bottom line to most of this is  
6 that for the pre-August 23, '89 hires, they have a  
7 right to enforce the plan as it was on August 22nd.  
8 '89. And the City, as Ms. Holt basically said, we  
9 couldn't raise -- and most of the other people's  
10 rates, because they were -- sorry.

11 We couldn't deal with most of the  
12 other people's salaries, benefits, whatever, because  
13 they were protected by unions. Our participants have  
14 only the Constitution of the State of Illinois and  
15 this Court for their protection.

16 THE COURT: I'm just one of many  
17 courts. And I'm going to do my best to get it right,  
18 and what can I tell you? You're going to have to  
19 just trust in my desire to get it right.

20 I'm not the only court, as you've  
21 proven many times.

22 MR. KRISLOV: They say trust but  
23 appeal.

24 THE COURT: Sure. Trust but verify is

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1 the old expression.

2 MR. KRISLOV: I think that that's what  
3 that guy said.

4 THE COURT: That's what he said.

5 MR. KRISLOV: But the bottom line,  
6 Your Honor, is that in terms of -- until this Court  
7 decides the merits of the issue, and we have until  
8 January to file our amended complaint, which I  
9 believe will address everything fine, for the time  
10 being, we ask that you hold the City off in  
11 increasing the rates.

12 All that we're talking about is  
13 delaying the City's imposition of these new rates for  
14 a few months until this Court deals with the issue on  
15 the merits. If Your Honor doesn't agree with me on  
16 everything today, it's not necessary, but we  
17 certainly have created a fair question. And there's  
18 nothing, really, in the City's equities to say that  
19 holding them off for a couple of months until you  
20 decide what the merits are so we can get it teed up  
21 for them to appeal or us to appeal, whatever --

22 THE COURT: Well, if it's only a  
23 couple of months, and if they can be made whole by  
24 money with interest, only a couple months, why is

1 appropriate. Whoever can appeal at that time can  
2 appeal. But for the moment, the City can hold off on  
3 raising the rates, because it can always get the  
4 money back from the retirees.

5 As I understand it, the Funds assert  
6 there's no limitation period on correcting the amount  
7 that they withhold from people.

8 All that we need to do -- and some of  
9 these people have had massive increases -- some of  
10 the increases are such that their premium is more  
11 than their annuity. And for others, they're paying  
12 as much as \$26,000 for family coverage. That's a lot  
13 of money.

14 And having to forego your family  
15 coverage, or having to go with a lesser plan in which  
16 none of your doctors are in -- I mean, what they've  
17 testified to is the networks you can go in with  
18 these -- the Choice plan -- you know, everything, if  
19 there's a fairness statute, you know who things are  
20 being done to. If there's a choice statute, you know  
21 that you're reducing your choices. They have been  
22 taken out of the plan. You no longer have a network,  
23 Northshore, Northwestern, University of Chicago,  
24 Rush, Advocate. If you take those out, you may have

1 damages at law not adequate to your clients, and,  
2 thereby, as a matter of law, say that an injunction  
3 should not issue?

4 MR. KRISLOV: Because going without  
5 your City coverage -- and of all the plans that  
6 people may prefer to keep their City coverage live,  
7 going without your City coverage, is irreparable  
8 injury. And it isn't even -- and for those people  
9 that go off, they won't be addressed retrospectively.  
10 They'll only be addressed prospectively if they come  
11 back.

12 There is no -- and giving them --  
13 refunding them the additional amounts if they're gone  
14 is no replacement. And refunding it with interest  
15 doesn't replace the risk, the fear of having to go  
16 without your health insurance that you depend on.

17 These people are, for the most part,  
18 we're talking about 22,000, or the bulk of them, who  
19 are retirees. Their health is not great. The older  
20 they get, the older they are, the sicker they get in  
21 numbers. And so between the balance of equities, is  
22 it fairer to say to the City, hold off for a few  
23 months. We'll get this worked in whatever way we  
24 think -- whatever way the Court deems to be

1 a few nice hospitals, but you have eliminated the  
2 bulk of the medical care that is done by the premier  
3 institutions in the Chicago area.

4 And so when you balance the equities,  
5 who's undergoing a hardship? Not for the City. The  
6 City just has to put off its phaseout for another  
7 couple or three months. For the retirees, for the  
8 participants in the plan, they have real risk. They  
9 have real life, human experiences that the City  
10 doesn't.

11 As I've said, Your Honor, the retirees  
12 only have the Illinois Constitution and this Court.  
13 And so for the time being, we ask this Court to hold  
14 the City off in raising its rates January 1st.

15 THE COURT: Thanks.

16 MR. KRISLOV: Thank you, Your Honor.

17 THE COURT: Mr. Prendergast, may I  
18 start with a question to you, or you start with a  
19 question for me.

20 MR. PRENDERGAST: I'm happy to answer  
21 any questions.

22 THE COURT: I'm rereading my opinion  
23 of December 3rd, and I read that before the federal  
24 district court, page five, the plaintiffs filed their

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1 amended complaint which identified the four putative  
2 subclasses of plaintiffs, the Korshak subclass, those  
3 retiring prior to December 31st, 1987; the Window  
4 subclass, those retiring between January 1st, 1988,  
5 and August 23rd, 1989; and the third subclass was  
6 subclass 3. And that was any participant who  
7 contributed to any of the four Funds before  
8 August 23rd, 1989's, amendments to the Pension  
9 Codes -- forget the fourth one for a second -- which  
10 would encompass the class of folks that Mr. Krislov  
11 just referred to as the hirees, anyone who was hired  
12 before August 23rd, 1989, because they would have  
13 been a participant, a participant who contributed  
14 before that date.

15 You then go to my opinion at page ten,  
16 and I say the 1983 and '85 amendments were in effect  
17 when the Korshak subclass, the Window subclass, and  
18 the subclass 3 entered into the Funds' retirement  
19 system. That means the hirees that Mr. Krislov  
20 referred to.

21 The '83 and '85 amendments were in  
22 effect when the hirees entered into the Funds'  
23 retirement system as participants before August  
24 23rd, 1989, and I wrote:

1 centers on the fact that those retirees, you have to  
2 be relying on the '83 and '85 amendments.

3 THE COURT: I'm talking about the  
4 hirees, not the retirees.

5 MR. PRENDERGAST: Yeah, they're hired  
6 but, at that point, the '83 and '85 amendments are  
7 the amendments in place.

8 THE COURT: Yes. We are relying on  
9 those.

10 MR. PRENDERGAST: And for purposes of  
11 the '83 and '85 amendments, the one thing that  
12 counsel has conceded, at least ten times, including  
13 this morning, is that they're not relying on the '83  
14 and '89 [SIC] amendments, because for good reason --  
15 I'll give two reasons. One is the '83 and '89  
16 amendments don't impose any obligation on the City.  
17 We've talked about that.

18 THE COURT: '83 and '85.

19 MR. PRENDERGAST: '83 and '85, I'm  
20 sorry, don't impose any obligation on the City.

21 And, two, because even if they did --  
22 and this is where I'd kind of like to start. Even if  
23 they did, the amount that the City would pay under  
24 the 2016 plan is greater than the amount that the

[AS READ:

1 There does not appear to be any  
2 dispute between the parties that the amendments  
3 from '83 and '85 apply to these subclasses.]

4 That means the hirees. So doesn't  
5 the -- these are lifetime benefits I held, according  
6 to my opinion, through the '83 and '85 amendment,  
7 because they were not time limited. And Kanerva  
8 holds that that which is given cannot be diminished  
9 or impaired.

10 Doesn't that mean that the City cannot  
11 diminish or impair any benefits that enure to the  
12 benefit, for lack of another word, of the hirees  
13 before August 23rd, 1989?

14 In other words, doesn't that mean that  
15 Mr. Krislov is absolutely right, that with regard to  
16 his request for a preliminary injunction, it should  
17 issue with regard to raising the subsidies, the rates  
18 to be charged these folks, including the folks of the  
19 hirees, the people who entered as participants into  
20 the Funds' retirement system before August 23rd,  
21 1989?

22 That's my question.

23 MR. PRENDERGAST: Well, the answer

1 City would pay under either the '83 or '85  
2 amendments. The amount is greater.

3 Now, this case is about the pension  
4 clause. It is about whether or not there is a  
5 diminution, or a reduction, or whatever word we want  
6 to use, in a pension benefit. We're accepting the  
7 fact that under Kanerva healthcare costs are pension  
8 benefits.

9 But as you mentioned just now in your  
10 conversation with Mr. Krislov, rights must -- using  
11 your words, rights must be specifically granted in  
12 order to be protected.

13 So if the rights that they were  
14 granted are the rights under the '83 and '85  
15 amendments, in other words, if we lose our motion to  
16 reconsider, so I'm not going there right now --

17 THE COURT: But it is inextricably  
18 bound with his request for the issuance of  
19 preliminary injunction, so you can go there if you  
20 want.

21 MR. PRENDERGAST: And I will, with my  
22 prepared remarks.

23 But to answer your question, and  
24 jumping a little bit ahead of them, the '83 and '85

1 amendments require the City to pay less than the  
2 2016, okay? Therefore, there is no diminution.  
3 There is no reduction. You cannot --

4 THE COURT: So you're saying that  
5 assuming Mr. Krislov is right, and all hirees before  
6 August 23rd, 1989, are included as participants,  
7 and their right to receive paid benefits for  
8 healthcare is immutable, it cannot be diminished or  
9 impaired, you're saying that, nevertheless, it is  
10 subject to the terms of the '83 or '85 amendments; is  
11 that correct?

12 MR. PRENDERGAST: That's correct.

13 THE COURT: In terms of the amount  
14 that the City has to pay?

15 MR. PRENDERGAST: Yes, because that's  
16 the statutory basis. And I'm going to jump around  
17 here a little bit from my prepared remarks, because I  
18 really think it's important to go to this.

19 We are talking about the diminution or  
20 reduction in a pension benefit.

21 So you have to look at '83 and '85 and  
22 say what were they. In '83, the police department --

23 THE COURT: You mean what was that  
24 which was granted?

1 to pay, whether it's the City or the Funds, paid \$55  
2 for the firemen and police officers who were  
3 non-Medicare, and \$21 for those that were Medicare.  
4 And under the '85 amendment for labor and for  
5 municipal, it was \$25 a head across the board.

6 THE COURT: Regardless of Medicare or  
7 not.

8 MR. PRENDERGAST: Exactly, right.

9 Okay. That amount is considerably  
10 less than what the City paid in 2015 and what's  
11 considerably less than what the City will pay in  
12 2016. Therefore, the City is paying more in 2016  
13 than under the only possible statutory bases that  
14 they can rely upon for a diminution or reduction in  
15 pension benefits.

16 If they're paying -- if the City is  
17 paying more -- they're paying more than they used to  
18 pay, then that's not a diminishment in what the City  
19 is contributing. It is an enhancement of what the  
20 City is contributing. There's no way you can do the  
21 math any other way.

22 THE COURT: Explain that to me again.

23 MR. PRENDERGAST: Sure. I'm a  
24 fireman. I'm 1986. We're going to use this -- I got

1 MR. PRENDERGAST: What was it that the  
2 City was required to do, or what anybody was  
3 required. City wasn't required to do anything under  
4 the '83 amendment or the '85 amendment.

5 But let's just use the numbers. Let's  
6 suppose that you hold that the City does have  
7 obligations to do what the '83 and '85 amendments  
8 require. I don't think that is correct, but that's  
9 okay. Let's assume that.

10 THE COURT: I've already said that.

11 MR. PRENDERGAST: Under the '83  
12 amendment, the City of Chicago had to contribute \$55  
13 for police and fire who were not Medicare -- I'm  
14 sorry, the Funds. The Funds had to do that. But,  
15 again, I'm only assuming for purposes of argument --

16 THE COURT: Take for the sake of  
17 argument the truth of what I said in my opinion, that  
18 the Funds are an instrumentality of the City, and  
19 there's really no substantive difference between the  
20 two. So it's the City that had to do it. Take that  
21 as granted.

22 MR. PRENDERGAST: Right. So we're  
23 working in that framework for purposes of my answer.  
24 And my answer is, the party that had

1 hired in 1986. We're using "hire." That's what he  
2 wants to use. I'm hired in 1986.

3 I say I've got pension benefits. My  
4 pension benefits include healthcare. I say, what  
5 makes you think so? The answer is 1983. They passed  
6 a statute. I'm entitled for the City -- the argument  
7 being for the City rather than the Funds, but we'll  
8 stay with that. I'm entitled for the City to pay \$55  
9 because I'm not on Medicare. The City has to  
10 contribute \$55 a month. The City contributes a lot  
11 more in 2016 than \$55 dollars a month.

12 So for purposes of a preliminary  
13 injunction, that is one that pertains to only 2016,  
14 the City is now paying more than it would have had to  
15 pay under the 1993 amendment to the Pension Code.  
16 Consequently, there is -- there cannot be a  
17 diminution in the benefit --

18 THE COURT: So there's no reason for  
19 the issuance of a preliminary injunction --

20 MR. PRENDERGAST: Absolutely.

21 THE COURT: -- with regard to those  
22 now raised rates relative to the '83 or '85, because  
23 it's no harm, no foul, vis-a-vis the retirees.

24 MR. PRENDERGAST: Yes. If the only

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1 basis that can be cited, and, obviously, it can't be  
2 the later statutes because it's time limited, if the  
3 only basis, statutory basis, and there has to be one,  
4 for the healthcare right is the '85 statute, or the  
5 '83 statute if you're a fireman or policeman, you're  
6 getting more now from the City than you got back  
7 then. There can be no diminution.

8 We've covered that as clearly as we  
9 can in our response to his request for preliminary  
10 injunctive relief. He hasn't given us much of an  
11 answer. But his answer seems to be, well, that's not  
12 what Kanerva holds. You don't have to just look at  
13 Pension Code. Kanerva makes it clear. You don't  
14 look at just the Pension Code.

15 That's true. Kanerva wasn't based on  
16 the Pension Code. What happened in Kanerva was, the  
17 state argued that if it's not in the Pension Code,  
18 there's no entitlement. And the court said, not so.  
19 There's another statute. And that other statute was  
20 the Group Health Insurance Act.

21 And under the Group Health Insurance  
22 Act, that's the act under which they were entitled,  
23 the state employees, were entitled to healthcare  
24 benefits. There was a statutory basis.

1 reaction is no good act goes unpunished.

2 THE COURT: Well, that's absolutely  
3 true. But here's another one. A deal's a deal.

4 MR. PRENDERGAST: Okay. So let's talk  
5 about the deal. What was the deal? We will extend  
6 benefits to a specific date, no magic about it, the  
7 end of 2013. We will then wean you off this process  
8 over a period of four years, through 2016, each year,  
9 each step down being time limited.

10 Each one, the 2013 limitation ended in  
11 2013, next 2014, 2015, 2016. They're all time  
12 limited. There's absolutely no difference --

13 THE COURT: What about -- I'm not  
14 talking about the folks who entered into the system  
15 during those time limiteds. I'm talking about the  
16 folks who entered into the system before they went  
17 into effect.

18 MR. PRENDERGAST: Oh, yeah, and so am  
19 I. I'm talking about --

20 THE COURT: Let's just talk about  
21 those folks. Everybody in class 1, 2, and 3 being  
22 the hirees, those who participated in the system  
23 prior to August 23rd, 1989, you gave them benefits,  
24 benefits as stated in those statutes. You chose to

1 So the Supreme Court said, we don't  
2 care if it's in the Pension Code. There's another  
3 statute here. Well, here, there isn't another  
4 statute. The only statute for the people we're  
5 talking about here is the '83 and the '85 statute.  
6 And it, number one, in our view, doesn't apply to the  
7 City of Chicago. But if it did impose obligations on  
8 the City of Chicago, those obligations are far less  
9 than what the City is doing now. Therefore, there  
10 can be no diminution, and, therefore, there cannot be  
11 a preliminary injunction.

12 THE COURT: Understood, your position.

13 Let me ask you a question, and getting  
14 more to the core and the substance.

15 Mr. Krislov has said that that may be,  
16 but you've given, and you've given without -- for  
17 these '83, '85 participants, including the hirees,  
18 you've given more than those enactments require, and  
19 because they're not time limited at creation, it was  
20 something you just gave, and you cannot take away  
21 that which you've already given at the levels that  
22 you've given it.

23 What's your response?

24 MR. PRENDERGAST: Well, my gut

1 increase them. And as you said, no good benefit goes  
2 unpunished.

3 Was that not immutable?

4 MR. PRENDERGAST: Oh, no.

5 THE COURT: Why not?

6 MR. PRENDERGAST: Because they were  
7 time limited. In the middle of 2013, the limitation  
8 on the extension was the end of 2013.

9 THE COURT: Can you time limit  
10 something that's been given for life? Can you just  
11 change in midstream -- I understand why the City  
12 wants to. No one loves the City more than me or any  
13 of these folks here, I assume. No one wants the City  
14 to be destitute. We all know what's going on. We  
15 all know what the cause of it is, and we're all  
16 looking for an answer. And I do understand that.

17 But when you've given something for  
18 life, as you acknowledge has been given -- forget the  
19 numbers. This is what Mr. Krislov's point is.  
20 Forget the numbers. You gave the benefits for life.  
21 Can you now take them away?

22 MR. PRENDERGAST: We didn't give them  
23 benefits for life.

24 THE COURT: There's no time

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1 limitations in the '83 and '85 statutes.

2 MR. PRENDERGAST: Oh, those benefits?

3 THE COURT: Yes. That's the ones I'm  
4 talking about.

5 MR. PRENDERGAST: My point is, if  
6 that's the benefits -- Your Honor, time and again,  
7 they've said the '83 and '85 amendments don't apply  
8 to them. Do you know why? The '83 and '85  
9 amendments -- they don't want the '83 and '85  
10 amendments.

11 THE COURT: Because they don't want to  
12 be stuck at lower amounts.

13 MR. PRENDERGAST: Not only do they not  
14 want to be stuck at the lower amount, they know they  
15 have no constitutional claim if you're relying on the  
16 '83 and '85, because the City pays less under the '83  
17 and '85 amendments than it's going to pay for 2015.  
18 We're now in 2015. They're seeking an injunction for  
19 2016, where the City's going to pay more than the '83  
20 and '85 amendments would require the City to pay.  
21 That can't be a diminution, period.

22 THE COURT: Okay. So let's get to the  
23 answer to my question.

24 By giving it to them, how can you take

1 THE COURT: They're subject to the  
2 conditions that were stated in the '83 and '85  
3 statute. Everyone agrees about that. There are no  
4 time limitations on those benefits. So how can you  
5 start weaning them off something about which there  
6 were no time limitations?

7 MR. PRENDERGAST: We didn't wean them  
8 off of that, Your Honor. We weaned them off of what  
9 they were paid under the settlement statute that  
10 ended in 2013. We're paying them more than 1983 and  
11 1985. We don't have to wean them off of that. For  
12 2016, we're paying more than we're required to by  
13 statute, under the '83 and '85 statutes, if you hold  
14 us accountable to the '83 and '85 statutes.

15 THE COURT: Let's assume I hold you  
16 accountable for the subclass 1, 2, and 3. That  
17 means, as I was discussing with Mr. Krislov, the  
18 hirees before August 23rd, 1989. And they're in the  
19 Korshak class and the Windows class.

20 What do you owe them?

21 MR. PRENDERGAST: Korshak and Windows  
22 are classes 1 and 2.

23 THE COURT: Yes. Class 3 is everyone  
24 who participated before August 23.

1 it away?

2 MR. PRENDERGAST: Because, for the  
3 very reason that part of the your question said time  
4 limited, and that's why I said they weren't. They  
5 were not time limited. They had six -- they were  
6 extended by six months, and six months only, to the  
7 end of 2013.

8 And then they announced that they were  
9 going to go through three years or four years of  
10 stages of reductions for the very reason that Ms.  
11 Holt testified to, and that is, they wanted to give  
12 people a time to wean off of this and get into the  
13 Affordable Care Act and give them an opportunity.

14 THE COURT: How can you wean people  
15 off of something that they've been given for life?

16 MR. PRENDERGAST: It wasn't given for  
17 life.

18 THE COURT: In '83 and '85, those  
19 participants.

20 MR. PRENDERGAST: Oh, no.

21 THE COURT: Let's keep our eye on the  
22 ball. I'm talking about subclass 1, 2, and 3, those  
23 who began as participants before August 23rd, 1989.

24 MR. PRENDERGAST: Your Honor --

1 MR. PRENDERGAST: That's what they  
2 say, so --

3 THE COURT: Yes, that's what they say.  
4 But that's what we're dealing with.

5 MR. PRENDERGAST: Your opinion is  
6 still otherwise, but we're not going to get into  
7 revisiting it. Let's stay with one and two for a  
8 minute.

9 What else has the City done that it's  
10 now apparently being punished for?

11 Korshak and Windows class members,  
12 have been extended lifetime healthcare by the City.

13 THE COURT: Yes.

14 MR. PRENDERGAST: Okay. They're gone.  
15 They're taken care of. There's no injunction you  
16 have to enter for them. They're going to get  
17 lifetime healthcare for -- that's what they asked for  
18 them. They cannot use a settlement statute that was  
19 time limited as a basis for a diminution claim,  
20 because, as you held, when it was time limited, the  
21 rights under that statute ended, so you have to go  
22 back to '83 and '85.

23 When you go back to '83 and '85, you  
24 find that the City was paying less for '83 and '85,

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1 or the Funds were paying less --  
2 THE COURT: Than they are now --  
3 MR. PRENDERGAST: The numbers are  
4 less.

5 THE COURT: -- under the time limited  
6 enactments.

7 MR. PRENDERGAST: So there's no  
8 diminution.

9 THE COURT: Does that then, also then  
10 apply to the subclass 3?

11 MR. PRENDERGAST: It would apply to  
12 any retiree that claims a diminution of healthcare  
13 benefits.

14 THE COURT: Well, I'm asking  
15 specifically. Is it your position that applies to  
16 the hires, people who were hired and participated in  
17 the program, and may still be working, before  
18 August 23rd, 1989?

19 MR. PRENDERGAST: A person who, in  
20 this case, it's brought on behalf of the retirees, so  
21 let's stay with retirees if I could.

22 THE COURT: Yes, who was hired before  
23 August 23rd, 1898 and retired thereafter.

24 MR. PRENDERGAST: Retired thereafter.

1 applies to 2016 only. So it's not a question of  
2 lifetime benefits. It's a question of whether the  
3 City has to give up \$30 million that is appropriated  
4 --

5 THE COURT: I understand.

6 MR. PRENDERGAST: -- for 2016. And in  
7 this case, the City's -- the amount the City would  
8 pay under the '83 and '85 amendments is so much less  
9 than what it's going to pay for 2016, that there's  
10 nothing to enjoin. That's our position with respect  
11 to that.

12 So it's really much more, Judge, in my  
13 opinion, a question of -- put in that context. That  
14 is a question of which class is covered or not.  
15 We're at a preliminary injunction stage. They have  
16 to prove everything necessary for preliminary  
17 injunction.

18 THE COURT: Well, but,  
19 Mr. Prendergast, Mr. Krislov has just acknowledged,  
20 or conceded earlier today, that the post-hirees,  
21 post-August 23rd, 1989, hires would not be included  
22 in his request for a preliminary injunction because  
23 they're not entitled to anything.

24 MR. PRENDERGAST: It doesn't say that

1 Okay. What are they entitled to? The only statute  
2 that applies to them is the '83 and '85 statute.

3 THE COURT: Are those the benefits  
4 you're giving for the lifetimes of the class 1, class  
5 2 folks, those same benefits?

6 MR. PRENDERGAST: Well, for purposes  
7 of the preliminary injunction, we're only dealing  
8 with 2016. For the purpose -- as this case proceeds,  
9 you're going to hear a lot of evidence going a lot of  
10 different ways. A lot of arguments about whether you  
11 can stop altogether at 2016, or whether you have to  
12 pay the '83 or '85 benefits.

13 Although I must say to you, Judge, if  
14 all they're looking for is the '83 and '85 benefits,  
15 this case isn't going to last very long.

16 THE COURT: From your mouth.

17 MR. PRENDERGAST: To God's ears. And  
18 they're clearly not. They are running away from '83  
19 and '85 at record speed. They've done everything  
20 they can to tell you that's not where they're going,  
21 and the reason is because it doesn't get them  
22 anywhere.

23 And so -- but for purposes of a  
24 preliminary injunction, the preliminary injunction

1 in his papers, I must say.

2 THE COURT: Well, I understand. But  
3 he argued that today, if we accept my version of what  
4 the law is vis-a-vis Kanerva, with that exception,  
5 which, by the way, I'm accepting, he acknowledged  
6 that if I'm right on that, then the post-August 23rd,  
7 1989 class has no ascertainable claim of relief.  
8 They have no standing to complain, because they're  
9 not covered. So that's done. I accept that.

10 MR. PRENDERGAST: Maybe one and two is  
11 done.

12 THE COURT: So now we're just dealing  
13 with the hires.

14 MR. PRENDERGAST: We're just dealing  
15 with people who --

16 THE COURT: Who were part of the  
17 program, who participated in the program before  
18 August 23rd, 1989.

19 And it seems to me your argument is  
20 that a preliminary injunction should ensue vis-a-vis  
21 those at least -- so your argument is, it should be  
22 granted in part, denied in part, but it should be  
23 granted vis-a-vis those folks to the extent of the  
24 benefits that they were entitled to under the '83 and

1 '85 amendments, yes?

2 MR. PRENDERGAST: No. The reason is  
3 because this is an injunction for 2016. There's no  
4 need for an injunction because they're going to get  
5 more --

6 THE COURT: Because they're going to  
7 get that anyway.

8 MR. PRENDERGAST: That's right.

9 THE COURT: At least at this point.

10 MR. PRENDERGAST: At this point,  
11 they're going to get that.

12 THE COURT: But in the end, there's a  
13 claim that those -- even those benefits are going to  
14 be extinguished.

15 MR. PRENDERGAST: And in the end, at  
16 the end of 2016, they may be back here, if necessary,  
17 talking about an injunction if it's needed --

18 THE COURT: To prevent that from  
19 happening.

20 MR. PRENDERGAST: Yeah, but that's not  
21 today. And by the way, Judge, I expect, based upon  
22 your remarks the last time we were here, and based  
23 upon my assessment of what's got to be done in this  
24 case, this case is going to be over before 2016.

1 Judge, I do think that --

2 THE COURT: That's why throughout your  
3 brief, you argue in the alternative, that even if the  
4 City's implicated in this, or part of this -- and I  
5 understand.

6 MR. PRENDERGAST: And I have to argue  
7 in the alternative until we get past that point.

8 THE COURT: Of course you do.

9 MR. PRENDERGAST: But I have to say  
10 that it's been my experience that parties are held to  
11 their pleadings, and they are held to what they say,  
12 especially when they say it time and time again.

13 So they have said that the '83 and '85  
14 amendments don't apply, and we all know, there has to  
15 be a statutory basis. Even under Kanerva, there was  
16 a statute that the Supreme Court relied upon, because  
17 it's got to come from some basis, either a contract,  
18 or it's got to come from a statute.

19 And the contract claim is out on your  
20 ruling. And by the way, I know Mr. Krislov has said  
21 on several occasions here, something -- one thing or  
22 another is going to be in his amended complaint.  
23 That's not the complaint that's before the Court  
24 right now. That's the complaint we're dealing with

1 THE COURT: Once again, from your  
2 mouth.

3 MR. PRENDERGAST: Yeah, right. But, I  
4 mean, you know, there will be some discovery, I  
5 suppose, and there will be motions and the like.

6 But we're not talking preliminary  
7 injunction motions. Preliminary injunction motions  
8 are to address an immediate need, and there is no  
9 immediate need.

10 THE COURT: I understand.

11 MR. PRENDERGAST: Mike points out, I  
12 think something I thought was implicit in my remarks,  
13 and that is, remember, please, this preliminary  
14 injunction that they're seek is against the City, and  
15 they concede that the '83 and '85 amendments don't  
16 apply to the City.

17 THE COURT: Well, that's true. They  
18 concede that. It's really an interesting case. They  
19 concede that.

20 But, I held that the Funds are an  
21 instrumentality of the City. So from my point of  
22 view, the City's in it. That's my ruling, which you  
23 want me to revisit.

24 MR. PRENDERGAST: Well, you know,

1 for preliminary injunction purposes.

2 So let me go to -- some of this has  
3 been covered, but if I could go to what I expected to  
4 talk about -- maybe I'll be redundant, but that's the  
5 lawyer's prerogative, especially when you give them  
6 unlimited time.

7 Under the Pension Code, pension  
8 benefits cannot be impaired or diminished. We all  
9 agree on that. That's understood. Under Kanerva,  
10 retiree healthcare benefits can be pension benefits,  
11 as long as, like any other benefits, they are created  
12 by statute or contract. We're good with that. We're  
13 not trying to revisit you -- we don't want you to  
14 revisit Kanerva on the central issue of Kanerva,  
15 which is can healthcare benefits be pension benefits.  
16 The Supreme Court's answered that question for us.

17 The plaintiffs' contract claim, that's  
18 been dismissed. It was dismissed by the district  
19 court. It's been dismissed by this Court.  
20 Plaintiffs' have not asked you to reconsider that  
21 ruling, even in argument today.

22 The plaintiffs' reliance on the  
23 McDonough affidavit and deposition and the Kordeck  
24 affidavit from back 30 years ago was raised before

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1 you made your ruling, and you still held that doesn't  
2 establish the basis for a contractual claim. The  
3 materials, of course, were before you when you  
4 dismissed the contract.

5 Plaintiffs cannot claim a likelihood  
6 of success on the merits, on the limited settlement  
7 statutes, because you have ruled on that as well and  
8 dismissed those counts. So that argument about  
9 success on the merits goes out.

10 I do want to emphasize, by the way,  
11 that that first requirement is a requirement for them  
12 to establish a likelihood of success on the merits.  
13 It is not a requirement just to establish that  
14 they've stated a claim.

15 Mr. Krislov has a habit, and I'm not  
16 being pejorative, but he does have a habit of  
17 characterizing every denial of a motion to dismiss as  
18 if he's won the case. That's not the case here. He  
19 has to establish, for purposes of preliminary  
20 injunction, a likelihood of success on the merits.

21 And the contract claim can't do it.  
22 The time limited statutes can't do it. The estoppel  
23 claim can't do it, because since you have dismissed  
24 them, they can't possibly establish a likelihood of

1 In terms of the likelihood of success  
2 on the merits, at least for purposes of preliminary  
3 injunction, since they're getting more on their 2016  
4 plan, 2016 plans than they would ever get under the  
5 '83 and '85 amendments, they can't possibly show a  
6 basis for a success on the merits under the '83 and  
7 '85 plan.

8 And, therefore, on that ground alone,  
9 and they have to satisfy all the criteria, on that  
10 ground alone, the motion for preliminary injunction  
11 has to be denied.

12 As we pointed out, this is their sixth  
13 attempt to get a preliminary injunction with respect  
14 to this phaseout program.

15 Mr. -- counsel states that, well, the  
16 previous ones all involved a finding that the pension  
17 benefits were not -- I'm sorry -- healthcare benefits  
18 are not pension benefits, and Kanerva reversed all  
19 that, but that's not correct. There's been -- all of  
20 the arguments that he's making now were made in all  
21 of those motions for preliminary injunctive relief.  
22 And no one parsed out that, well, maybe you'll win on  
23 some other ground.

24 But the point is, we're here today.

1 success on the merits. So that leaves the  
2 constitutional claim, which was Count 1.

3 And so what he has to establish is if  
4 there's been a diminution or impairment of pension  
5 benefits. And if he doesn't have a likelihood of  
6 success on that one, and he talked about summary  
7 judgment. But I have to tell you, Judge, if he's not  
8 relying on the '83 and '85 amendments, that summary  
9 judgment motion comes from our side, not his.

10 So as we've just discussed --

11 THE COURT: And even if he does,  
12 according to our colloquy during the last half hour,  
13 it's coming from you, too, to the extent that it was  
14 offered by those amendments.

15 MR. PRENDERGAST: Yes. So that leaves  
16 him -- when you get rid of the contract -- there was  
17 a reason they had a contract claim, because they  
18 wanted to say well, we'll anchor this on a contract.  
19 And there was a reason why they wanted to go to those  
20 others statutes, because they wanted to say we want  
21 to anchor these on a statute that we can use.

22 But what's left is the '83 and '85  
23 statutes. We've already talked about that, and  
24 that's their statutory basis for a claim.

1 We're here on this motion for preliminary injunction.  
2 I don't mean to suggest the last five or six times  
3 that he's lost sets precedent, but it is getting to  
4 be habit for him.

5 I've talked about why the '83 and '85  
6 amendments don't apply. Talked about it doesn't make  
7 any difference whether they apply or not. There's no  
8 irreparable harm.

9 And you have raised a very significant  
10 point, and that is, if the pensioners have to pay in  
11 in 2016 amounts greater than 2015 because of the  
12 reduction in the subsidy, they have an adequate  
13 remedy at law. And they clearly do. If they  
14 ultimately win, the difference, plus interest, gets  
15 paid back to them.

16 They have not made a compelling  
17 argument why that's not an adequate remedy at law.  
18 They have argued that people are retired, they have  
19 less money than people who are working. That's also  
20 true, but it still doesn't mean they don't have an  
21 adequate remedy at law, especially in the context of  
22 a class-action claim.

23 I mean, we're not talking about one  
24 plaintiff in front of you where you can parse that

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1 out. There's 23,000 members of this class. So that  
2 concern no longer justifies a preliminary injunction.

3 And so now we turn to the one thing  
4 that they hammered on in this case, since they filed  
5 it. They've hammered on the idea that people would  
6 have to make choices. That's why this January date  
7 is critical. People would have to make choices of  
8 staying in or getting out.

9 But if they get out, and they went to  
10 one of those lower-priced Affordable Care Act plans,  
11 or even one of the premier plans that has all the  
12 bells and whistles you want, they wouldn't be able to  
13 get back in without an ability to prove insurability.  
14 That has been the irreparable harm argument here  
15 since day one.

16 So finally, we decided, you know, that  
17 one's got come off the table. We went back to the  
18 City, and we said let's revise that. Can you revise  
19 that? Is that impossible? That won't require you to  
20 do anything. It won't require the Funds do anything  
21 in January of 2016 to unscramble the eggs.

22 But it would extend people the  
23 opportunity if they become uninsurable because they  
24 have bad health to still come back to the City plan

1 resolved with the cooperation and effort of everyone,  
2 including the Court, and your calendar, to resolve  
3 this case by September 30th, 2016.

4 I'm authorized to tell you one other  
5 thing. It's not in that document, but I'm on the  
6 record as an officer of the court, representing the  
7 City of Chicago.

8 If at the end of the day they win this  
9 case, and then they say -- but it's January 2017, and  
10 it's after September, and they say, we won, I want  
11 back in the City plan, they're going to be allowed to  
12 go back in the City plan.

13 So this irreparable harm argument they  
14 have made from the beginning is no longer existent.  
15 All they have to do -- that gives them all the  
16 choices they want. They can stay with the plan, in  
17 the City plan if they want to. They can get out if  
18 they don't want to. I'm happy you heard the  
19 testimony of witnesses today that Mr. Krislov thought  
20 would be helpful to the Court, because I think one  
21 thing you should have come away with, I believe, from  
22 that testimony is that the City makes a great deal of  
23 effort to deal with its retirees, to put them on  
24 notice of everything from change -- any changes, any

1 if they wanted to.

2 And so the exhibit, which I forget the  
3 number of, and you saw it, which is only dated the  
4 18th of this month. That's when it became official,  
5 but it addresses --

6 THE COURT: It's your Exhibit 6 in  
7 your submission.

8 MR. PRENDERGAST: That's correct,  
9 Judge.

10 That program now allows people, if  
11 they leave and they go into an Affordable Care Act  
12 plan, or any other plan, if for some reason they find  
13 out this wasn't really good for me, this wasn't -- I  
14 don't like the deductibles here, I don't like the  
15 copay, or whatever their concern is, they can come  
16 back. They can come back anytime between  
17 September 30th -- until September 30th of this  
18 year, nine months out. And I know you point up when  
19 say this.

20 THE COURT: 2016.

21 MR. PRENDERGAST: 2016.

22 THE COURT: Not this year.

23 MR. PRENDERGAST: I'm sorry. 2016.

24 But there's nothing about this case that can't be

1 options that they have, they're fully aware of it.  
2 They've got a phone bank ready to answer any  
3 questions that they have.

4 And certainly, you know, to the extent  
5 that they ask questions of Mr. Krislov and he wants  
6 to send those questions in, the City is going to  
7 answer them.

8 The point is, they have all the basis  
9 that they need to make choices. But if they make, in  
10 their view, the wrong choice, and they get out of the  
11 City plan, they can get back in. And that has not  
12 been before you before this. I thought --

13 THE COURT: What limitations are you  
14 putting upon their ability to get back in? You say  
15 you've extended it now, as an officer of the court,  
16 to -- at least into 2017. What limitations?

17 MR. PRENDERGAST: The same limitations  
18 as are in the plan right now. For example --

19 THE COURT: No, what time limitations?

20 MR. PRENDERGAST: Oh, I think there  
21 will --

22 THE COURT: Up until the end of this  
23 case, whatever that's defined as; isn't that right?

24 MR. PRENDERGAST: I should clarify.

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1 If they win this --

2 THE COURT: If this goes up the  
3 Supreme Court and takes two or three years, and it  
4 comes back, and they won, the City is game, yes?

5 MR. PRENDERGAST: The City is game.  
6 The City will let them back into the plan, whatever  
7 the plan is, if there is a plan.

8 If they lose the case, they'll say we  
9 have to have a plan. If they win -- I'm sorry. If  
10 they win the case, they're going to say, we have to  
11 have a plan, and it's going to be ordered.

12 If they lose the case, there won't be  
13 a plan to come back to. Which is one of the reasons  
14 that it would be very prudent for those who have a  
15 concern, and I mean the pensioners, to explore, like  
16 a lot of people who are in the private sector,  
17 explore the Affordable Care Act.

18 Because, as you heard in the testimony  
19 today, there are considerable advantages to the  
20 Affordable Care Act. Counsel points out that there  
21 are going to be hospitals that are not covered by the  
22 Affordable Care Act, and that's true. They can't go  
23 to Northwestern or Chicago. People in Peoria don't  
24 go to Northwestern or Chicago either, generally

1 that got in. If they want to stand up here when I'm  
2 through and show it to you, it will surprise both of  
3 us. But that's not there. There has not been a city  
4 ordinance that grants healthcare benefits to anyone,  
5 and there's no state statute that does so, with the  
6 possible exception, possible exception, because we  
7 have a motion to reconsider, of the '83 and the '85  
8 amendments to the Pension Code.

9 And since the Kanerva case relied upon  
10 another statute, there was a statutory basis. And as  
11 this Court has said, there has to be. You have to  
12 have a basis for the claim before the pension clause  
13 can protect it. If there's nothing to protect, you  
14 can't say there's a pension clause, so I get a  
15 pension. That's not how it works. You've got to  
16 have a basis for doing that.

17 In terms of the balancing of the  
18 equities, if an injunction is entered requiring the  
19 City to subsidize at the 2015 rates rather than the  
20 2016 rates, the cost to the City will be  
21 approximately \$30 million.

22 That 30- -- Ms. Holt, I was happy that  
23 she was called. I didn't -- if I had put her on  
24 direct, I would have spent the first five minutes

1 speaking. But they have good hospitals in Peoria.  
2 Loyola's an excellent hospital. There are a lot of  
3 excellent hospitals that are covered by the  
4 Affordable Care Act.

5 So the idea that they can't get  
6 healthcare -- I mean, there's a difference between  
7 saying people should be able to get healthcare and  
8 saying they should be able to get healthcare, forget  
9 networks, forgetting limitations on hospitals,  
10 forgetting limitations on doctors that don't want to  
11 provide that healthcare, that's not a constitutional  
12 claim. That's a beef. That's a political argument.  
13 That's something they can take to their legislature.

14 But speaking of the legislature, I do  
15 want to mention something, because I'll probably  
16 forget to mention it.

17 In their papers, they say that  
18 Mr. McDonough, in his affidavit or his deposition, I  
19 think it's his deposition, testified that there was a  
20 city ordinance that was passed that granted  
21 healthcare.

22 Not only was there no such city  
23 ordinance, it's not in his affidavit or in his  
24 deposition. I don't know where that leaked in, how

1 going through her credentials, and they would have  
2 been impressive. But it's not important, because I  
3 think she's an impressive witness. She knows the  
4 budget. She knows how to balance the budget. She  
5 knows what's happened in the City of Chicago in  
6 previous years when they haven't balanced the budget,  
7 and they've gone off and sold the Skyway, sold  
8 parking meters, found other things to sell in order  
9 to raise money.

10 The objective now is to get the City  
11 back on a solid footing, fair to the taxpayers, fair  
12 to the residents of the city in a way that will make  
13 the city great and keep it from going in the wrong  
14 direction fiscally.

15 So she explained what goes into the  
16 budget, and that means we looked at everything. And  
17 one of the exhibits they talked about were the cuts  
18 that they have to make. They aren't only cuts in --  
19 it isn't just a step down in the amount that they  
20 paid to subsidize healthcare. It cuts across the  
21 board. Elimination of positions. Cutting programs.

22 I think it's -- I forget the number --  
23 \$3- or \$400 million in new real estate taxes were  
24 enacted this year. Other fees were enacted this year

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1 pursuant to the budget that they passed for 2016 so  
2 they could balance that budget. \$30 million is an  
3 imbalance. It's not an imbalance you make up by  
4 snapping your fingers or flipping a switch. There's  
5 a lot that goes into that, and it may mean cutting  
6 300 jobs, or it may mean cutting 150 jobs and \$15  
7 million worth of programs.

8 But it is an impact on the taxpayers,  
9 on the residents. As she pointed out correctly, when  
10 you raise taxes, you have to raise taxes across the  
11 board. There's people up in Lincoln Park that afford  
12 the tax increase. I can afford a tax increase. I'll  
13 make it. There's lots of people who can't. A lot of  
14 them are retirees. A lot of people who are going to  
15 be put to the test of paying the other way in taxes.

16 And so balance that against the  
17 hardship to the retirees. Well, we have before you a  
18 fair amount of evidence for a preliminary injunction  
19 hearing on the alternatives that the retirees have.  
20 The alternatives would be the Affordable Care Act,  
21 the opportunity to get insurance at lower prices so  
22 they don't have to.

23 And in context of the discussion about  
24 the breaks you get if you are below the poverty

1 income, because if they don't, then they're not going  
2 to get hit as hard under the Affordable Care Act or  
3 under the City plan. And, basically, what we were  
4 told is, that's an unreasonable intrusion into their  
5 privacy.

6 Well, it's a relevant fact. We'll  
7 develop it in the course of discovery in this case to  
8 find out what the real impact is, and we will make  
9 our judgments accordingly.

10 But fact of the matter is when you  
11 balance the availability of lower-priced insurance  
12 under the Affordable Care Act, the availability of  
13 insurance under the City plans, the lower-level City  
14 plans, against the fiscal hit that the City has for  
15 the \$30 million adjustment, I think the balance of  
16 the equities falls in favor of the City.

17 And I know it's more popular to talk  
18 about how people on pensions are hurt more, but I'm  
19 saying to you that when you take \$30 million out,  
20 everybody gets hurt. Taxpayers get hurt, residents  
21 who do not have excess income see their taxes go up  
22 even more than the \$347 million, I believe it was, in  
23 new real estate taxes this year, more than the new  
24 water fees, more than the other new fees that went up

1 level, I should say below two and a half times the  
2 poverty level, or on the Affordable Care Act side,  
3 four times the federal poverty level, four times the  
4 federal poverty level is \$46,500. If you're making  
5 \$46,500 or less, that's -- then you get substantial  
6 additional breaks under the Affordable Care Act.

7 It's only two and a half times, but it  
8 is two and a half times for the poverty level for the  
9 city program, which, you know, if you're making  
10 \$30 million, people making less than that.

11 One of the things that the witnesses  
12 were asked here today was, how do you know? You  
13 know, how do you know what people are making, you  
14 know? Well -- and the only ones we know are the ones  
15 that ask for the break, you know, that say, I'm  
16 eligible to pay less.

17 So they send -- they -- basically,  
18 their entire tax return is not sent to the City. The  
19 first page, or the summary on the first page gives  
20 your adjusted gross income is what does it.

21 So when they provided you with this  
22 book full of various annuitants' letters and a  
23 summary they put in the front, we were interested in  
24 knowing whether or not those annuitants have other

1 this year in order to balance the budget in 2016.  
2 It's a significant impact.

3 And, you know, the case law on that,  
4 Your Honor, particularly when you get into the public  
5 sector, is pretty clear that the public harm, the  
6 impact of an injunction to the extent that it creates  
7 a public harm, or public burden, has to be considered  
8 by the Court. It's not just a question of, well, why  
9 don't you write a check for \$30 million.

10 To a certain extent, in fact, to a  
11 large extent throughout their reply brief, I think  
12 that's the most important document that they filed,  
13 they try to -- as was much the discussion that we had  
14 with counsel, they tried to run away from the ruling  
15 dismissing most of the case, and now they're down to  
16 carving out, trying to carve out some group of class  
17 members that are maybe part of a class and saying we  
18 should enter an injunction for them.

19 But for the same reasons that we've  
20 discussed at length here today, they don't have a  
21 colorable claim under the '83 or '85 statutes.

22 So they turn to Kanerva, and I just  
23 discussed Kanerva. Kanerva was based upon the  
24 statute. There is no statute basis here. It's that

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1 simple. This is not, as counsel said, a photocopy of  
2 the Kanerva case. This is a different case. There  
3 is no ordinance, there is no statute on which to  
4 rely.

5 Had there been no statute in Kanerva,  
6 the state would have won. Had there been no statute  
7 establishing the state's obligation to pay pension  
8 benefits, the state would have won the Kanerva case.  
9 It's absolutely clear from the opinion.

10 I don't want to sound patronizing, but  
11 this is a preliminary injunction; it's not the case.

12 THE COURT: I understand.

13 MR. PRENDERGAST: Okay. I need to go  
14 no further on that.

15 There is an argument that they make,  
16 and he alluded to it, because we've decided -- the  
17 City has decided that the Korshak and the Window  
18 classes are going to have coverage for life, even if  
19 the City otherwise gets out of the business.

20 They've thrown in an argument that  
21 there's a denial of equal protection here. Now, that  
22 argument has not previously been made, and I saw it  
23 for first time when we got their papers fairly  
24 recently, and so we really haven't had a chance to go

into it in any depth.

THE COURT: And there's no need to,  
because new ideas brought up in a reply brief are not  
going to be considered by the Court. And I'll just  
note that the equal protection argument, as I noted  
to Mr. Krislov, is not pled.

So, as Mr. Krislov says, it may be in  
the future, but that's not what I'm dealing with now,  
so no need.

MR. PRENDERGAST: They argue with  
respect to the handbook. Are you familiar with what  
I'm referring to?

THE COURT: I sure am.

MR. PRENDERGAST: Plaintiffs  
incorrectly argue that the City abandoned its  
argument that under the handbook, the City maintained  
the right to terminate its retiree healthcare plan.  
That's just not what we've done. It's not correct.

Plaintiffs' opening brief did make  
claims in support of a likelihood of success on the  
merits based on the handbook for the straightforward  
reason that the Court dismissed that contract claim,  
so we had no reason to revisit it in our response to  
the preliminary injunction.

We talked about irreparable harm.

THE COURT: You have.

MR. PRENDERGAST: And I won't go back  
to it, other than --

THE COURT: Good.

MR. PRENDERGAST: Good. I hope that  
means I've persuaded you.

THE COURT: It means I've heard it  
all.

MR. PRENDERGAST: You've heard it all,  
yes.

THE COURT: We've been here since  
10:30, it's now quarter to 3:00.

MR. PRENDERGAST: You have been  
awfully patient, and I appreciate that.

THE COURT: I'm sorry? I didn't hear  
that.

THE COURT REPORTER: Do you want me to  
read it back?

(Laughter.)

THE COURT: No, no, no. I want to  
give everyone an opportunity to argue.

MR. PRENDERGAST: One argument they  
have made is that it -- and it was rebutted by the

sworn testimony today, is that, well, what's going to  
happen if a retiree goes to an ACA plan and then  
says, I want to go back to the City, and the ACA  
insurer says, well, you have to pay for the next --

THE COURT: The uncontradicted  
evidence is there's a 14-day period, notification  
period, and there can be no -- at least according to  
the evidence I hear, no penalty for that.

I don't know to the contrary, but  
that's what the evidence is that was elicited from  
the stand.

See, I remember, Richard.

MR. PRENDERGAST: So Mike Layden, my  
colleague who's one of the best lawyers I know, just  
handed me a note that said let's end it.

THE COURT: He's not only good, he's  
wise.

MR. PRENDERGAST: Thank you for your  
time.

THE COURT: You're welcome.

Mr. Burke.

MR. BURKE: Your Honor, I was going to  
argue for another five hours, but I've changed my  
mind, and we will rely on our filings, both in the



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1 underlying litigation and the one that we just pled.

2 THE COURT: Thank you.

3 Mr. Kennedy.

4 MR. KENNEDY: Thank you, Your Honor.

5 On behalf of the Laborers' Fund, we join in the  
6 City's request that you deny the motion for  
7 preliminary injunction.

8 THE COURT: Mr. Kugler.

9 MR. KUGLER: Yes, Your Honor. Well,  
10 granting we've been here for four hours or more,  
11 granting your preliminary injunction in full or in  
12 part is now -- there's nothing further that the  
13 Pension Fund can add to it. The Court has heard it.  
14 It's in your hands.

15 The only thing I would say, Your Honor  
16 is, as I understand it, I believe the timing of this  
17 month, the deductions have already been made with  
18 regard to the City, or are in effect, so whatever the  
19 Court does, there may have to be some adjustment with  
20 the check that's going out currently.

21 THE COURT: Thank you.

22 Mr. Krislov, you've got last ups.

23 MR. KRISLOV: Your Honor, I mean, we  
24 obviously, as we have said before, object to the

Funds taking a positions today, especially to say  
that it's some sort of hardship or difficulty to not  
-- they've not asserted anything like this before.  
All that they have to do is just not withhold from  
their people the January premiums at the higher  
rates.

If they're now saying that that would  
be difficult, they could have spoken about this  
before and not blindsided us today with that  
argument, because they haven't made this argument  
before.

THE COURT: They haven't made which  
argument before?

MR. KRISLOV: They haven't made the  
argument that it would be difficult for them to  
comply with not raising the healthcare rates  
beginning January 1st.

THE COURT: Is it not in their  
submission?

MR. KRISLOV: They didn't make a  
submission.

THE COURT: Is it not in the response  
to your --

MR. KRISLOV: They didn't make a

1 response.

2 THE COURT: What's this?

3 (Indicating.)

4 MR. KRISLOV: No, no. The City.

5 THE COURT: That's what I'm talking  
6 about.

7 MR. KRISLOV: I'm talking about the  
8 Funds.

9 THE COURT: Oh, well. Okay. I  
10 thought we were just talking -- my eye was on the  
11 City, not the Funds.

12 MR. KRISLOV: Okay. As I say, you can  
13 ignore that.

14 THE COURT: But it does call into  
15 question where your eye is. Mr. Prendergast has  
16 asserted, as I know, and I was here when he did it,  
17 you conceded the City had no obligation under the '83  
18 and '85 amendments. That, just so you know, is key  
19 to my answer to this problem raised by your motion.  
20 And you conceded the City has no obligations under  
21 that.

22 Apart from my ruling, what's your  
23 response to Mr. Prendergast's argument about that?

24 MR. KRISLOV: Our position is that

1 while the specific language of the Pension Code  
2 provisions do not obligate the City to provide  
3 healthcare, the City has in two ways subjected itself  
4 to that obligation: Number one, by being the insurer  
5 that the Funds have obtained that insurance from;  
6 and, number two, by providing -- and this is what we  
7 seek to enforce -- the City of Chicago Annuitant  
8 Medical Benefits Plan. That is Exhibit 4 to our  
9 reply, but it's been in everything. It's attached to  
10 the complaint, it's attached to lots of things  
11 throughout.

12 And it says eligibility. You will be  
13 eligible for coverage if you are an annuitant of the  
14 City of Chicago. Annuitant means a former employee  
15 who is receiving an age and service annuity from one  
16 of the four retirement funds. And here's what the --  
17 here's where Kanerva comes in.

18 Once you provide as a governmental  
19 employer, whether you regard the Funds as an  
20 instrumentality of the City, or the City just does  
21 it, because the state just did it in Kanerva, once  
22 you provide a benefit that is conditioned on  
23 exclusively whatever to people who are annuitants,  
24 participants in one of the four pension funds, you

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1 are stuck with it for life because Article 13,  
2 Section 5 doesn't say we protect benefits of  
3 pension -- we don't protect benefit -- excuse me. We  
4 don't protect pension benefits. It says, membership  
5 in any pension or retirement system of the state or  
6 any unit of local government, dot, dot, dot.

7 THE COURT: Shall not be diminished or  
8 impaired.

9 MR. KRISLOV: The benefits of which  
10 shall not be diminished or impaired.

11 THE COURT: Sure.

12 MR. KRISLOV: That's the key language.  
13 That's why when the City provides the plan, and it's  
14 the plan that we're seeking to enforce, it's the plan  
15 that is the benefit.

16 Once they provide it to people  
17 conditioned on their being members of the retirement  
18 system --

19 THE COURT: They don't disagree,  
20 really.

21 MR. KRISLOV: Then they're stuck.

22 THE COURT: They're just saying that  
23 they're limited by the amounts that were granted by  
24 the '83 and '85 legislation. They're capped at that

1 But I'll tell you, it's just ordinary  
2 rules of statutory construction. You look at the  
3 four corners of the statute and the contract. You  
4 look at the four corners of the contract, and you are  
5 limited by those terms as to what was given. That's  
6 just the ordinary rules of construction, whether it's  
7 a constitutional amendment provision, statutory  
8 provision or a contract.

9 You're asking me to read into that  
10 that which is not there. You're asking me to do it  
11 because of Kanerva, and I understand that.

12 But Kanerva didn't just give carte  
13 blanche. It doesn't say that which has been given  
14 with limitations is, carte blanche, given for life.  
15 It just said that which is given is guaranteed. It's  
16 not guaranteed for life. It's guaranteed within the  
17 ambit in which it was given, and that's up to the  
18 legislature. It's not up to you, and it's not up to  
19 me. I wish it were up to me; then we'd have a real  
20 nice, platonic republic, and lots of things would be  
21 changing. But we don't have that, and I'm somewhat  
22 limited by that which is the -- by the separation of  
23 powers in that regard.

24 MR. KRISLOV: Here's what I don't

1 in terms of what they have to do, even for the  
2 hirees.

3 MR. KRISLOV: That's what they have to  
4 do under the Pension Code. That is not what they are  
5 limited in having to do because they are -- because  
6 they have taken it on.

7 That's why in Kanerva, the state, by  
8 enacting a group healthcare plan, that, for these  
9 people was conditioned --

10 THE COURT: But unlike Kanerva, here  
11 it was time limited. It was not a, here, you're  
12 getting it all for life. Apart from all your  
13 assertions to the contrary in your briefs, they've  
14 never said you can have it for life. In fact, they  
15 didn't say it in the '83 and '85 amendments. I found  
16 it, without it being in there, because it was given  
17 without any --

18 MR. KRISLOV: Time limit.

19 THE COURT: -- limitation, to the  
20 extent that it was given in those statutes.

21 MR. KRISLOV: See, that's where you  
22 and I differ on this one, because --

23 THE COURT: There you go, and when you  
24 wear the robes, I'll listen to you.

1 understand and maybe missing the point.

2 Our view of Kanerva is that Kanerva  
3 says where a public employer has granted a benefit  
4 that is conditioned on --

5 THE COURT: Participation.

6 MR. KRISLOV: -- participation in one  
7 of the retirement systems, it is a protected benefit  
8 for life. And giving it --

9 THE COURT: What if the nature of that  
10 which has been given is limited? I'm giving you \$5  
11 every week for the rest of your life. Somehow,  
12 because you need more money, or because things  
13 change -- and I'm not trying to insult anybody here,  
14 believe me, I'm not -- are you trying to tell me that  
15 it should be \$10 or \$20 because the value of the  
16 dollar has gone down? Does it ipso facto mean that I  
17 have to give you \$100 a week? Isn't it limited to  
18 that which I give?

19 MR. KRISLOV: If I'm a public  
20 employee, and I say here is a benefit that I will  
21 give to people who are participants in the retirement  
22 system, I will provide your healthcare -- I will  
23 provide the following benefit. I will provide, the  
24 City of Chicago --

1 THE COURT: I will give you \$55 a  
2 month.

3 MR. KRISLOV: But that's not what I'm  
4 seeking to enforce.

5 THE COURT: I know. But that's what  
6 it says. I understand you're trying to go beyond  
7 that.

8 MR. KRISLOV: That's what the Pension  
9 Code wording says. That's what I concede that the  
10 Pension Code wording says.

11 What I'm saying is that by  
12 providing -- and Ms. Holt said all they need is an  
13 ordinance, and all they need is the appropriation  
14 ordinance, and they could be -- no one said that the  
15 City of Chicago annuitant healthcare plan was being  
16 illegally provided. Once it is provided to people  
17 based solely on their being annuitants or  
18 participants in the plan, you're stuck with it for  
19 life. Yes.

20 THE COURT: Okay. I got it. I got  
21 your ideas.

22 MR. KRISLOV: So what we're trying to  
23 enforce is not the \$55 subsidy. The subsidy is the  
24 Funds. Providing the plan is what the City did.

1 balancing. I don't even get to adequate remedy at  
2 law. I'll let you go on. You've said it before, and  
3 I don't want to stop you. But I don't even get to  
4 that if you don't pass the standing issue, which is  
5 the first prong of the injunctive inquiry.

6 MR. KRISLOV: And our view is if we  
7 interpret your ruling, people who were participants  
8 on August 23rd, '89, have enforceable rights to  
9 enforce a benefit whose parameters you said are to be  
10 determined. And that's what you said, that on a  
11 2-615 --

12 THE COURT: Yes. Oh, yes. That have  
13 yet to be determined under 2-615. I did say that.

14 MR. KRISLOV: Yes.

15 THE COURT: Absolutely.

16 MR. KRISLOV: Those -- the exact  
17 nature of those obligations, however, is not properly  
18 decided on a 2-615 motion to dismiss. That's where  
19 we figure that -- that explaining what we think the  
20 obligations are is for later in the case.

21 At this point, the people who were  
22 participants as of August 23rd, '89, have  
23 enforceable rights. What they are entitled to  
24 protect you left to be determined, and that's what I

1 There are differences. The City is saying, look, all  
2 that they provided --

3 THE COURT: Providing the tax levy is  
4 what the City did per the statute, '83 and '85.

5 MR. KRISLOV: Per the Pension Code  
6 statute.

7 THE COURT: Yeah, well, isn't that  
8 what I'm stuck with?

9 MR. KRISLOV: No, you're not stuck  
10 with that. The City is stuck with it when it legally  
11 provides a benefit to people based on their  
12 participation in one of the four Funds, it's stuck  
13 with that for their life. And that's -- if we  
14 disagree on something, I believe I'm right on that  
15 one.

16 I guess we'll find out.

17 But for these purposes, at least at  
18 this point, until you decide the merits of it, who's  
19 more harmed? They can't say the City's harmed. The  
20 taxpayers, if they have an average of \$30 per  
21 person --

22 THE COURT: But I don't get to harm if  
23 I don't find an ascertainable claim, I mean a right,  
24 standing. I don't get to harm. I don't get to

1 interpret your ruling to be.

2 THE COURT: Then how does that jibe  
3 with the likelihood of success and an ascertainable  
4 claim if I haven't yet determined what rights enure  
5 to those three classes?

6 MR. KRISLOV: Because at this stage of  
7 the proceedings, we need -- we don't have to prove  
8 summary judgment. We just have to show that there's  
9 a reasonable basis that we might --

10 THE COURT: No, that's not true, and  
11 that's not the law, and you know that.

12 MR. KRISLOV: Oh, I --

13 THE COURT: For purposes of injunctive  
14 relief, you have to show a likelihood of success.  
15 Not a reasonable probability that there's a conflict  
16 here, or it's been interpreted as being a fair  
17 question, at least.

18 MR. KRISLOV: Fair question, at least.  
19 We've done that. And I believe that you will say  
20 that you will agree that at least for these  
21 purposes -- whether you disagree with me ultimately  
22 or not is for the Court to decide -- but the fact is,  
23 I think we have raised an absolutely, at least a fair  
24 question. I think we're right. I think we will

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ultimately prevail on that. But I think we've shown enough to justify hurdle number one.

And it's not an all -- and failing one. It is an overall -- we shouldn't fail any of them by a significant amount, but it is a balancing test overall, and it is to maintain --

THE COURT: No, it's not. I don't even get to the balancing test unless you can prove the first four.

MR. KRISLOV: Well, I think we have satisfied --

THE COURT: And that's the law, too.

MR. KRISLOV: Fair enough. But we've sat- -- I believe we've satisfied the first one, at least, sufficient to preserve the status quo, until we get to the merits of the case.

In terms of the post-'89 hirees, in our view, is that when you give things to people after that, whatever you give them, again, conditioned on their being participants, that's a floor.

But we can -- we may disagree with that, and that's why for purposes of this injunction that we're requesting, it's for the pre-8-23-89

off of the Choice.

So if you want to get lesser coverage -- and I probably should have asked Ms. Currier -- but if she's elected out of the coverage and to go in the ACA, everybody who says, oh, you'll be better off in the ACA is generally not in it.

The only ordinance needed is the appropriation ordinance. We're looking to enforce the plan, and at this point, I think we've shown, certainly for the pre-8-23-89 hires, a sufficient showing of likelihood of harm, balance of equities, hardship. I don't think we've missed any of the six on that.

But I think, overall, we're not asking for much. Just put off the increase until we find out who's entitled to do what. And until then, we -- all we can rely on, that's all these people have to rely on is the Constitution and this Court, and we ask you to do so.

THE COURT: Thanks.

First, I'd like to compliment Mr. Krislov and Mr. Prendergast and the other attorneys here on their submissions. They were as

hires.

THE COURT: You're not asking for it to be imposed as to the post-August 23rd, 1989, hirees, or participants, correct?

MR. KRISLOV: We concede that that is a weaker claim that you, by your ruling, do not accept. How is that?

THE COURT: That means you want me to rule. Okay. I will.

Anything else?

MR. KRISLOV: Yes. This whole business of you can't get -- you know, you can still get healthcare. Too bad you can't get your doctor, too bad you can't get any of the hospitals you've been dealing with. These are hardships. These are unique hardships that everybody has been recognizing is a big problem.

If you can't deal with the doctor that you have been dealing with for years, if you must go to a lesser, far distant place -- people in Peoria don't necessarily go to Northwestern, but people in the city go overwhelmingly, it may be 80 percent of the patient treatment or more, I don't know, goes to the five or six institutions that I named who are all

well written as anything I've ever seen as a judge, and certainly better than I've ever written, and they helped me focus on what the issues were.

The Court is guided by the law with regard to issuance of injunctions. And for the sake of the folks here who do not know the law as well as the attorneys, let me just spend a few moments explaining to you what it is and what I'm guided by.

An injunction is called an equitable remedy. It's an order by which a party is directed to perform some act or is ordered to refrain from doing some act, which is what Mr. Krislov is asking for here.

A request for a preliminary injunction is called an interlocutory remedy. That means that they're intended to provide immediate but durational, that means not forever, relief prior to the final adjudication of a controversy on the merits.

And by definition, that means I can't, by the giving of the issuance of a preliminary injunction, make a ruling on the merits. And as Mr. Krislov just suggested, I have not -- with regard to the motion to dismiss, I do not know, have not yet decided, have not yet discussed with the attorneys

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1 what the nature and extent of the folks' interest is  
2 under the '83 and '85 amendments to the Pension Code.

3 An interlocutory injunction is also  
4 called an extraordinary remedy by our Supreme Court.  
5 And that means that I shouldn't grant one unless I've  
6 taken great care to assure that it is needed under  
7 the circumstances.

8 What the circumstances are is  
9 dependent on every case, and being equitable in  
10 nature, that means not being guided by law, but being  
11 guided by aspects of equity. They're addressed to  
12 the sound discretion of the trial court. In this  
13 case, that's me.

14 The elements which must be shown by  
15 the movant for the issuance of a preliminary  
16 injunction and calling upon this Court's discretion  
17 to issue an extraordinary order is, first, there must  
18 be an ascertainable claim for relief by the  
19 plaintiffs.

20 Secondly, there has to be showing of a  
21 likelihood of success on the merits, without ruling  
22 on those merits, or, as I said just a few moments  
23 ago, at least a fair question that the plaintiff will  
24 succeed.

1 As I've ruled in my December 3rd  
2 opinion, I find that the participants, post-August  
3 23rd, 1989, that means the hirees thereafter, do not  
4 have an ascertainable claim for relief.

5 And the reason for that, so you know,  
6 is, as I said before, alluded to, I'm guided by the  
7 law. And the law says that, yes, pension benefits  
8 shall not be diminished or impaired.

9 But it doesn't grant pension benefits.  
10 To that, I have to look at the core body, the body  
11 which issued that. In this case, it's the  
12 legislature. And for the post-August 23rd, 1989  
13 hirees, whatever protections they were given,  
14 whatever benefits they were given were a matter of  
15 statute.

16 As I said before, if it were me, it  
17 would be different. But I'm not a super-legislature.  
18 I've been told, every court has been told, I cannot  
19 impose my will on the legislature. And there's a  
20 reason for that in democratic theory. They're your  
21 representatives. They're the ones who decide what  
22 the law is going to be; I decide whether they did it  
23 right or not, and I look at it. As I said before, I  
24 use statutory construction, if needed. But the first

1 Third, there has to be irreparable  
2 harm to the plaintiff if -- or in this case, a class  
3 of plaintiffs -- if the injunction is not given.

4 Fourth, there has to be an inadequate  
5 remedy at law. And that means, according to the law,  
6 as our Supreme Court has said, that means that money  
7 damages will not suffice if it's not given.

8 Lastly, or -- not lastly, but the  
9 courts say that if it comes down to it, I should  
10 balance the equities, the hardships to both sides. I  
11 should consider that in terms of giving or not giving  
12 the injunctive relief.

13 And, also, some cases have said that I  
14 should consider the public interest, and the harm to  
15 the public, and public policy.

16 As you've heard, and I compliment you  
17 all for, (a), being here. Obviously, you're  
18 concerned, and it's a concerning matter. I've  
19 noticed your attention to it.

20 With regard to the first element, the  
21 ascertainable claim for relief, the plaintiffs must  
22 clearly establish an ascertainable right and need of  
23 protection, and the failure to do so obviates the  
24 need to go further.

1 rule is, I just look at the ordinary words that are  
2 in the statute.

3 And in the statutes in '89 and  
4 thereafter, it was clearly limited, the benefits that  
5 were given to the folks post- -- who were hired  
6 post-August 23rd, 1989. So that's the core grant.

7 And Mr. Krislov's argument  
8 notwithstanding, the Constitution protects that which  
9 was granted. It doesn't add to it. It doesn't  
10 magically create a right that was not given. The  
11 problem therein lies with the legislature if you have  
12 a beef, not with anybody else. And that was a long  
13 time ago.

14 So, clearly, as to the -- it seems to  
15 me, as to the post-August 23rd, 1989 group, the  
16 fourth subclass, they do not have an ascertainable  
17 claim for relief, and I need go no further.

18 With regard to the prior groups, the  
19 1983 and '85 amendments were in effect when the  
20 Korshak subclass and the Windows subclass and  
21 subclass 3 entered into the Funds' retirement  
22 systems, as I stated.

23 Although Mr. Krislov and I argued  
24 about the issue, I do find, of course, that those who

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1 were participants prior to August 23rd, 1989, do  
2 have an ascertainable claim for relief. And that's  
3 what I said earlier in my December 3rd opinion.

4 What that claim for relief is, as I  
5 mentioned earlier, and Mr. Krislov mentioned, is  
6 going to be subject to further discussion between the  
7 parties, arguments, etcetera. But as I have alluded  
8 to, I use rules of statutory construction, and I  
9 cannot write into a statute that which is not there,  
10 even if I want to.

11 And I look at the 1983 and the 1985  
12 statutes, and much as Mr. Prendergast has as argued,  
13 they are limited. They are limited by their terms.  
14 And the ascertainable claim for relief for those  
15 three subclasses is, thus, limited thereby.

16 Therefore, they do have an  
17 ascertainable claim for relief, but I have to go on  
18 to see their likelihood of success on the merits as  
19 to that which is being asked of me today and is being  
20 asked of me in the complaint. That's the second  
21 element, as you may recall I said to you.

22 Much as Mr. Prendergast has argued,  
23 and I accept his argument, those retirees are subject  
24 to the limitations of the statute that gave them the

benefit, the '83 and the '85 statute, which is  
clearly less than that which is being given by the  
2016 enactment, or appropriation.

Therefore, I do not find that there  
would be a likelihood of success on the merits with  
regard to that which is before me today.

I might say to you all who are  
seriously interested in this, my ruling today is not  
with prejudice. If there is some other evidence that  
comes before me, I'm open to that. But I'm trying to  
give you the analysis that I have gone through and my  
thinking on the subject so you know that I cannot  
give you that beyond which the legislature has given  
you, as much as I would like to. And I would. And I  
did in my opinion of December 3rd, but only to the  
extent that the legislature gave it to you.

With regard to the third element,  
irreparable harm, in this case, I find that there is  
some harm that would occur to the retirees. I find  
that that element mitigates in favor of the  
plaintiffs. This is inextricably bound with the  
hardship that would befall the retirees. And let me  
talk about that just a little bit.

I find, as a matter of anecdotal

1 evidence, based on myself, that the older you get,  
2 the less you like change. And as my father used to  
3 say, "these newfangled ways, I just don't understand  
4 them, and they're confusing." And I find that there  
5 is a hardship to retirees, the elderly folks, to  
6 change the way things are, and to go out and look at  
7 this mysterious ACA, and have to go into the  
8 marketplace when it's already and always been given  
9 to you. That's the problem with our paternal  
10 structure of government as it's been in the past.

11 I understand things have changed for  
12 all sorts of reasons, a lot of which have been  
13 alluded to today. And I just wanted to say that I'm  
14 sensitive to that, and I do understand that it's a  
15 problem for folks to go out into the marketplace and  
16 start looking and thinking, instead of just taking it  
17 as it's been given to them all these years. I  
18 understand that, and I've taken that into  
19 consideration.

20 But it doesn't throw the balance off  
21 or replace the lack of a factor, in this case, the  
22 claim for relief, which is limited by that which was  
23 granted by the legislature, and the lack of a  
24 likelihood of success on the merits for that reason.

1 The fourth element is the inadequate  
2 remedy at law. There is case law that's been cited  
3 to me that Illinois law is clear that a preliminary  
4 injunction, which is being requested here, cannot be  
5 premised upon a temporary loss of benefits or income.

6 The case law is cited in the parties'  
7 submissions to me, especially the City's, and I have  
8 read it, and it's actually true, wherein Knott versus  
9 Illinois Racing Board, the court said the loss of  
10 income for a brief period does not constitute  
11 irreparable harm.

12 And wherein Kurle versus Evangelical  
13 Hospital Association -- by the way, the citation for  
14 the first case is 198 Ill.App.3d 364 at page 368,  
15 and in Kurle, the citation is 89 Ill.App.3d 45 at  
16 page 53, which vacated an order granting a  
17 preliminary injunction as is being asked of me today,  
18 because the relief requested sought back pay and  
19 benefits, which is a purely economic benefit, and the  
20 plaintiffs had an adequate remedy at law for the back  
21 pay and the back benefits, which is true here.

22 Everything Mr. Krislov said is  
23 absolutely accurate. It's just a few months, maybe.  
24 And I hope everything Mr. Prendergast said is

1 accurate, that there's a chance that this is going to  
2 be resolved without going much further and causing  
3 more heartache to the retirees.

4 But I have to follow the law,  
5 regardless of my heart, which I've been accused of  
6 leading with too much. But I have to follow the law.  
7 And when there's a remedy at law, as a matter of law,  
8 an adequate remedy at law will prevent me from  
9 issuing an injunction. In fact, injunctive relief is  
10 proper when money damages are adequate to remedy the  
11 wrong, absent a showing that it would be impossible.  
12 And there has been no showing here. There hasn't  
13 even been an argument about that here.

14 So three of the elements have not been  
15 proven to me by a satisfactory burden by the  
16 plaintiffs, the ascertainable claim of relief, past  
17 that which was given by the '83 and '85 statutes.  
18 Therefore, the likelihood of success on the merits  
19 and the inadequate remedy at law, that's enough for  
20 me to deny this, with my sorrow, especially on  
21 Christmas, as we're approaching that.

22 I have considered the balance of the  
23 equities. I have considered the hardships. And as I  
24 mentioned, I'm aware of the hardships that befall the

1 right, or wrong -- but I truly believe the City is  
2 implicated in this, and so that they are a proper  
3 party with regard to the '83 and '85. That's  
4 something that will be subject to review by the  
5 City's motion to reconsider, which I will review and  
6 keep an open mind on.

7 But that's my ruling as of today. So  
8 for all those reasons, and with great respect for the  
9 job that's been done by Mr. Krislov and  
10 Mr. Prendergast and the attorneys for the Funds, the  
11 motion for the issuance of a preliminary injunction  
12 is denied.

13 What's next?

14 MR. KRISLOV: We need to do some  
15 scheduling. And one of them -- at the moment, our  
16 response to their to motion to clarify is due  
17 tomorrow --

18 THE COURT: Ladies and gentlemen, I  
19 know that you're done and you want to go. But I need  
20 for you to still be quiet so that I can listen to  
21 Mr. Krislov, your attorney, about what it is he wants  
22 to do to help protect your rights. I promise it's  
23 going to be over in no more than three minutes. Just  
24 give me the three minutes, please.

1 elderly. And by the elderly, I mean anyone over 30.  
2 (Laughter.)

3 THE COURT: But I am duty-bound by my  
4 oath to follow the law, and that's the way I see it.  
5 Although I understand intellectually and viscerally,  
6 Mr. Krislov and I disagree on that. That's the way I  
7 see it for the reasons I've stated.

8 Now, does this apply to the City, or  
9 is it true, as Mr. Prendergast said, and as my review  
10 of the record shows, Mr. Krislov conceded that he  
11 wasn't going against the City, just against the  
12 Funds.

13 MR. KRISLOV: I disagree with your  
14 characterization, but...

15 THE COURT: You're entitled, and  
16 you've made a record about it, and it's clear.

17 But the City is implicated in this.  
18 I've ruled in my prior decision that the City was  
19 used as an instrumentality of the Funds, and vice  
20 versa, and, actually, the Funds of the City. And the  
21 City agreed to tax levies for these '83 and '85  
22 amendments.

23 And as Mr. Prendergast disagrees with  
24 me, so does Mr. Krislov -- I must be doing something

1 Go ahead.

2 MR. KRISLOV: We're due tomorrow to  
3 respond to their motion to clarify.

4 I would like, and I don't think  
5 Mr. Prendergast has a problem with this, if we could  
6 deal with that on the same schedule as our amended  
7 complaint, which is due in January, January 11th.

8 So if we could --

9 THE COURT: How would you like to  
10 modify the briefing schedule, Clint?

11 MR. KRISLOV: What we would do is, we  
12 would file our brief and our amended complaint, and  
13 we'll probably -- if our amended complaint is  
14 permitted to incorporate all the things which we're  
15 allowed to replead, we can deal with all of that in  
16 our January 11th filing.

17 THE COURT: Well, one side of me says  
18 if you're going to file an amended complaint, this is  
19 all moot. Another side of me says that we should  
20 keep things on parallel tracks but not together.

21 Because I think it's important for me  
22 to file a written memorandum opinion and order with  
23 regard to the City's motion for clarification.

24 So let's -- I'm going to separate

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1 that, and that's my ruling. Just tell me when you  
2 would like to file your response.

3 MR. KRISLOV: I guess on the motion to  
4 clarify, we'd probably like to file on the same day  
5 as we file the amended complaint.

6 THE COURT: Have I given you leave to  
7 file the amended complaint?

8 MR. KRISLOV: Yes.

9 THE COURT: What is that date? What  
10 day is that?

11 MR. KRISLOV: January 11th.

12 THE COURT: Any objection to the  
13 motion to extend time to file the response to  
14 January 11th?

15 MR. PRENDERGAST: No objection.

16 THE COURT: When would you like to  
17 file your reply?

18 MR. PRENDERGAST: 14 days thereafter.

19 MR. KRISLOV: I think that's already  
20 set, actually.

21 THE COURT: But aren't we pushing  
22 things forward? I don't have the briefing schedule.

23 MR. KRISLOV: Their response was --

24 THE COURT: Oh, I do have --

1 next. If we're going to --

2 THE COURT: Well, that's with the  
3 motion for clarification. So I'll throw it in the  
4 book on then, and show up so that Deborah can ask you  
5 about your schedules, and choose a ruling date that's  
6 commensurate with your personal and professional  
7 schedule with regard to your motion to amend. And I  
8 said it would be due by 1-11.

9 Do you wish to change that?

10 MR. KRISLOV: No. We would still file  
11 that on January 11th.

12 THE COURT: Okay. And they're to  
13 answer or otherwise plead by 2-16, which is the date  
14 I gave you. Is that still all right?

15 MR. KRISLOV: Could they answer the  
16 Count 1 that's been upheld?

17 THE COURT: No. No, they can't. No.  
18 Let me explain to you why.

19 No. They're going to answer or  
20 otherwise respond, per our schedule, by 2-16. That's  
21 what I gave the last time. That was without  
22 objection then. And then we have a clerk's -- a  
23 status date before me of 2-24, and that still sounds  
24 good to me. Is that okay for you?

1 MR. KRISLOV: -- February 16th, I  
2 think.

3 THE COURT: No, I've got it here.

4 They were asking -- you were going to  
5 file your response tomorrow. That pushes things up.  
6 Now you want it to the 11th. I'm going to  
7 commensurately give a further extension to them to  
8 file a response, a reply, since their reply was due  
9 on the 8th, and I'm not going to have them file it  
10 before your response is due.

11 MR. KRISLOV: Obviously.

12 THE COURT: Okay. We're on the same  
13 page. You want 14 days, Richard?

14 MR. PRENDERGAST: 14 days.

15 THE COURT: I'm going to give you a  
16 little bit more, because 14 days brings us the  
17 25th, and on that day, that's -- my clerk's status  
18 days are on Monday. So I'm going to give you until  
19 January 29th to file your reply, and the clerk  
20 status day will now be on February 1st at 9:00 a.m.

21 Does that meet your with your  
22 schedule, Clint?

23 MR. KRISLOV: I think that's no  
24 problem. I think our only thinking is what happens

1 MR. KRISLOV: What I don't understand,  
2 Your Honor, is why they don't have to answer the  
3 count that's been upheld.

4 THE COURT: Because it's going to be  
5 superseded by your amended complaint. It's going to  
6 be mooted out. It's going to be nonexistent.

7 That's why.

8 MR. KRISLOV: I understand the Court's  
9 ruling.

10 THE COURT: Okay. That's as much of  
11 an, "oh, I get it," from you I get.

12 MR. KRISLOV: Well, no, I get it. But  
13 usually if a count's been upheld, then usually you  
14 proceed to answer the count that's been upheld.

15 THE COURT: No, there is no "usual"  
16 about that, and certainly not in front of me. It's a  
17 complaint, which I'll take as a whole. They're going  
18 to answer or otherwise plead.

19 Who knows what you're going to do with  
20 regard to the first count and whether you're going to  
21 amend it or modify it. You're entitled to. I don't  
22 want to prevent you from doing that.

23 So we'll take every step as it comes,  
24 and we'll give everybody an opportunity to be heard.

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1 MR. KRISLOV: Okay. So we file our  
2 amended complaint and our response to their motion to  
3 clarify on January 11th.

4 THE COURT: Yes, sir.

5 MR. KRISLOV: They then file their  
6 response to the reply on the clarification on  
7 January 29th.

8 THE COURT: Correct.

9 MR. KRISLOV: And they have until  
10 February 16th in which to answer or otherwise plead  
11 with respect to the amended complaint.

12 THE COURT: Correct.

13 MR. KRISLOV: There is a clerk status,  
14 I guess, on February 1, with respect to the clarify?

15 THE COURT: Correct. And there is a  
16 -- and if you tell Deborah when you come on  
17 February 1st, tell her there's a status date on the  
18 new, amended complaint of 2-24-16 at 9:30.

19 Are we all on the same page,  
20 schedule-wise?

21 MR. KRISLOV: We are.

22 MR. KENNEDY: The 2-24 had been on our  
23 schedule as a ruling date on the reconsideration, but  
24 now it's just --

1 everything that's occurred today, and you can go  
2 home, and all these people can go home. And we have  
3 a transcript anyway.

4 MR. PRENDERGAST: That will be fine,  
5 Judge.

6 THE COURT: I will not be here next  
7 week, so I can't sign off on anything, but Judge  
8 Allen will be around. And I wish you well.

9 Happy holidays to everybody.  
10 (Proceedings adjourned at 3:25 p.m.,  
11 December 23, 2015.)

1 THE COURT: Well, it's not now.

2 MR. KENNEDY: I understand.

3 THE COURT: Things have been pushed  
4 up. Who knows? If I can get to it, believe me, I  
5 will. But I can't guarantee that, so I don't want to  
6 lie to you about anything.

7 MR. PRENDERGAST: Should we put that  
8 in the order, Your Honor?

9 THE COURT: Put in the "I don't want  
10 to lie to you about anything" in the order.

11 MR. KENNEDY: Strike the --

12 THE COURT: Yes, please strike the --  
13 which date are we striking?

14 MR. KENNEDY: The ruling date, which  
15 is not --

16 THE COURT: Yeah, 2-24 is not a ruling  
17 date. You're going to have to fill out another  
18 briefing schedule, a modified briefing schedule as to  
19 the motions to clarify.

20 Is anyone going to be around tomorrow?  
21 I will. Is anyone going to be around?

22 MR. KRISLOV: I will.

23 THE COURT: So maybe you can put all  
24 of these -- get a confirming order in writing for

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 proceedings 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 proceedings.

12 IN WITNESS WHEREOF, I hereunto set my  
13 hand as Certified Shorthand Reporter in and for the  
14 State of Illinois on January 6, 2016.

15  
16 *Jerri Estelle*



17  
18 Jerri Estelle, CSR, RPR  
19 License Number: 084-003284

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	5 90:11 91:4 141:24 142:13 147:7 152:20 159:6 214:2				

# EXHIBIT 23

**EXHIBIT 1**

	A	B	C	D	E	F
1	Last Name	First Name	Retired	Years of Service/ Hire Date	Category	Fund
2	Abbey	Leon	11/26/2008	3/26/1990	CPD	Police
3	Alongi	Rosemarie	1/20/1991	9/29/1952	CPD	Police
4	Anderson	Donald G.	2/9/1999	8/15/1966	CPD	Police
5	Anderson	Michelle	11/15/2010	1/3/1977	CPD	Police
6	Andler	Robert	8/16/2001	4/3/1972	CPD	Police
7	Andruzzi	Joseph J.	3/2/2002	1/5/1969	CPD	Police
8	Angelo	Thomas	3/15/2001	6/6/1966	CPD	Police
9	Antol	Robert P.	11/27/2009	5/18/1981	CPD	Police
10	Augustine	Lawrence	3/1/2004	6/10/1968	CPD	Police
11	Azara	John T.	4/15/2005	11/3/1969	CPD	Police
12	Azzaro	Donald J.	1/15/2001	6/15/1970	CPD	Police
13	Baker	Madelyn	00/1976	00/00/1948	CPD	Police
14	Banahan	Dennis M.	4/1/1999	3/3/1969	CPD	Police
15	Barreto	Nelson	02/0/2003	31 yrs.	CPD	Police
16	Battistella	Irene C.	03/00/2009	11/00/1987	Municipal	Municipal
17	Battistella	John	2/14/1997	7/1/1963	CPD	Police
18	Bellavia	Ronald J.	2/15/2004	4/3/1972	CPD	Police
19	Berman	Barry	06/00/2011	04/00/1973	Municipal	Municipal
20	Blake	Marion	7/1/1998	8/00/1965	Municipal	Municipal
21	Blanc	Curtis E.	4/15/2004	4/3/1972	CPD	Police
22	Blanc	Karen A.	8/2/2011	4/14/1989	CPD	Police
23	Bobko	John R.	3/15/2002	10/20/1969	CPD	Police
24	Bolda	Dennis J.	3/15/1998	3/4/1968	CPD	Police
25	Bonk	James R.	11/15/2005	11/1/1977	CPD	Police
26	Bonke	Fred	4/24/2000	3/1/1965	CPD	Police
27	Borski	Anthony E.	7/1/1992	2/26/1962	CPD	Police
28	Botwinski	JoAnne	5/16/2007	8/11/1986	CPD	Police
29	Boyle	Leslie	2/15/2005	1/3/1977	CPD	Police
30	Breska	Victor J.	3/15/2000	12/11/1968	CPD	Police
31	Brockman	Ellwood W.	1/6/2000	6/14/1971	CPD	Police
32	Brosnan	Patrick	7/15/2000	6/8/1968	CPD	Police
33	Cagney	Edward C.	3/3/2000	1/20/1969	CPD	Police
34	Caliendo	June G.	4/15/2001	2/27/1978	CPD	Police
35	Camden	Patrick T.	11/1/1998	9/14/1970	CPD	Police
36	Campion	William E.	10/15/2003	2/19/1973	CPD	Police
37	Canchola	Donna J.	7/31/2007	4/18/1977	Municipal	Municipal
38	Canchola	Robert A.	6/30/2010	4/1/1985	Municipal	Municipal
39	Capesius	Michael C.	4/15/2002	1/5/1967	CPD	Police
40	Carlo	Patricia	Dec'd 1987	5/8/1905	CPD	Police
41	Carr	Elaine	05/00/1989	04/00/1961	CPD	Police

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## EXHIBIT 1

	A	B	C	D	E	F
1	Last Name	First Name	Retired	Years of Service/ Hire Date	Category	Fund
42	Carroll	Paul B.	5/1/1998	7/3/1967	CPD	Police
43	Cervenka	Richard G.	4/15/2004	2/19/1973	CPD	Police
44	Chengary	Alan	2/2/2002	12/00/1968	CPD	Police
45	Clancy	Patrick M.	5/16/2001	12/9/1968	CPD	Police
46	Clark	Jeanne	7/4/2001	5/00/1975	CPD	Police
47	Clarke	James R.	3/15/2005	3/2/1970	CPD	Police
48	Clarke	Patricia S.	2/15/2004	11/29/1982	CPD	Police
49	Clepp	Kathy	Not Yet Retired	12/16/1985	CPD	Police
50	Clisham Sr.	John E.	9/16/1995	1/24/1966	CPD	Police
51	Cole	Jon	8/2/1996	7/22/1968	CPD	Police
52	Conlisk III	James B.	11/15/2009	3/2/1970	CPD	Police
53	Conrad	Susan M.	5/3/2012	7/10/1995	CPD	Police
54	Conrad	Walter A.	4/3/2001	11/8/1965	CPD	Police
55	Considine	Joseph E.	5/15/1995	2/26/1962	CPD	Police
56	Conway	Carol J.	12/31/2000	11/17/1986	CPD	Police
57	Conwell	Hugh	6/8/1998	11/22/1972	CPD	Police
58	Corcoran	John E.	3/15/2002	7/8/1968	CPD	Police
59	Cowell	Raymond M.	7/5/2000	6/4/1973	CPD	Police
60	Coyne	Michael J.	8/4/1994	3/12/1962	CPD	Police
61	Cronk	Virigina M.	4/16/1999	2/19/1974	CPD	Police
62	Cunningham	James J.	1/20/1989	00/00/1955	CPD	Police
63	Dalton	Tom	12/1/2000	2/16/1977	CFD	Fireman's
64	Danihel	William	6/12/1988	3/16/1957	CPD	Police
65	Danzl	Joseph M.	3/15/2000	6/13/1966	CPD	Police
66	Davis	William B.	4/15/2005	12/11/1978	CPD	Police
67	DeCola	Salvatore L.	3/15/1999	3/4/1968	CPD	Police
68	DeFrancisco	Peter J.	1/3/1998	6/20/1966	CPD	Police
69	DeFranza	Donald	1/3/998	5/31/1965	CPD	Police
70	DeGiulio	William	10/2/2002	9/27/1965	CPD	Police
71	DeGryse	James J.	5/16/1992	12/16/1959	CPD	Police
72	DeVivo	Rosalie	Decd 12/31/1989	08/00/1962	CPD	Police
73	Dicks	Kenneth	4/4/1992	6/22/1964	CPD	Police
74	Dickson	Robert M.	4/15/1998	3/2/1970	CPD	Police
75	Dorich	Gerald	3/15/2002	3/2/1970	CPD	Police
76	Dragon	Dennis	7/16/1996	6/6/1966	CPD	Police
77	Drnek	Donald	12/31/2001	7/00/1957	CPD	Police
78	Droba	Gerard	1/16/2006	10/18/1976	CPD	Police
79	Drummond	Richard L.	4/15/1992	6/5/1961	CPD	Police
80	Drust	Wayne W.	4/15/2001	4/3/1972	CPD	Police
81	Dubielak	Ronald	2/16/2004	3/19/1973	CPD	Police

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## EXHIBIT 1

	A	B	C	D	E	F
1	Last Name	First Name	Retired	Years of Service/ Hire Date	Category	Fund
82	Dunn	Terrence L.	11/30/2008	6/15/1970	CPD	Police
83	Dunn Sr.	Lawrence J.	4/15/2004	3/19/1973	CPD	Police
84	Durbak	Andres	8/15/2000	11/21/1972	CPD	Police
85	Dyckman	Barbara	4/15/2008	10/18/1976	CPD	Police
86	Dyckman	Louis	6/16/2000	2/5/1968	CPD	Police
87	Dziedzic	Dennis	2/16/2006	10/22/1973	CPD	Police
88	Egan	William G.	10/16/2004	7/26/1971	CPD	Police
89	Eichler	Thomas	12/9/2003	12/9/1968	CPD	Police
90	Eldridge	James	5/23/2007	10/23/1972	CPD	Police
91	Engelsman	Richard	1/5/2005	3/19/1973	CPD	Police
92	Eshoo	John C.	1/24/1999	1/24/1968	CPD	Police
93	Evanish	Francis	4/16/1996	5/16/1956	CPD	Police
94	Everett	Daniel	9/15/2006	1/3/1977	CPD	Police
95	Faragoi	Thomas V.	4/1/1994	1/30/1961	CPD	Police
96	Farrer	Gerald L.	6/12/1995	2/19/1962	CPD	Police
97	Faust	Robert	00/00/1994	6/5/1961	CPD	Police
98	Ferriter	John T.	8/15/2006	11/20/1972	CPD	Police
99	Ficke	Thomas R.	4/15/2005	2/5/1968	CPD	Police
100	Fields	Robert M.	6/30/1986	1/23/1961	CPD	Police
101	Finlayson	Donna M.	4/15/1999	3/19/1973	CPD	Police
102	Finlayson	James R.	7/1/2002	6/14/1971	CPD	Police
103	Flanagan, Jr.	Thomas J.	8/14/1993	6/14/1965	CPD	Police
104	Flynn	Michael C.	7/8/2007	10/23/1972	CPD	Police
105	Foley	Janice	1/1/2004	12/1/1970	CPD	Police
106	Foran	John K.	2/26/1979	2/18/1946	CPD	Police
107	Frank	Albert M.	11/15/2001	3/31/1969	CPD	Police
108	Frederick	Arthur G.	4/1/1996	00/00/1976	CPD	Police
109	Frost	Barbara C.	4/15/2002	2/19/1974	CPD	Police
110	Fruin	James E.	7/10/1991	2/26/1962	CPD	Police
111	Glowacki	Christine	7/15/2011	7/19/1991	CPD	Police
112	Glynn-Johnson	Mary	6/16/2005	6/14/1982	CPD	Police
113	Gneda	Diane	Dec'd. 1979		CPD	Police
114	Gogliotti	Antoinette	10/16/2006	8/13/1986	CPD	Police
115	Golczak	Anthony	8/15/2010	9/29/1980	CPD	Police
116	Golon	William J.	7/15/2006	10/18/1976	CPD	Police
117	Golosinski	Casimer L.	9/16/1992	8/13/1962	CPD	Police
118	Gorski	Steven H.	1/15/2004	3/23/1970	CPD	Police
119	Gottfried	Alan J.	1/6/1999	6/13/1966	CPD	Police
120	Gould	David R.	7/15/2004	6/1/1964	CPD	Police
121	Gray	Curtis	4/15/2001	11/4/1963	CPD	Police

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	A	B	C	D	E	F
1	Last Name	First Name	Retired	Years of Service/ Hire Date	Category	Fund
122	Green	Mary	00/00/2001	00/00/1978	CPD	Police
123	Gunnell	Donald L.	09/00/1984	08/00/1955	CPD	Police
124	Gutierrez	George	11/15/2012	2/11/1980	CPD	Police
125	Gvozdénovich	Anthony	2/15/2008	2/1/1982	CPD	Police
126	Hagele	Marvin	04/00/2000	2/16/1969	CFD	Fireman's
127	Hammermeister	JoAnne Connelly	8/16/2010	6/14/1982	CPD	Police
128	Hammermeister	Raymond F.	2/16/2012	9/29/1980	CPD	Police
129	Harper	Juana J.	8/16/2002	6/14/1982	CPD	Police
130	Harrington	Patrick J.	2/2/2001	6/15/1970	CPD	Police
131	Hartford	Joseph B.	1/5/2001	9/14/1970	CPD	Police
132	Hatzel	Joseph	11/16/2009	2/12/1980	CPD	Police
133	Healy	John	3/1/1993	2/00/1966	CPD	Police
134	Healy	Lawrence	4/4/1994	11/4/1963	CPD	Police
135	Heidemann	Fred G.	3/6/1986	3/1/1959	CPD	Police
136	Heyden	Fran H.	00/00/1994	00/00/1971	CPD	Police
137	Hopkins	James T.	2/24/2001	10/22/1973	CPD	Police
138	Horkavy	Gregory L.	1/31/2010	9/14/1970	CPD	Police
139	Horne	Ross	7/15/2001	7/25/1966	CFD	Fireman's
140	Hourihane	Michael	1/2/1998	4/19/1965	CPD	Police
141	Hujar	Richard A.	00/00/1997	00/00/1965	CPD	Police
142	Ippolito	Joseph C.	3/16/2006	10/25/1971	CPD	Police
143	Ippolito	Patricia	1/25/2004	12/13/1993	CPD	Police
144	Ivanjack	Anthony J.	2/22/2001	12/14/1970	CPD	Police
145	Januszyk	Donald	1/15/2003	6/15/1970	CPD	Police
146	Jazyk	Raymond	3/1/1989	2/16/1958	CPD	Police
147	Jin	Tony H.	1/4/2006	1/3/1977	CPD	Police
148	Johnson	Harold F.	04/00/1996	10/23/1972	CPD	Police
149	Julien	Patricia Lou	1/15/1999	2/19/1974	CPD	Police
150	Kann	Vivian J.	8/1/1984	00/00/1956	CPD	Police
151	Karl	Joyce L.	5/1/1998	1/1/1968	CPD	Police
152	Keane	Carole L.	Dec'd 4/6/1993	06/00/1972	CPD	Police
153	Kehoe	James G.	4/16/2004	2/19/1973	CPD	Police
154	Keller, Jr.	Frank J.	4/15/2003	12/14/1970	CPD	Police
155	Kelly	Francis	10/15/1988	1/23/1961	CPD	Police
156	Kern	George "Steve"	5/00/1995	4/11/1966	CPD	Police
157	King	Richard	11/15/2010	1/3/1977	CPD	Police
158	King	Walter	4/15/2000	11/20/1972	CPD	Police
159	Klauba	Bennet	6/28/2003	6/14/1971	CPD	Police
160	Kleidon, Jr.	Walter A.	5/19/2010	11/1/1965	CPD	Police
161	Kliner	Donald C.	8/12/1996	7/18/1966	CPD	Police

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	A	B	C	D	E	F
1	Last Name	First Name	Retired	Years of Service/ Hire Date	Category	Fund
162	Kliner	Helen	2/19/1993	2/19/1973	CPD	Police
163	Klodnicki	John H.	11/1/1992	7/16/1966	CPD	Police
164	Knight	Evelyn F.			CPD	Police
165	Kobel	Richard	6/30/2005	3/19/1973	CPD	Police
166	Kocur	Thomas M.	4/1/2000	3/00/1970	CPD	Police
167	Kopbenhoefer	Charles	9/8/1992	3/5/1962	CPD	Police
168	Kosteris	Dimitrios	5/3/2012	12/22/1986	CPD	Police
169	Kotowicz	James F.	3/4/1997	1/22/1968	CPD	Police
170	Kouchoukos	Andrew F.	7/31/1998	7/26/1971	CPD	Police
171	Kozaritz	John A.	1/15/2000	2/27/1967	CPD	Police
172	Krupowicz	Kenneth G.	2/22/2011	12/14/1970	CPD	Police
173	Kwiatkowski	Robert P.	1/1/2000	3/1/1968	CPD	Police
174	Lambros	Kathleen	4/1/1999	3/8/1976	CPD	Police
175	Lampard	Marilyn C.	9/15/2006	9/8/1986	CPD	Police
176	Leracz	Edmond	8/15/2007	11/3/1969	CPD	Police
177	Loftus	James R.	3/15/2011	1/28/1980	CPD	Police
178	Logan	Patrick	8/15/2007	6/15/1970	CPD	Police
179	Lorenz	John G.	7/15/2002	6/8/1964	CPD	Police
180	Lotito	James M.	3/00/2001	2/1/1968	CPD	Police
181	Lucchesi	James	00/00/1996	00/00/1957	CPD	Police
182	Maderak	Terry	4/1/2010	8/1/1987	CPD	Police
183	Madigan	Raymond	8/1/2009	4/3/1972	CPD	Police
184	Madsen	Theodore J.	6/15/2000	6/4/1973	CPD	Police
185	Majeske	Albert R.	00/00/1998	00/00/1966	Laborers	Laborers
186	Majeske	Carol	5/16/2001	4/13/1981	CPD	Police
187	Makowski	Karen A.	1/15/2007	12/11/1978	CPD	Police
188	Maley	Muriel M.	4/1/1984	8/2/1948	CPD	Police
189	Manning	Jennifer	3/6/2009	2/13/1989	CPD	Police
190	Maratto	Kathleen	2/15/2009	9/16/1968	CPD	Police
191	Mares	Achilles	2/15/2012	2/1/1982	CPD	Police
192	Martin	Patrick	4/15/2003	6/10/1965	CPD	Police
193	Massi	John S.	8/1/2006	6/16/1986	CPD	Police
194	McCann	Kenneth J.	6/1/1986	2/1/1958	CPD	Police
195	McCarthy	George	2/16/1999	1/24/1966	CPD	Police
196	McFadden	Robert J.	1/16/1999	10/17/1966	CPD	Police
197	McGivney	John M.	4/15/2000	3/2/19790	CPD	Police
198	McQuaid	Michael J.	1/15/2003	7/20/1970	CPD	Police
199	Midona	Barbara A.	1/15/2013	7/19/1982	CPD	Police
200	Midona, Sr.	Joseph A.	1/15/2008	9/10/1970	CPD	Police
201	Milam	Mary J.	1/15/2007	12/11/1978	CPD	Police

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	A	B	C	D	E	F
1	Last Name	First Name	Retired	Years of Service/ Hire Date	Category	Fund
202	Milazzo-Triggs	Catherine	Dec'd 5/13/2003	00/00/1966	CPD	Police
203	Miller	James	4/15/2005			
204	Miller	John F.	6/00/1990	10/9/1961	CPD	Police
205	Minich	John	3/5/2005	7/4/1966	CPD	Police
206	Mitkal	Victor	1/8/2012	10/18/1976	CPD	Police
207	Montedore	Ronald P	4/16/1998	2/19/1973	CPD	Police
208	Morgan	Charles E.	8/16/2012	7/19/1982	CPD	Police
209	Morgan, Jr.	Walter J.	8/16/1996	6/1/1966	CPD	Police
210	Morley	Christine	1/16/2006	4/26/1976	CPD	Police
211	Morse	Robert C.	1/15/1999	2/6/1966	CPD	Police
212	Mostacchio	Santo V.	3/31/2001	12/14/1970	CPD	Police
213	Mueller	Joan	4/00/1980	00/00/1955	CPD	Police
214	Munoz	Luis	4/13/2012	3/4/1985	CPD	Police
215	Murphy	Marie Irene	2/15/2002	11/00/1973	CPD	Police
216	Murray	Michael M.	10/1/1998	2/20/1973	CPD	Police
217	Nagle	Jeffery Jon	1/5/2001	6/15/1970	CPD	Police
218	Nakaguchi	Ann M.	7/30/2010	3/16/1981	CPD	Police
219	Nauer	Donald B.	4/15/1999	9/14/1970	CPD	Police
220	Nieckula	Cynthia	11/1/2008	6/8/1981	CPD	Police
221	Nork	Charles	7/19/1995	6/27/1966	CPD	Police
222	Nyhan	Thomas P.	1/5/1997	9/27/1965	CPD	Police
223	O'Connor	Margaret	00/00/1987	00/00/1949	CPD	Police
224	Ogarek	Joseph	07/00/2002	09/00/1969	CPD	Police
225	Olivieri	Edwin	10/22/1991	5/9/1966	CPD	Police
226	O'Malley	Francis	10/1/1988	00/00/1948	CPD	Police
227	Onesto	Philip	2/15/1986	9/1/1958	CPD	Police
228	O'Reilly	Bernard	3/16/1991	5/15/1956	CPD	Police
229	O'Rourke	James A.	5/7/1997	12/11/1967	CPD	Police
230	Oskielunas	Adam B.	00/00/1984	00/00/1952	CPD	Police
231	Ott	Roy J.	3/5/1996	1/2/1961	CPD	Police
232	Padar	James R.	9/1/1995	6/13/1966	CPD	Police
233	Palmer	Ronald A.	9/15/2005	6/14/1971	CPD	Police
234	Paoello	James	00/00/1999	00/00/1969	CPD	Police
235	Paoletti	Grayceanne	11/16/2008	6/23/1980	CPD	Police
236	Paoletti	James M.	11/16/2008	11/2/1970	CPD	Police
237						
238	Parizanski	Paul	1/15/2001	2/19/1962	CPD	Police
239	Patt	Corinne	00/1976	00/00/1946	CPD	Police
240	Paulnitsky	Roland	2/15/2008	3/4/1968	CPD	Police
241	Pemberton	Patrick M.	8/16/1999	8/13/1962	CPD	Police

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	A	B	C	D	E	F
1	Last Name	First Name	Retired	Years of Service/ Hire Date	Category	Fund
242	Peron	Robert J.	4/15/2004	10/22/1973	CPD	Police
243	Perovich	Vladimir	1/15/2007	9/27/1980	CPD	Police
244	Pizzo	Angeline	00/00/1988	00/00/1957		
245	Poedtke	Ronald	03/00/1988	03/00/1959	CPD	Police
246	Poholik	Peter F.	1/1/1998	04/00/1965	CPD	Police
247	Polerecky	Robert E.	1/15/2002	12/9/1968	CPD	Police
248	Pontrelli	Darlene	11/30/2000	3/16/1957	CPD	Police
249	Ptak	Theodore	2/15/2009	7/3/1967	CPD	Police
250	Quinn	Robert F.	07/00/1999	6/1/1964	CPD	Police
251	Quinn	Sylvia A.	8/15/2008	4/26/1976	CPD	Police
252	Ratledge	Robert D.	1/16/1995	3/1/1959	CPD	Police
253	Reiter	Mark	8/16/2002	3/19/1973	CPD	Police
254	Retzke	Gery	4/27/2011	3/27/1991	CPD	Police
255	Reynolds	Thomas A.	1/20/1999	8/15/1966	CPD	Police
256	Rhoden	Dawn	9/15/2006	6/14/1982	CPD	Police
257	Rhoden	Ralph	8/15/2004	6/8/1981	CPD	Police
258	Rieck	Judith	2/1/1995	5/18/1981	CPD	Police
259	Rimkus	Stanley	6/15/2008	4/4/1977	CPD	Police
260	Rini	Victor			CPD	Police
261	Riordan	Ann	4/15/2009	7/16/1973	CPD	Police
262	Rodgers	Audrey	1/10/2010	10/13/1986	CPD	Police
263	Rohloff	Richard P.	5/4/2004	2/22/1971	CPD	Police
264	Rooney Sr.	Patrick F.	6/16/2006	10/25/1971	CPD	Police
265	Roscich	Anthony M.	11/29/2000	6/20/1966	CPD	Police
266	Ross	Kenneth C.	4/15/2002	10/23/1972	CPD	Police
267	Rowan	Karen	3/20/2006	7/19/1982	CPD	Police
268	Rowan	Michael	1/15/1998	7/8/1968	CPD	Police
269	Rowan	Richard	2/16/2004	10/23/1973	CPD	Police
270	Ruback	Charles R.	5/15/2004	3/2/1970	CPD	Police
271	Rumsfeld	Alma	6/19/2009	6/16/1986	CPD	Police
272	Ryan	David	11/00/2003	11/1/1977	CPD	Police
273	Sappanos	Thomas	1/16/2008	10/18/1976	CPD	Police
274	Sarnowski	Ret. Sgt. Robert W.	5/16/1999	6/14/1971	CPD	Police
275	Sasso	Kathryn	6/1/2009	5/18/1981	CPD	Police
276	Scalise	Anthony J.	4/16/2007	11/20/1967	CPD	Police
277	Schrager	Daniel V.	6/22/1998	6/15/1970	CPD	Police
278	Schreiner	Angela M.	9/3/1996	6/27/1966	CPD	Police
279	Schultz	Marshall A.	3/16/2006	10/23/1972	CPD	Police
280	Schwab	John	6/19/2012	3/1/1982	CPD	Police
281	Schwartz	Gerald	2/1/1986	10/00/1957	CPD	Police

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## EXHIBIT 1

	A	B	C	D	E	F
1	Last Name	First Name	Retired	Years of Service/ Hire Date	Category	Fund
282	Sebastian, Jr.	Roy D.	6/16/1993	3/16/1973	CPD	Police
283	Seils	Richard C.	9/1/1990	9/1/1956	CPD	Police
284	Selke	Jerome C.	3/11/1994	2/15/1965	CPD	Police
285	Seyfert	Eugene H.	2/21/2010	4/4/1977	CPD	Police
286	Seyfert	Judith A.	2/15/2005	1/3/1977	CPD	Police
287	Shuman	Bernard	5/16/1997	3/16/1959	CPD	Police
288	Signoretti	J. Robert		10/22/1973	CPD	Police
289	Sloma	Raymond T.	4/15/1999	8/19/1966	CPD	Police
290	Smith	Charles J.	6/16/1998	3/11/1968	CPD	Police
291	Smith	Deborah K.	11/15/2001	10/18/1976	CPD	Police
292	Sobczyk	Jane	Dec'd. 1/1981	10/16/1957	CPD	Police
293	Sowinski	Ronald	8/00/1995	7/11/1966	CPD	Police
294	Specht	Robert	1/16/1999	9/14/1970	CPD	Police
295	Spedale	Dominic	6/16/1989	6/1/1956	CDP	Police
296	Spratt	Doris	Dec'd 10/10/1983	00/00/1955	CPD	Police
297	Stampnick	Raymond L.	3/15/2000	1/19/1970	CPD	Police
298	Staszak	Norbert	8/16/2003	11/14/1966	CPD	Police
299	Steinmeier	Arthur M.	9/15/1995	12/19/1966	CPD	Police
300	Strazzante	Charles M.	3/15/1998	3/3/1970	CPD	Police
301	Suess	Robert	2/15/2004	2/27/1967	CPD	Police
302	Sullivan	Michael T.	6/15/2000	6/4/1973	CPD	Police
303	Sutor	Yvonne	11/16/2007	7/18/1977	CPD	Police
304	Swiatkowski	Daniel	10/14/2002	6/4/1973	CPD	Police
305	Szparkowski	Debra	8/19/2008	8/11/1986	CPD	Police
306	Szparkowski	Gary	2/3/2005	5/23/1975	CPD	Police
307	Tapkowski	Roman	2/16/2001	10/28/1968	CPD	Police
308	Terrance	Timothy J.	5/21/1999	2/27/1978	CPD	Police
309	Thulis	John	6/7/1997	6/6/1966	CPD	Police
310	Tobuch	Lawrence J.	3/23/1993	3/12/1962	CPD	Police
311	Tolley	John F.	6/1/1993	11/4/1963	CPD	Police
312	Tomaska	Joseph A.	4/15/2002	5/30/1966	CPD	Police
313	Tracey	Robert J.	4/15/1999	12/18/1967	CPD	Police
314	Troken	Eugene B.	06/00/1998	06/00/1964	CPD	Police
315	Utz	Charles A.	10/16/2012	2/14/1989	CPD	Police
316	Utz	James J.	8/15/1999	8/12/1968	CPD	Police
317	Vitaioli	Kathleen	4/15/2007	3/9/1987	CPD	Police
318	Vitaioli	Paul	4/1/2002	7/1/1969	CPD	Police
319	Vogt	Vince	5/2/2005	3/19/1973	CPD	Police
320	Vucko	Ralph E.	04/00/2000	12/11/1967	CPD	Police
321	Wagner	Patricia M.	2/23/1986	00/00/1955	CPD	Police

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## EXHIBIT 1

	A	B	C	D	E	F
1	Last Name	First Name	Retired	Years of Service/ Hire Date	Category	Fund
322	Webb	James E.	12/31/2001	10/23/1972	CPD	Police
323	Webb	Laura M.	4/6/2002	9/29/1980	CPD	Police
324	Weber	Matthew E.	6/16/2000	6/4/1973	CPD	Police
325	Weiner	Ben	10/29/2007	8/11/1969	CPD	Police
326	Welninski	Anthony	2/15/2004	11/28/1966	CPD	Police
327	Whalen	Thomas Michael	3/15/2004	6/145/1971	CPD	Police
328	White	Glenn L.	4/15/1999	2/19/1973	CPD	Police
329	White	Ralph	4/15/2001	4/3/1972	CPD	Police
330	Wiberg	Wayne A.	2/15/2005	7/18/1966	CPD	Police
331	Winter	Joyce A.	2/7/1990	8/13/1962	CPD	Police
332	Wolanski	John	4/13/2006	3/19/1973	CPD	Police
333	Wolfe	Joseph	6/1/2001	8/2/1962	CPD	Police
334	Woody	Lorraine	Dec'd 1978	03/00/1959	CPD	Police
335	Yablong	Phil H.	2/1/1984	12/17/1947	CPD	Police
336	Young	Phillip P.	4/15/2002	2/28/1978	CPD	Police
337	Zolna	Clifford A.	4/2/2003	3/19/1973	CPD	Police
338	Zurawik	James E.	4/15/2004	4/4/1977	CPD	Police
339	Zurawski	James J.	7/5/1990	5/29/1961	CPD	Police
340						
341	<b>Total Additional Named Plaintiffs:</b>		<b>337</b>			

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# EXHIBIT 24

EXHIBIT # 21

MINUTES OF THE PROCEEDINGS  
REGULAR MEETING  
OF THE  
RETIREMENT BOARD OF THE POLICEMEN'S  
ANNUITY & BENEFIT FUND  
HELD  
THURSDAY JUNE 27, 1985

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DEFENDANT'S  
EXHIBIT  
# 19 A 973  
Blumberg No. 6114

Meeting of the Retirement Board  
of the  
Policemen's Annuity & Benefit Fund  
held

Thursday June 27, 1985

Minutes of the Proceedings

The Regular Meeting of the Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago was held Thursday June 27, 1985 at 9:30 A.M. in the Office of the Fund 221 N. LaSalle Street Room 1626 Chicago, Illinois for the consideration of applications and bills, and for other such matters as may come before the Board.

Present: Trustees Korshak, Jaskolka, Norris, McDonough, Settles, Ewert.

Absent: Trustees Geary, Trautner, Partee.

Presiding: President Korshak.

It was moved by Trustee Jaskolka and seconded by Trustee Settles that the Board approve the minutes of the Regular Meeting held May 23, 1985 and the minutes of the Finance Meeting held June 25, 1985.

Roll Call-For: Korshak, Jaskolka, Norris, McDonough, Settles, Ewert.6.  
Against: 0. Absent: 3.

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MISCELLANEOUS

CITY OF CHICAGO MEDICAL CARE  
PLAN FOR ANNUITANTS

The City of Chicago developed a Medical Care Plan for Annuitants that provides broader benefit coverage for annuitants. In order to provide this health benefit plan it will be necessary that the Board appoint the City of Chicago to be the administrator of the plan. This plan and appointment if adopted by the Board would be in effect for a period of two years beginning September 1, 1985.

It was moved by Trustee McDonough and seconded by Trustee Settles that the Board appoint the City of Chicago administrator of the Medical Care Plan for Annuitants.

Roll Call-For: Korshak, Jaskolka, Norris, McDonough, Settles, Ewert.6.  
Against: 0. Absent: 3.

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*adopted 7/21/85*

6-0

Resolution

The Policemen's Annuity and Benefit Fund hereby adopts the City of Chicago Medical Care Plan for Annuitants as its health benefit plan for annuitants. Further, the Board appoints the City of Chicago to be administrator of said plan. This plan and appointment shall be in effect for a period of two years beginning September 1, 1985.

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# EXHIBIT 25

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H:\Korshak FOR the year 2013\Rate Changes for 2016 w comparison to prior years. .xlsx\Sheet1											
1/13/2016 10:07											
fund	dept	line item	description	Mayor's 2016 Recommendation	2015 actual	2015 appropriation	2014 Expenditure	Mayor's 2014 Recommendation	2013 Revised	2013 Appropriation	2012 Expenditures
0100 Corporate Fund	099 Finance General	52	Costs of Claims and Administration for Hospital and Medical Care to Eligible Annuitants and Their Eligible Dependents	\$ 26,511,716	\$ 51,164,241	\$ 51,164,241	\$ 64,765,020	\$ 69,895,335	\$ 82,139,822	\$ 82,139,822	\$ 77,249,262
0200 Water Fund	099 Finance General	52	"	\$ 1,618,773	\$ 3,048,231	\$ 3,048,231	\$ 4,158,052	\$ 4,158,052	\$ 5,185,936	\$ 5,185,936	\$ 5,794,524
0300 Vehicle Tax fund	099 Finance General	52	"	\$ 1,121,672	\$ 2,253,226	\$ 2,253,226	\$ 3,237,788	\$ 3,237,788	\$ 3,819,110	\$ 3,819,110	\$ 3,761,151
0314 Sewer Fund	099 Finance General	52	"	\$ 512,668	\$ 1,008,128	\$ 1,008,128	\$ 1,349,767	\$ 1,349,767	\$ 1,693,015	\$ 1,693,015	\$ 2,021,619
0346 Library Fund	099 Finance General	52	"	\$ 674,207	\$ 1,303,587	\$ 1,303,587	\$ 1,804,048	\$ 1,804,048	\$ 2,535,729	\$ 2,535,729	\$ 3,032,428
0355 Special Events & Mun.Hotel Operators Occ.Tax Fund	099 Finance General	52	"	\$ 76,217	\$ 152,123	\$ 152,123	\$ 199,609	\$ 199,609	\$ 202,748	\$ 202,748	\$ 235,072
0610 Chi. Midway Airport Fund	099 Finance General	52	"	\$ 355,121	\$ 662,713	\$ 662,713	\$ 840,421	\$ 840,421	\$ 1,084,771	\$ 1,084,771	\$ 1,257,635
0740 Chicago O'Hare Airport Fund	099 Finance General	52	"	\$ 1,830,536	\$ 3,320,596	\$ 3,320,596	\$ 4,255,103	\$ 4,255,103	\$ 5,665,222	\$ 5,665,222	\$ 6,288,175
	099 Finance General	52	"								
<b>Total City Annuitant Healthcare Expenditure</b>				\$ 32,700,910	\$ 62,912,845	\$ 62,912,845	\$ 80,609,808	\$ 85,740,123	\$ 102,326,353	\$ 102,326,353	\$ 99,639,866
Reduction from Prior year actual				\$ 30,211,935		\$ 17,696,963	\$ 21,716,545				
Reduction from 2013 Appropriation				\$ 69,625,443		\$ 39,413,508	\$ 21,716,545				
Relative Diminishment in Dollars				\$ 130,755,496							

# EXHIBIT 26

Underwood v City											
Chart of City Rate changes											
1/13/2016			Note: Document Totals 6 pages						PAGE 1 OF 6		
H:\Korshak FOR the year 2013\[Rate Changes for 2016 w comparison to prior years. .xlsx]Sheet1											
<b>Retiree Category</b>		<b>Medicare</b>									
<b>Status</b>		<b>Pre-8/23/1989 Retirees</b>									
		<b>"Retiree Code F"</b>									
		<b>2013 Rates</b>		<b>2014</b>		<b>2015</b>		<b>2016</b>			
<b>City PensionCode No.</b>	<b>Persons Covered</b>	<b>Medicare</b>	<b>As Charged</b>	<b>Corrected</b>	<b>2014 Rates</b>	<b>2014 Increase</b>	<b>2015 Rates</b>	<b>2016 Rates</b>	<b>Increase from prior year</b>		<b>Change in rates from 2013 to 2016</b>
		<b>Status</b>		<b>Per audit</b>		<b>from 2013net</b>	<b>M Only?</b>	<b>\$</b>	<b>%</b>		
1	Retiree	Medicare	\$ 69	\$ 64	\$ 69	7.25%	\$ 89.00	\$ 93.00	\$ 4	4%	45%
3	Retiree	NonMedicare	\$ 69	\$ 64	\$ 69	7.25%	\$ 89.00	\$ 93.00	\$ 4	4%	45%
								\$ -			
2	Retiree & Spouse	M/M	\$ 197	\$ 187	\$ 197	5.08%	\$ 237.00	\$ 245.00	\$ 8	3%	31%
4	"	M/Non	\$ 197	\$ 187	\$ 197	5.08%	\$ 237.00	\$ 245.00	\$ 8	3%	31%
10	"	NonM/M	\$ 197	\$ 187	\$ 197	5.08%	\$ 237.00	\$ 245.00	\$ 8	3%	31%
	"	BothNonMedicare	\$ 197	\$ 187	\$ 197	5.08%	\$ 237.00	\$ 245.00	\$ 8	3%	31%
								\$ -			
	Retiree & Children	Med&Children	\$ 184	\$ 172	\$ 197	12.69%	\$ 230.00	\$ 262.00	\$ 32	14%	52%
	"	Non Med & Children	\$ 184	\$ 172	\$ 197	12.69%	\$ 230.00	\$ 262.00	\$ 32	14%	52%
								\$ -			
	Retiree Spouse and Children							\$ -			
9	"	Medicare/M/C	\$ 311	\$ 295	\$ 325	9.23%	\$ 378.00	\$ 414.00	\$ 36	10%	40%
7	"	M/NonMedicare/C	\$ 311	\$ 295	\$ 325	9.23%	\$ 378.00	\$ 414.00	\$ 36	10%	40%
15	"	Non/M/C	\$ 311	\$ 295	\$ 325	9.23%	\$ 378.00	\$ 414.00	\$ 36	10%	40%
6	"	Non/Non/C	\$ 311	\$ 295	\$ 325	9.23%	\$ 378.00	\$ 414.00	\$ 36	10%	40%
								\$ -			
19	Children only	n/a					\$ 52.00	\$ 80.00	\$ 28	54%	

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Retirees 8/23/1989-7/1/2005									
"Retiree Code E"									
2013 Rates		2014		2015		2016			
As Charged	Corrected	2014 Rates	2014 Increase	2015 Rates	2016 ppo Rate	Increase from prior year		Change in rates from 2013 to 2016	
	Per audit		from 2013 net			\$	%		
\$ 69	\$ 64	\$ 110	71.88%	\$ 183.00	\$ 238.00	\$ 55	30%	272%	
\$ 318	\$ 279	\$ 454	62.72%	\$ 629.00	\$ 876.00	\$ 247	39%	214%	
						\$ -			
\$ 197	\$ 187	\$ 277	48.13%	\$ 421.00	\$ 529.00	\$ 108	26%	183%	
\$ 476	\$ 433	\$ 651	50.35%	\$ 897.00	\$ 1,197.00	\$ 300	33%	176%	
\$ 46	\$ 403	\$ 621	54.09%	\$ 867.00	\$ 1,167.00	\$ 300	35%	190%	
\$ 157	\$ 636	\$ 982	54.40%	\$ 1,326.00	\$ 1,812.00	\$ 486	37%	185%	
						\$ -			
\$ 172	\$ 172	\$ 277	61.05%	\$ 411.00	\$ 562.00	\$ 151	37%	227%	
\$ 376	\$ 376	\$ 608	61.70%	\$ 840.00	\$ 1,177.00	\$ 337	40%	213%	
						\$ -			
						\$ -			
\$ 311	\$ 295	\$ 444	50.51%	\$ 649.00	\$ 853.00	\$ 204	31%	189%	
\$ 581	\$ 529	\$ 805	52.17%	\$ 1,108.00	\$ 1,498.00	\$ 390	35%	183%	
\$ 551	\$ 499	\$ 775	55.31%	\$ 1,078.00	\$ 1,468.00	\$ 390	36%	194%	
\$ 820	\$ 733	\$ 1,136	54.98%	\$ 1,538.00	\$ 2,113.00	\$ 575	37%	188%	
						\$ -			
\$ 26	\$ 19	\$ 80	321.05%	\$ 143.00	\$ 241.00	\$ 98	69%	1168%	

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<b>Retirees Post 7/1/2005</b>									
<b>Years of Service</b>									
20 "Retiree Code K"									
<b>2013 Rates</b>		<b>2014</b>		<b>2015</b>		<b>2016</b>			
<b>As Charged</b>	<b>Corrected</b>	<b>2014 Rates</b>	<b>2014 Increase</b>	<b>2015 Rates</b>	<b>2016 ppo Rates</b>	<b>Increase from prior year</b>		<b>Change in rates from 2013 to 2016</b>	
	<b>Per audit</b>		<b>from 2013 net</b>			<b>\$</b>	<b>%</b>		
\$ 84	\$ 79	\$ 121	34.71%	\$ 192.00	\$ 242.00	\$ 50	26%	206%	
\$ 364	\$ 321	\$ 489	34.36%	\$ 653.00	\$ 890.00	\$ 237	36%	177%	
						\$ -			
\$ 226	\$ 215	\$ 299	28.09%	\$ 438.00	\$ 538.00	\$ 100	23%	150%	
\$ 536	\$ 488	\$ 697	29.99%	\$ 930.00	\$ 1,215.00	\$ 285	31%	149%	
\$ 506	\$ 458	\$ 667	31.33%	\$ 900.00	\$ 1,185.00	\$ 285	32%	159%	
\$ 557	\$ 718	\$ 1,051	31.68%	\$ 1,375.00	\$ 1,840.00	\$ 465	34%	156%	
						\$ -			
\$ 199	\$ 199	\$ 299	33.44%	\$ 427.00	\$ 571.00	\$ 144	34%	187%	
\$ 428	\$ 428	\$ 653	34.46%	\$ 872.00	\$ 1,195.00	\$ 323	37%	179%	
						\$ -			
						\$ -			
\$ 353	\$ 335	\$ 476	29.62%	\$ 673.00	\$ 866.00	\$ 193	29%	159%	
\$ 653	\$ 595	\$ 860	30.81%	\$ 1,149.00	\$ 1,521.00	\$ 372	32%	156%	
\$ 623	\$ 565	\$ 830	31.93%	\$ 1,119.00	\$ 1,491.00	\$ 372	33%	164%	
\$ 922	\$ 825	\$ 1,215	32.10%	\$ 1,594.00	\$ 2,145.00	\$ 551	35%	160%	
						\$ -			
\$ 39	\$ 32	\$ 91	64.84%	\$ 151.00	\$ 246.00	\$ 95	63%	669%	

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<b>Years of Service</b>									
15-19	"Retiree Code P"								
<b>2013 Rates</b>		<b>2014</b>		<b>2015</b>	<b>2016</b>				
<b>As Charged</b>	<b>Corrected</b>	<b>2014 Rates</b>	<b>2014 Increase</b>	<b>2015 Rates</b>	<b>2016 ppo Rates</b>	<b>Increase from prior year</b>		<b>Change in rates from 2013 to 2016</b>	
	<b>Per audit</b>		<b>from 2013net</b>			<b>\$</b>	<b>%</b>		
\$ 99	\$ 93	\$ 132	29.55%	\$ 200.00	\$ 247.00	\$ 47	24%	166%	
\$ 410	\$ 363	\$ 524	30.73%	\$ 678.00	\$ 904.00	\$ 226	33%	149%	
						\$ -			
\$ 255	\$ 243	\$ 321	24.30%	\$ 455.00	\$ 546.00	\$ 91	20%	125%	
\$ 596	\$ 543	\$ 743	26.92%	\$ 963.00	\$ 1,234.00	\$ 271	28%	127%	
\$ 566	\$ 513	\$ 713	28.05%	\$ 933.00	\$ 1,204.00	\$ 271	29%	135%	
\$ 695	\$ 799	\$ 1,120	28.66%	\$ 1,424.00	\$ 1,867.00	\$ 443	31%	134%	
						\$ -			
\$ 239	\$ 225	\$ 320	29.69%	\$ 444.00	\$ 580.00	\$ 136	31%	158%	
\$ 238	\$ 481	\$ 698	31.09%	\$ 905.00	\$ 1,214.00	\$ 309	34%	152%	
						\$ -			
						\$ -			
\$ 395	\$ 375	\$ 509	26.33%	\$ 698.00	\$ 880.00	\$ 182	26%	135%	
\$ 724	\$ 661	\$ 916	27.84%	\$ 1,189.00	\$ 1,543.00	\$ 354	30%	133%	
\$ 694	\$ 631	\$ 886	28.78%	\$ 1,159.00	\$ 1,513.00	\$ 354	31%	140%	
\$ 1,024	\$ 917	\$ 1,293	29.08%	\$ 1,650.00	\$ 2,177.00	\$ 527	32%	137%	
						\$ -			
\$ 53	\$ 44	\$ 102	56.86%	\$ 159.00	\$ 251.00	\$ 92	58%	470%	

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<b>Years of Service</b>									
10-14Years	"Retiree Code S"								
<b>2013 Rates</b>				<b>2015</b>	<b>2016</b>				
<b>As Charged</b>	<b>Corrected</b>	<b>2014Rates</b>	<b>2014 Increase</b>	<b>2015 Rates</b>	<b>2016 ppo Rates</b>	<b>Increase from prior year</b>		<b>Change in rates from 2013 to 2016</b>	
	<b>Per audit</b>		<b>from 2013net</b>			<b>\$</b>	<b>%</b>		
\$ 114	\$ 107	\$ 144	25.69%	\$ 209.00	\$ 251.00	\$ 42	20%	135%	
\$ 456	\$ 404	\$ 559	27.73%	\$ 703.00	\$ 918.00	\$ 215	31%	127%	
						\$ -			
\$ 284	\$ 271	\$ 343	20.99%	\$ 471.00	\$ 555.00	\$ 84	18%	105%	
\$ 656	\$ 598	\$ 788	24.11%	\$ 996.00	\$ 1,252.00	\$ 256	26%	109%	
\$ 626	\$ 568	\$ 758	25.07%	\$ 966.00	\$ 1,222.00	\$ 256	27%	115%	
\$ 985	\$ 880	\$ 1,189	25.99%	\$ 1,473.00	\$ 1,895.00	\$ 422	29%	115%	
						\$ -			
\$ 286	\$ 251	\$ 342	26.61%	\$ 460.00	\$ 589.00	\$ 129	28%	135%	
\$ 966	\$ 533	\$ 742	28.17%	\$ 937.00	\$ 1,232.00	\$ 295	31%	131%	
						\$ -			
						\$ -			
\$ 437	\$ 416	\$ 541	23.11%	\$ 723.00	\$ 893.00	\$ 170	24%	115%	
\$ 726	\$ 727	\$ 971	25.13%	\$ 1,230.00	\$ 1,566.00	\$ 336	27%	115%	
\$ 768	\$ 697	\$ 941	25.93%	\$ 1,200.00	\$ 1,536.00	\$ 336	28%	120%	
\$ 1,125	<b>1009</b>	\$ 1,372	26.46%	\$ 1,707.00	\$ 2,209.00	\$ 502	29%	119%	
						\$ -			
\$ 66	\$ 57	\$ 113	49.56%	\$ 167.00	\$ 255.00	\$ 88	53%	347%	

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<u>Years of Service</u>									
Less than 10 years			Retiree Code V						
<u>2013 Rates</u>					2015		2016		
As Charged	Corrected	2014 Rates	2014 Increase	2015 Rates	2016 ppo Rates	Increase from prior		Change in rates from 2013 to 2016	
	Per audit		from 2013 net			\$	%		
\$ 233	\$ 223	\$ 233	4.29%	\$ 277.00	\$ 286.00	\$ 9	3%	28%	
\$ 823	\$ 737	\$ 840	12.26%	\$ 903.00	\$ 1,031.00	\$ 128	14%	40%	
						\$ -			
\$ 517	\$ 496	\$ 517	4.06%	\$ 605.00	\$ 624.00	\$ 19	3%	26%	
\$ 1,137	\$ 1,041	\$ 1,154	9.79%	\$ 1,261.00	\$ 1,398.00	\$ 137	11%	34%	
\$ 1,107	\$ 1,011	\$ 1,124	10.05%	\$ 1,231.00	\$ 1,368.00	\$ 137	11%	35%	
\$ 1,706	\$ 1,530	\$ 1,739	12.02%	\$ 1,865.00	\$ 2,116.00	\$ 251	13%	38%	
						\$ -			
\$ 487	\$ 463	\$ 517	10.44%	\$ 591.00	\$ 662.00	\$ 71	12%	43%	
\$ 916	\$ 952	\$ 1,101	13.53%	\$ 1,195.00	\$ 1,380.00	\$ 185	15%	45%	
						\$ -			
						\$ -			
\$ 771	\$ 736	\$ 801	8.11%	\$ 920.00	\$ 999.00	\$ 79	9%	36%	
\$ 1,370	\$ 1,256	\$ 1,416	11.30%	\$ 1,553.00	\$ 1,747.00	\$ 194	12%	39%	
\$ 1,340	\$ 1,226	\$ 1,386	11.54%	\$ 1,523.00	\$ 1,717.00	\$ 194	13%	40%	
\$ 1,939	\$ 1,745	\$ 2,000	12.75%	\$ 2,157.00	\$ 2,465.00	\$ 308	14%	41%	
						\$ -			
\$ 173	\$ 159	\$ 203	21.67%	\$ 233.00	\$ 294.00	\$ 61	26%	85%	

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# Chancery DIVISION

## Litigant List

Printed on 01/13/2016

Case Number: 2013-CH-17450

Page 1 of 2

### Plaintiffs

Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
UNDERWOOD MICHAEL C			0000	
VUICH JOSEPH M			0000	
SCACHITTI RAYMOND			0000	
MCNULTY ROBERT			0000	
DORN JOHN E			0000	
SELKE WILLIAM J			0000	
ARCHER JANIECE R			0000	
MUSHOL DENNIS			0000	
AGUINAGA RICHARD			0000	
SANDOW JAMES			0000	
SANDOW CATHERINE A			0000	
JOHNSTON MARIE			0000	
IN EXHBIT 1 TO THIS 320 A			0000	

REMVD TO FED CT 08/09/13 0000

REMAND FROM FED CT 040815 0000

Total Plaintiffs: 15

## Defendants

Defendant Name	Defendant Address	State	Unit #	Service By
CITY OF CHICAGO			0000	
TRUSTEES, POLICEFUND			0000	
TRUSTEES, FIREFUND			0000	
TRUSTEES, MUNICIPAL			0000	
TRSTEES, LABORERSFUND			0000	
REMVD TO FED CT 08/09/13			0000	

Total Defendants: 6