In the United States District Court
For the Northern District of Illinois, Eastern Division

Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 338 other Named Plaintiffs listed in Exhibit 1 to Complaint, Plaintiffs, v. CITY OF CHICAGO, a Municipal Corporation, Defendant, and Trustees of the Policemen's Annuity and Benefit Fund of Chicago; Trustees of the Firemen's Annuity and Benefit Fund of Chicago; Trustees of the Municipal Employees' Annuity and Benefit Fund of Chicago; and Trustees of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, et al. Defendants.	)	No. 13-CV-5687 Hon. Judge James F. Holderman

Plaintiffs' Reply in Support of Class Certification

The City's response to our motion ignores that the previous courts have repeatedly certified classes both for trial and for settlements that recognized exactly the class and subclass definitions we propose.

1. All current participants have been previously certified as part of the Korshak litigation classes.

To begin, the City does not oppose certifying the "Korshak" (12/31/1987 retiree participants) and "Window" classes (retirees during the "window" period, post-12/31/1987 through the 8/22/1989 statutory change). These classes were certified repeatedly during the Korshak litigation, both for trial and settlement, and undersigned counsel Krislov was the certified class counsel throughout.

The City's statement that "proposed sub-classes three [pre-8/23/89 hire date] and four [post 8/22/1989 hire date] have never been certified" (City Opp to Class Cert. at 1) is wrong. Although only the Korshak and Window subclasses existed at the time of the first Korshak settlements, the Category Three (pre 8/23/89 hires) and Four (post-8/22/89 hires) subclasses were certainly members of the 2003 Korshak Settlement's "Settlement Class" and "Class Members", which included not only the Korshak and Window "subclasses" that we then represented, but all the other participants at that time as well:

> H. The "Settlement Class" or "Class members" consists of: all current annuitants of the Funds, who are receiving an annuity based on City Service and who are enrolled in City healthcare plans, and their eligible dependents; and all current and former City employees who will become one of the Funds' Future Annuitants on or before June 30, 2013, and their eligible dependents. (2003 Korshak Settlement at ¶II.H, Ex. 2.)

The Korshak/Window subclasses and *all* Settlement Class Members explicitly retained the right to assert whatever rights they had at the expiration of the 2003-June 30, 2013 Settlement Period:

> After the termination of the Settlement Period, Class Members retain any right they currently have to assert any claims with regard to the provision of annuitant healthcare benefits, other than claims arising under the prior settlement of this Action or under the 1989, 1997, or 2002 amendments to the Pension Code, or for damages relating to the amounts of premiums or other payments that they have paid relating to healthcare under any prior health care plans implemented by the City, including this Settlement Agreement. (Korshak 2003 Agreement, at ¶IV.J, Ex. 2.)

Past that hurdle, the current proposal just divides the post-Korshak/Window participants into two subclasses based on their legal entitlements. Category Three are people who were hired and became participants in their retirement system before the 8/23/89 enactment of P.A. 86-273.[1]

[1] Within Category Three, it is conceivable that we may ask to divide it into two sub-sub classes, depending on whether the person's work began either (a) prior to April 1, 1986 (not qualifying for Medicare coverage), or (b) began April 1, 1986 or later (for whom their City employment quarters do qualify for Medicare credits. COBRA exemption from credits or coverage for state and local employees whose work began before 4/1/1986, PL99-272

Category Four were hired and first became participants after 86-273's enactment, thus limited to asserting that the Constitution's protection of benefits of participation should be interpreted as prohibiting the legislature from enacting benefits of participation that are not protected benefits.

The class definitions are clearly and objectively defined, differing only in the legal rights they may assert.

There is no supportable basis to oppose certifying the case to proceed for the same overall participant class, with the four categories of class members, whose entitlements are the same within each category, as mostly pure questions of law (the Constitutional or contract protection of the benefits in effect on the person's hire or retirement date. While claims for estoppel, contract, etc. may well have some variations, the essential characteristics of each category's claims are identical). Namely, Categories One and Two have the right to claim benefits by the Illinois Constitution and by the fact of the plan in existence (fixed rate benefits from the City, fully paid for the annuitant by his/her respective Fund) (potentially differing Police and Firemen from Municipal and Laborers, based on the lack of a constitutional disavowal in the Police and Fire provisions of the Pension Code). Category Three (participants who entered their respective Fund prior to 8/23/89, claiming entitlement to the benefits at the best level as they existed during a person's participation, without regard to when they retired), and Category Four (participants who began their participation only after 8/22/1989, claiming that a statutory limitation of a benefit of participation, ostensibly disavowing the Illinois Constitution's Art.XIII, §5 protection or time-limiting the benefit, are legally invalid), simply define the legal rights of each of the four.

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sec.13205(a). Although their State constitutional entitlement is the same, the equities differ in their coverage by the federal Medicare program.

2. The City's challenges to certification for conflict-based inadequacy are baseless.

The City's assertion that Rule 23's requirements are not met, seems to rest solely on "adequacy", variously asserting that Category Four claimants do not have a claim, or released the claims asserted here, are barred by the Statute of Limitations, or have different or conflicting legal claims, are all simply wrong. Whatever each subclass's rights are, this court will determine, as a legal issue.

Even ignoring the fact that the annuitants were already certified as an overall "class", there is simply no conflict *between or among* the subclasses; none of whose claims conflict with any others. As Newberg, makes clear, the conflicts that might render a representative or counsel inadequate to represent the class must be fundamental to the claims asserted…(i.e., that one's success, must legally preclude the other):

> Only conflicts that are fundamental to the suit and that go to the heart of the litigation prevent plaintiff from meeting the Rule 23(a)(4) adequacy requirement. Adequacy does not require complete identity of claims or interests between the proposed representative and the class. All that is required—s the phrase "absence of conflict" suggests—is sufficient similarity of interest such that there is no affirmative antagonism between the representative and the class. Rubenstein, 1 Newberg on Class Actions 5th Ed. §3.58 at 342-344. (Footnotes omitted.)[2]

The City offers no evidence for its argument, that post-8/23/89 hires or retirees success threatens the solvency of pension payouts to the Korshak or Window subclasses, or vice-versa, for that matter.

Nor is there any bona fide assertion that proposed class counsel Krislov is conflicted in representing all four subclasses here. The latter two classes were certified as part of the last

[2] *See Matamoros v. Starbucks, Corp.* 699 F.3d 129, 138 (1st Cir. 2012) "Put another way, to forestall class certification the intra-class conflict must be so substantial as to overbalance the common interests of the class members as a whole." (*See* Newberg, Summer 2013 Supplement, at 33.)

Korshak settlement, and there represented by their respective Fund's trustees, who simply show no desire to take up that gauntlet in this case; leaving that to undersigned counsel.

Nor is this a real conflict of the Rule 23(b)(1) variety, where one group's victory would legally preclude another's; such as where allocating multiple interests in a single property can only be done in one way, or where only one of competing interests may prevail.[3] Here, the legal claims are well and objectively defined, discreet and function entirely in parallel, without conflicting with each other's claim in any way.

WHEREFORE, Plaintiffs, individually and on behalf of the Class of all others similarly situated, respectfully pray that this Court

(i) Certify the Class herein pursuant to Rule 23:

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

a. Korshak subclass-12/31/1987 annuitant participants,
b. Window subclass-retired Post-Korshak, but pre-8/23/1989,
c. Pre-8/23/1989 Hiree Vesters, and
d. Participants –First hired date after 8/23/1989;

(ii) Appoint Plaintiffs Class Representatives;

(iii) Appoint Krislov & Associates, Ltd. lead Class Counsel; and

(iv) Any and all other relief the Court deems just and proper.

Dated: October 24, 2013

By: /s/ Clinton A. Krislov
Attorney for Plaintiffs, Participants

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[3] If that was actually the case, it would be a limited fund case, certified instead under FRCP 23(b)(1)(A)(for which the defendant would otherwise be subjected to incompatible and conflicting standards for dealing with the different interests, or (b)(1)(B) (where multiple claimants to a limited fund present claims which exceed the assets of the fund).

Certificate of Service:

Under penalty of perjury, Clinton A. Krislov, an attorney, certifies that service was made this day of filing, upon the City of Chicago by CM/ECF service, and by separate emails to attorneys for the trustees of the Funds, who have not yet entered appearances.

/s/ Clinton A. Krislov

EXHIBIT 1

original

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

CITY OF CHICAGO, a municipal corporation, Plaintiff- Counterdefendant, vs. MARSHALL KORSHAK, et al. Defendant- Counterplaintiff.	)	No. 87 CH 10134
MARTIN RYAN, WALTER RUCHINSKI, BERNARD McKAY, JOSEPH COGLIANESE, LOUIS EISEN, BERNARD HOGAN, PATRICIA DARCY, SYLVIA WALSH and KATHERINE DOYLE, Intervenors.	)	

OPINION AND MEMORANDUM OF LAW

On November 27, 1989, this Court presided over an evidentiary hearing to consider the proposed settlement between the City of Chicago, the four Pension Funds, and the annuitants of the Funds who participate in the City of Chicago Annuitant Health Benefits Plan.

A brief history of this litigation is warranted in light of the fact that there has been a full two years since this litigation commenced, and 1 1/2 years since this Court presided over a trial of the Funds' Counterclaims.

In October of 1987, the City of Chicago ("City") advised the four Pension Funds that it would no longer include the City's retired employees in the City's health care plan or pay for the

medical services rendered to those persons. The City then filed a complaint in this Court, naming as defendants the trustees of the four Funds, in which it sought to end the annuitants' health care coverage and recover approximately $58,000,000.00 it had spent on annuitants' health care benefits since 1980. In response to the complaint, the Funds argued that they were not responsible for the past or future costs of annuitant health care, beyond the subsidies provided for in the Illinois Pension Code, because they had no authority to do so and were legally required to limit use of the assets to meet pension obligations.

The Funds each filed Counterclaims on behalf of the annuitants to attempt to prevent the City from terminating the annuitants' coverage under the City's health care plan and to force the City to continue paying for most of the cost of the coverage. The City agreed to continue annuitants health care benefits while the litigation was pending.

This Court eventually dismissed the City's complaint with prejudice, finding that the Funds had no obligation to reimburse the City for the health care benefits received by the annuitants since 1980. The olaims asserted in the Funds' Counterclaims, were the subject of a bench trial before this Court in June of 1988. However, before the Court could reach its decision at the conclusion of the trial, the City and the Funds agreed to sponsor legislation amending the various pension codes and to enter into a settlement of the Court action consistent with the legislation.

TERMS OF THE SETTLEMENT

The settlement provides in general terms, that the City will pay at least 50% of the participating annuitants' health care costs through the end of 1997, the Funds will increase the subsidies, and the annuitants will pay any balance due after the funds subsidies are deducted. (Nothing in the agreement or the statute precludes the City from paying more, as it has in the past.) Because the increase in Funds' subsidies could not be effective until the Pension Code was amended to permit them to do so, the proposed settlement was essentially put on hold until the Legislature, in June of 1989, passed amendatory legislation to implement this term of the settlement. The legislation (Public Act 86-273) was signed by the Governor August 23, 1989.

The basic terms of the settlement are contained in the new legislation. They are as follows: Commencing with the date the increased annuitant payments take effect, the City is required by state law to pay at least 50% of the cost of the health care claims of the annuitants who participate in the City's health care plan. For the period January 1, 1988 until December 31, 1992, the four Funds will pay the City, on behalf of the annuitants who participate in the City plan, up to $65,00 per month for each non-Medicare annuitant and up to $35.00 per month for each Medicare-annuitant. From January 1, 1993 until December 31, 1997, the Funds' subsidies will increase by $10.00 per annuitant per month. For the first time, the widows of annuitants will receive the same subsidies as the annuitants themselves.

The legislation further provides that the City's obligations to continue coverage and to pay at least 50% of the cost of coverage will terminate at the end of 1997, but that this provision "does not affect other obligations that may be imposed by law;" that the group coverage plans described in the statute "are not and shall not be construed to be pension or retirement benefits for the purposes of" the Illinois Constitution of 1970; that the cost of claims of the annuitants will be estimated by the City on the basis of a written determination by an independent actuary to be appointed and paid by the City and the four Funds; and that the annuitant may elect to terminate coverage in a plan at any time.

In addition to the terms contained in the legislation, counsel for the Funds and the Corporation Counsel for the City committed to a letter agreement which contained other terms and conditions with the proposed settlement. In pertinent part, those additional terms and conditions are as follows:

> The City is obligated to give notice of proposed increases in rates at least 90 days prior to the effective date of such changes.
>
> The Funds have the right to retain a separate actuary to monitor the work of the independent actuary and to consult with the independent actuary concerning the payments to be charged annuitants.
>
> The City has agreed to pay all of the administrative costs proposed by Banker's Life and Home Pharmacy and 50% of the claims billed by Blue Cross (at a discounted rate) to the City.
>
> If the city offers more than one health benefits plan, an annuitant may elect to convert coverage from one City plan to

> another, during times designated by the City, which shall occur at least annually. There will be no limit on the number of times an annuitant may convert coverage. If an annuitant leaves or fails to enroll in the City plan, he or she may later enroll in a City plan under the same terms and conditions which existed prior to implementation of this agreement.

The Court had the benefit of hearing the testimony of witnesses opposing the proposed settlement hereinabove set out and was further aided by the post-trial memorandum filed by the City and the Funds, the Funds' memorandum was a joint memorandum;a memorandum filed by the Participant Class opposing the proposed settlement. The Participant Class also renewed their motion for summary judgment, and their motion for permanent injunction against the City's changing the terms of health care benefits provided to existing annuitant participants in the City's annuitant health care plan.

Further the Court reviewed all of its original notes and the testimony taken during the bench trial conducted by this Court in June of 1988.

The Participant Class in opposing the proposed settlement states that the settlement is unfair because:

> A: The participants are entitled to the status quo coverage under principles of contract, detrimental reliance, promissory estoppel and the Illinois Constitution.
>
> B: The participants are being denied, their coverage in retaliation for the Courts stopping the City's illegal use of Pension Fund tax levies.
>
> C: The settlement subjects the class to extreme hardship while it relieves the City of costs which are a minimal portion its annual budget (less than 1 or 1/2%).

They contend that the proponents of the settlement fail to meet their burden of proof to show that the settlement is fair; that the facts show that the settlement is unfair and should be rejected; that the annuitants relied upon the City's promise and the City should be estopped from changing the terms of coverage; that the annuitants and their families will be unable to obtain coverage elsewhere; that the City's whole basis for this litigation is bad faith; and that the annuitants presented a strong likelihood of success on the merits.

The Court has taken into consideration all of the testimony of the opponents and has reviewed very carefully the brief in opposition to the proposed settlement.

The Court finds the brief filed by the Pension Funds to be extremely persuasive and most exact in its factual presentation.

The procedural and substantive standards governing class action settlement hearings are well established. This Court must evaluate the fairness of the settlement in light of the benefits provided thereunder and the risks of further litigation. In addition, the Court should satisfy itself that the settlement was reached after arm's length negotiations between counsel authorized to act on behalf of the respective parties and that the Class was adequately notified of the proposed settlement and the opportunity to object. People ex rel. Wilcox v. Equity Funding Life Ins. Co., 61 Ill.2d 303, 335 N.E.2d 448 (1975); Gowdey v. Commonwealth Edison Co., 37 Ill.App.3d 140, 345 N.E.2d 785 (1st Dist. 1976). See also, City of Detroit v. Grinnell

Corp., 495 F.2d 448 (2d Cir. 1974); Weinberger v. Kendrick,, 698 F.2d 61 (2d Cir. 1982), cert. denied, 464 U.S. 818 (1983).

Only a small percentage of class members have indicated their objection to the agreement. By their silence, the vast majority of the class members have indicated their approval of the terms of the settlement. The settlement clearly satisfies all prerequisites for judicial approval, and is in the best interests of class members. The settlement should be approved by this Court.

GENERAL CONSIDERATIONS AND BACKGROUND

As a general rule, the law favors and encourages the settlement of class action suits. Weinberger v. Kendrick, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied, 464 U.S. 818 (1983); West Virginia v. Chas. Pfizer & Co., 440 F.2d 1079, 1085 (2d Cir.), cert. denied, 404 U.S. 871 (1971). Before approving a class action settlement, the Court must find the proposal to be "fair, adequate and reasonable." People ex rel. Wilcox v. Equity Funding Life Ins. Co., 61 Ill.2d 303, 335 N.E.2d 448, 456 (1975); Weinberger, supra, 698 F.2d at 73. The assessment of those factors rests within the discretion of the trial court. Gowdey v. Commonwealth Edison Co., 37 Ill.App.3d 140, 345 N.E.2d 785, 793 (1st Dist. 1976). This is because the trial judge has been exposed to the "strategies, positions and proofs" of the litigation and is well "aware of the expense and possible legal bars to success." Ace Heating & Plumbing Co. v. Crane Co., 453 F.2d 30, 34 (3d Cir. 1971). A trial court "should not disapprove a settlement nor should its approval be overturned on review

unless, taken as a whole, the settlement appears on its face so unfair as to preclude judicial approval." Gowdey, supra, 345 N.E.2d at 793.

The determination of whether a settlement is fair, reasonable and adequate requires the examination of an amalgam of factors, the principle factor is a balancing or comparison of "the terms of the compromise with the likely rewards of litigation." Wilcox, supra, 335 N.E.2d at 456, quoting Protective Committee for Independent Stockholders of TMT Trailer Ferry Inc. v. Anderson, 380 U.S. 414, 424-25 (1968).

Criteria for evaluating the fairness of a proposed class action settlement were set forth by the Second Circuit in City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974). Although these criteria are obviously not binding on this Court, they provide a convenient framework within which to examine the relevant factors. They are:

(1) the complexity, expense and likely duration of the litigation;

(2) the reaction of the class to the settlement;

(3) the stage of the proceedings and the amount of discovery completed;

(4) the risks of establishing liability;

(5) the risks of establishing damages;

(6) the risks of maintaining the class action through the trial;

(7) the ability of the defendants to withstand a greater judgment;

(8) the range of reasonableness of the settlement fund in light of the possible recovery; and

(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the atendant risks of litigation.

Grinnell, 495 F.2d at 463 (citations omitted).

In assessing the fairness of a settlement under the Grinnell criteria, a court's function is not "to reopen and enter into negotiations with the litigants in the hope of improving the terms of the settlement." Levin v. Mississippi River Corp., 59 F.R.D. 353, 361 (S.D.N.Y.), aff'd., 486 F.2d 1398 (2d Cir. 1973), cert. denied, 414 U.S. 1112 (1974). Rather, the court should examine the settlement terms, the process by which the settlement was reached and the judgment of counsel to determine whether the settlement falls within the broad range which may be categorized as "reasonable". Weinberger, supra; Grinnell, supra; Cannon v. Texas Gulf Sulphur Co, 55 F.R.D. 309 (S.D.N.Y. 1971). Each of these factors will be examined in the context of the instant settlement.

1. Complexity, Expense and Duration of Litigation

There can be little argument with the fact that this case presents the kind of dispute where a fair and reasonable settlement would be beneficial to all parties concerned and to the public interest, and as a consequence the policy of the law to encourage settlements should be extended to it.

Approval of the agreement will obligate the City to pay at least 50% of the total cost of the annuitants' health benefits until December 31, 1997. As noted above, nothing precludes the City from paying more, as it has in the past. If the agreement is not approved, the litigation will return to the posture it was

in in June of 1988, when the parties reached a settlement in principle. Post-trial briefs will be submitted and this Court will issue its judgment on the merits of the Funds' Counterclaims. Appeals are sure to follow, both from dismissal of the City's Complaint and from this Court's judgment as to the Counterclaims. During the lengthy appeal process, the annuitants' health benefits will continue to be in limbo -- both as to coverage and who pays the cost of coverage. The agreement is clearly in the best interest of both the class members and the public.

2. Reaction of the Class to the Settlement

In cases of this nature, which are highly visible and where there are numerous members of the class, objections are to be expected. Even significant oppositition to the settlements from class members "cannot serve as an automatic bar to a settlement that a (trial) judge, after weighing all the strengths and weaknesses of a case and the risks of litigation, determines to be manifestly reasonable." TBK Partners, L.T.D. v. Western Union Corp., 675 F.2d 456, 462 (2d Cir. 1982). The court must independently assess the adequacy of the settlement, even in the absence of any objections. In re Traffic Executive Association - Eastern Railroads, 627 F.2d 631, 634 (2d Cir. 1980).

When objections are presented, however, they must be weighed according to their substantive merit.

The Notice of Class Certification, which was sent to approximately 16,000 persons in early November, 1989, informed the class members that any notice of intent to appear at the fairness hearing had to be filed in writing with the Court by November 21, 1989, and that copies of such notices should be mailed to one of the attorneys for the parties. Counsel for the Funds were made aware of only one notice of intent to appear at the November 27th hearing. Counsel have received a number of letters indicating annuitants' approval of the terms of the settlement and a number of letters indicating opposition to it. Counsel for the opponents presented in excess of 500 preprinted form letters opposing the proposed settlement. The Court has considered these objections in making its decision. Although a number of class members apparently oppose the settlement because it will result in some paying increased premiums for coverage, in the past these rates have reflected the political processes and nothing in the agreement prevents the City from paying much more than 50%.

In addition to the notice of class certification, which was mailed to all class members in early November, the annuintants have also received a letter from the City advising them of the cost to them of continued coverage in the City health benefits plan, assuming this proposed settlement is approved. Not surprisingly, many annuitants have indicated these new rates are too high or that they cannot afford them.

Since 1982, when the last rate increase occurred, most retired employees of the City have been paying nothing for their health benefits. The $55 (for non-Medicare) or $21 (for Medicare-eligible annuintants) contributed by the Police and Fire Funds, was equal to the amount of "premium" charged by the City. By contrast, under the 1990 rates just announced by the City, a singly annuitant not covered by Medicare will be paying $105 per month. Although this is a substantial increase, the important fact is that the actual cost of annuitant's coverage is $340. If the City were successful in this litigation, these annuitants could required to pay $285 per month (after deducting the Funds' $55 contribution) or $3,420 per year out of their own pockets. Annuitants in other rate classifications could required to pay even more to maintain coverage.

The raison d'etre of a settlement is to eliminate the risk of not prevailing on the merits. The Fund submit that under the circumstances presented here, the proposed settlement, which obligates the City to continue coverage and to pay at least 50% of the annuitants' health care costs until the end of 1997, is in the best interests of all parties.

The substantial benefits conferred upon the annuitants under the proposed settlement must be viewed in light of the risk that the annuitants would not prevail on the merits of the litigation. The Funds submit that this "balancing test" compels the conclusion that the proposed settlement is in the best interests of all parties and should be approved by this Court.

3. The Stage of Proceeding and Discovery

The purpose of considering the "state of proceeding and the discovery taken" is to ensure that the class members have had access to sufficient material to evaluate their case and to assess the adequacy of the settlement proposal in light of an informed judgment of the strengths and weaknesses of their position.

The proposed settlement here was reached after discovery was completed and after a full trial on the merits of the Funds' Counterclaims.

This case has thus advanced to the eve of a judgment on the merits, in contrast to most other cases where settlements have been approved. Here, this Court has had the benefit of presiding over a full trial on the merits of the claims raised by the Funds on behalf of the annuitant-class members and is thus uniquely qualified to evaluate the reasonableness of the settlement.

4-5. The Risks of Establishing Liability and Damages

In assessing the fairness, reasonableness and adequacy of the settlement, the Court must balance the amount of the proposed settlement and the immediacy of a prospective recovery for class members against the continuing risks of litigation. The risks in this case involve primarily the establishment of the City's liability for the cost of its retired employees' health benefits. This proposed settlement eliminates the risk that the Funds and their annuitants will not be successful in establishing that liability. A secondary benefit of the settlement is elimination

of the delay and expense which will be incurred if the proposed agreement is not approved. For the past two full years, the annuitants have been aware of the City's position that it was legally entitled to terminate both the annuitants' participation in the City's health benefits plan and its payment of any of the bills for those benefits. Bringing an end to this uncertainty is another benefit of the proposed agreement.

6. The Risks of Maintaining the Class Action Through the Trial

Because this is not the typical class action, this factor is generally irrelevant.

7. The Ability of the Defendant to Withstand a Greater Judgment

This factor requires the Court to consider whether the City would be financially able to satisfy a judgment in excess of the settlement amount. This factor is not particularly relevant in the instant cause because there is no "settlement amount" as such. Nonetheless, it is relevant to point out that this settlement will cost the City an estimated $261 million (actual cost of $25.3 million in 1988, $35.7 million in 1989, and another eight years at an estimated minimum of $25 million per year).

8-9. The Range of Reasonableness of the Settlement in Light of the Possible Recovery and All the Attendant Risks of Litigation

The determination of a "reasonable" settlement is not susceptible of a mathematical equation yielding a particularized sum. Rather, as Judge Friendly has explained, "(i)n any case, there is a range of reasonableness with respect to a settlement." Newman v. Stein, 464 F.2d 689, 693 (2d Cir.), cert. denied, 409 U.S. 1039 (1972). See denied, Zerkle v. Clevand-Cliffs Iron, Inc., 52 F.R.D. 15, 159 (S.D.N.Y. 1871); Glicken v. Bradford, 35 F.R.D. 144, 152 (S.D.N.Y. 1964).

The Second Circuit has held that a settlement can be approved even though the benefits amount to a small percentage of the recovery sought. City of Detroit v. Grinnell Corp.,495 F.2d 448, 455 (2d Cir. 1974): "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." In a footnote, the Court buttressed its conclusion: "In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundreth or even a thousandth part of a single percent of the potential recovery." Id. at 455 n.2.

Here, by contrast to the usual class action settlement, the Funds and annuitants have not sued for money damages and are not settling for some percentage of their actual damages. Instead, the proposed agreement eliminates the risk that the annuitants would have to pay the entire bill for their health benefits and the further and more serious risk that they may not be able to obtain coverage at any price. The agreement eliminates these risks by committing the City to pay at least 50% of the cost of

the annuitants' health benefits through the end of 1997. At the conclusion of that period, if no "permanent solution" has been found, the parties will return to the legal postures they were in in June of 1988, before this compromise was negotiated.

On balance, no one can reasonably state that the porposed settlement is anything but fair, adequate and reasonable. It is in the best interests of the class that the settlement receive this Court's final approval.

The Court finds that the settlement was achieved only after arduous arm's length negotiations.

To avoid the burden of unduly extended inquiry into the claims asserted and benefits resulting from the settlement, the federal courts often have focused on the "negotiating process by which the settlement was reached...." Weinberger v. Kendrick, 698 F.2d 61, 74 (2d Cir. 1982), cert. denied, 464 U.S. 818 (1983). The courts have thus insisted that a settlement be the result of "arm's length negotiations" effected by counsel possessed of the "experience and ability...necessary to effective representation of the class' interest." Weinberger, supra, 698 F.2d at 74 (citation omitted).

In evaluating the negotiations, the trial court is permitted to rely on the judgment of counsel. Weinberger, supra, 698 F.2d at 74; West Virginia v. Chas. Pfizer & Co., 314 F.Supp. 710, 741 (S.D.N.Y. 1970), aff'd, 440 F.2d 1079 (2d Cir.), cert. denied, 404 U.S. 871 (1971). In fact, the opinion of counsel is entitled to considerable weight by the court. Cannon v. Texas Gulf Sulphur Co., 55 F.R.D. 308 (S.D.N.Y. 1971); Josephson v.

Campbell,. (1967-69 Tr. Binder) Fed. Sec. L. Rep (CCH), 92, 347 at p. 96, 658 (S.D.N.Y. 1969). In Lyons v. Marrud, (1972 Transfer Binder) Fed. Sec. L. Rep. (CCH) 93, 525 (S.D.N.Y. 1972), the court noted that:

> Experienced and competent counsel have assessed these problems and the probability of success on the merits. They have concluded that compromise is well advised and necessary. The parties' decision regarding the respective merits of their positions has an important bearing on this case.

Id. at p. 92, 520,. Indeed, in the absence of fraud, collusion or the like, the Court should be hesitant to substitute its own judgment for that of counsel. Weinberger, supra, 698 F.2d AT 74.

This court has had the opportunity to acquaint itself fully with the facts and law of this case and has been apprised of the procedural aspects of this ligitation to date. Similarly, the Court is aware that this has been a hard-fought case and that competent and experienced counsel represent both the City and the Funds, the parties who negotiated the settlement.

This is an unusual case in a number of respects, including the fact that the Funds, who were permitted by this Court to act on behalf of the annuitants throughout the discovery and trial phases of this litigation, negotiated and support the proposed settlement. By contrast, counsel for the class, which was certified on the eve of the settlement hearing, opposes the settlement on various grounds. Consequently, this Court must consider the City's and Funds' reasons for supporting the settlement and class counsel's reasons for opposing it.

There can be no hint of collusion in conjunction with either the vigorously contested litigation or the hard bargaining that preceded the agreement. Many of the details in the negotiations surrounding the settlement were hotly disputed. Thus, the settlement was produced by "arm's length" bargaining after energetically contested litigation and in the context of numerous contested issues of fact and law, many of which have not yet been decided.

The Court finds that the notice given the annuitants meets the requirements of due process and Section 2-806 of the Illinois Code of Civil Procedure.

Each of the approximately 16,000 annuitants and widows of annuitants who participate in the City health benefits plan was given notice of the proposed settlement and fairness hearing, by first class mail, in accordance with this Court's Order of October 30, 1989. This notice clearly meets the due process requirements of Section 2-806 of the Illinois code of Civil Procedure, which calls for such "notice as the Court may direct."

The notice informed the class members of their right to appear at the fairness hearing and to enter appearances through their own counsel, if desired.

The notice fully and explicitly explained the litigation, the proposed settlement and the rights and options of the class members. The notice complies with the requirements of due process and is similar to the procedures approved in other cases. See, e.g., Weinberger, supra, 698 F. 2d at 71-72; Grunin v.

International House of Pancakes, 513 F.2d 114, 121 (8th Cir.), cert. denied, 423 U.S. 864 (1975).

IV.

THE SETTLEMENT HEARING

The purpose of a settlement hearing is to enable the trial court to assess the adequacy of the proposed settlement. As expressed by one Federal appeals court: "While we do not expect the district judges to convert settlement hearings into mini-trials on the merits, we do expect them to explore the facts sufficiently to make intelligent determinations of adequacy and fairness." Malchman v. Davis, 706 F.2D 426, 433 (2d Cir. 1983). And, as the court stated in Newman v. Stein, 464 F. 2d 689, 692 (2d Cir.), cert. denied, 409 U.S. 1039 (1972), "the court must not turn the settlement hearing into a trial or a rehearsal of the trial."

At the hearing, Donald Franklin, Deputy Comptroller, was called by the City as a witness. Mr. Franklin testified that one of his duties is to supervise the City's insurance and benefits program. Franklin described what has happened with the City's expenditures for annuitant health care over the past decade, during which period the total cost of annuitant health care has skyrocketed from $6.3 million in 1980 to an estimated $46.6 million in 1989. In 1980, the City was spending $1.9 Million for annuitant health care and in 1989 its projected expenditure for annuitant health care is $35.7 million, an increase of 1800%.

Stated in percentages, in 1980 the City was paying 31% of the total while the annuitants were paying 69%. By 1989, these percentages had reversed, with the City paying 77.5% of the total cost while the Funds paid 9% and the annuitants 13.5%.

Franklin also explained that almost 36% of the affected annuitants will pay nothing for their coverage in 1990 because they are medicare eligible and the $70 cost is covered by the Funds' $35 subsidy and the City's payment of the other 50% of the cost. Another 19% of the annuitants (two Medicare-eligible individuals) will pay only $14 per month more than at present. On cross examination, Franklin acknowledged that the rates for each category were not required to be set in this fashion. In fact, the agreeement gives the City discretion to categorize the annuitants in any logical fashion and to allocate the costs thereof in any reasonable fashion.

Ten annuitant witnesses testified, explaining their opposition to the settlement. Eight of the ten witnesses wre retired policemen (or their widows). One Municipal Fund annuittant and one retired laborer also testified. The Court listened attentively, with compassion and understood their objections..

A number of the police annuitants testified that they had attended a pre-retirement seminar at which they had been advised that their health care would be paid for by the City "for life." Based on these representations, which some of the witnesses believed created a contractual obligation on the part of the City, the annuitants testified that the proposed settlement is

unfair. This Court must consider the merits of this alleged contractual obligation and the annuitants' likelihood of establishing the City's liability on this basis if the case were to be adjuciated to a final judgment.

A few of the witnesses testified to their belief that under the proposed agreement they would have no coverage at all after 1997. As noted above, this is simply incorrect. The City and the Funds have agreed that at the conclusion of the 10 years covered by the settlement the parties will return to the same positions they were in before the proposed settlement was negotiated. In the words of the stipulation between the City and the Funds, which was read into the record before this Court on November 27, 1989:

> On January 1, 1998, the parties will be in the same legal positions they were in as of June of 1988. To the extent the City had any obligation in June of 1988, they will have that same obligation or obligations on January 1, 1998.

Consequently, the annuitants have not "given up" anything through this settlement. (Other than the claimed right to have the City pay more than 50% of the costs between March of 1990 and December of 1997.) On January 1, 1998, if some "permanent solution" has not been achieved, the annuitants will be permitted to reargue

the claims which were asserted in the Funds' Counterclaims as well as the Intervenors' initial pleading.

This confusion as to what will happen after 1997 was reflected as well in the annuitants' general lack of knowledge as to the underlying litigation. For example, one annuitant testified that he was unaware that in 1987 the City announced it was going to drop all annuitants from the health care plan and that he was generally unfamiliar with the terms of the settlement or the underlying litigation. A second annuitant similarly did not recall that in June of 1988 the City took the position that it did not have to pay anything for annuitant health care. Another annuitant testified that he did not know what happens if the Court rejects the settlement and stated it would be "financial ruin" for him if the annuitants lost the case on the merits. In evaluating the opinions of such individuals as to the fairness of the settlement, this Court should take into consideration their misunderstanding of the complexity of the underlying litigation and the legal issues involved therein.

Finally, most ot the annuitant witnesses testified that the proposed settlement was unfair because it simply cost too much. The Funds and the Court are sympathetic with the plight of annuitants who will find it a real hardship to pay the increased rates which have been set by the City. Nonetheless, the dollars involved are only peripherally relevant to this Court's determination of the fairness of the settlement. The major premise of the settlement is that the City will pay at least 50% of the cost of the annuitants' health care with the Funds'

subsidies defraying a portion of the annuitants' share of the cost. There is no real dispute as to the amount of the actual cost of annuitant health care at the present time; the issue instead is who pays for it and whether the 50/50 sharing arrangement set forth in the proposed settlement is in the best interests of the annuitants generally. The Funds believe that only one conclusion can be drawn, and the Court agrees: In light of the risk that the City might prevail in its position that it has no legal obligation to provide or pay for annuitant health care, this proposed settlement is eminently fair and reasonable and should be approved by this Court.

CONCLUSION AND ORDER

The Court taking all of the evidence in its totality and having reviewed all of the briefs finds that the proposed settlement is clearly in the interest of the Class and the Parties and that all criteria covering the approval of class action settlements have been satisfied.

Further, the Court having found the proposed settlement to be fair, it need not address the Participant Class' motion for summary judgment and its motion for a permanent injunction.

ENTER

JUDGE

EXHIBIT 2

Exhibit A-1:

City of Chicago vs. Korshak vs. Ryan

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

CITY OF CHICAGO, a municipal corporation,	)	
	)	
Plaintiff-Counterdefendant,	)	
	)	
vs.	)	No. 01 CH 4962
	)	Calendar 12
MARSHALL KORSHAK, et al,	)	
	)	Hon. Lester D. Foreman,
Defendants-Counterplaintiffs,	)	Judge Presiding.
	)	
and	)	
	)	
MARTIN RYAN, et al.,	)	
	)	
Intervening-Plaintiffs.	)	

SETTLEMENT AGREEMENT

The Parties to this Settlement Agreement ("Agreement") are: Plaintiff-Counterdefendant, the City of Chicago ("the City"); Defendants-Counterplaintiffs, Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago, the Retirement Board of the Municipal Employees', Officers' and Officials' Annuity and Benefit Fund of Chicago, the Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago, and the Retirement Board of the Laborers' and Retirement Board Employees' Annuity and Benefit Fund of Chicago (collectively, "the Funds"); and certain intervenor annuitants, certified as representatives of the class of the Funds' annuitants who retired prior to December 31, 1987 (the "Korshak Class"), and seeking to be further certified for the Funds' annuitants who retired after December 31, 1987, but before August 23, 1989 (the "Window Class").

I. INTRODUCTION

The Action, City of Chicago v. Korshak, No. 01 CH 4962 (formerly No. 87 CH 10134), is currently pending in the Circuit Court of Cook County Illinois, Chancery Division. The

Action involves the issue as to whether the City has an obligation to provide health benefits to the Funds' annuitants and who is responsible for the cost of such benefits.

The Funds contend that the City is required to provide a health care plan and to contribute to the annuitants' health benefits. The City maintains that it is not obliged to provide annuitant health benefits. The Korshak and Window Classes allege that they are entitled to health benefits for life, which are to be subsidized by the Funds.

The Parties have participated in settlement discussions in an effort to resolve the controversy and provide continued health care benefits for current and future annuitants of the Funds. On April __, 2003, the Parties reached a proposed settlement, which is described in this Settlement Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreement set forth herein and subject to the approval of this Court, it is hereby agreed as follows:

II. DEFINITIONS

A. "The Action" refers to City of Chicago v. Korshak, No. 01 CH 4962 (formerly Case No. 87 CH 10134), pending in the Circuit Court of Cook County, Illinois, Chancery Division.

B. The "Claims Administrator" is the organization(s) engaged by the City to perform the tasks of administering the Settlement Healthcare Plans, including but not limited to, contracting with hospitals and medical professionals, processing claims and making payments thereon.

C. The "Court" refers to the Circuit Court of Cook County, Illinois.

D. The term "Defined Costs" used in this Agreement shall mean the following:

1. For Physician Services: The actual amount paid by the Claims Administrator to a provider for physician services. This is net of any provider contract discounts, patient's co-payments and deductibles, other insurance (such as Medicare) or ineligible amounts. It includes administrative costs and case management fees.

2. For Hospitals and Other Providers: The amount billed by a provider for hospital services, net of any hospital discounts, and less all ineligible amounts, other insurance payments and the patient's co-payments and deductible. It includes administrative costs, access fees and utilization review and case management fees.

3. For Prescriptions: The amounts paid by the Pharmacy Benefits Manager for Class Members' prescription medications, net of the patients' co-payments and deductible, and net of any applicable discounts from the published AWP (Average Wholesale Price). It includes the fees paid to pharmacies for dispensing the prescriptions and administrative charges paid to the Pharmacy Benefits Manager.

E. "Future Annuitant" is a person who becomes eligible for and receives an age and service annuity after the effective date of this Settlement Agreement, and before July 1, 2013, based on Years of City Service without regard for reciprocal service with another agency or unit of government.

F. "Notice" refers to the "Notice of Proposed Class Action Settlement" attached hereto as Exhibit A.

G. "Pharmacy Benefits Manager" ("PBM"), is the organization(s) engaged by the City to perform the tasks of administering the pharmacy benefits of the Settlement Healthcare Plans, including, but not limited to, contracting with a network of retail pharmacies and one or

more mail order pharmacies, processing prescription claims, making payments thereon, providing rebates and other contractual allowances to the Settlement Healthcare Plans.

H. The "Settlement Class" or "Class Members" consists of: all current annuitants of the Funds, who are receiving an annuity based on City Service and who are enrolled in City healthcare plans, and their eligible dependents; and all current and former City employees who will become one of the Funds' Future Annuitants on or before June 30, 2013, and their eligible dependents.

I. The "Settlement Healthcare Plans" are the Settlement Healthcare Plan for Medicare Eligible Class Members and the Settlement Healthcare Plan for Medicare Ineligible Class Members. The Settlement Healthcare Plans will be established in a complete Plan Document(s), the highlights of which are summarized in Exhibit B to this Agreement.

J. The "Settlement Period" is the period of time that begins on July 1, 2003 or on the date of the Final Approval by the Court of this Settlement Agreement, whichever is later, and ends at midnight June 30, 2013. In the event of an appeal from the Court's Final Approval, the Parties agree that this Agreement will take effect and remain in effect while the appeal is pending.

K. "Years of City Service" means years of actual employment with the City, for which pension service credit is also recognized, without regard for reciprocal service with another agency or unit of government. This City Service need not be continuous.

III. SUBMISSION OF AGREEMENT FOR PRELIMINARY APPROVAL AND ORDER

Subsequent to the execution of this Settlement Agreement, counsel for the Parties will submit the Settlement Agreement and the proposed Notice (attached hereto as Exhibit A) to the

judge of the Circuit Court of Cook County, Illinois assigned to this matter, and will request an Order:

A. Preliminarily approving this Settlement Agreement;

B. Certifying the Action as a class action on behalf of the Settlement Class for settlement purposes only, with two subclasses consisting of the Korshak Class and the Window Class, who are represented by Krislov & Associates, Ltd.;

C. Approving the proposed Notice and directing that, within 14 days of the Order: the City will cause the Notice to be sent to every potential Class Member who is a former City employee, and not an annuitant, by first class mail where records are available, and by publication, and to be directly distributed to current employees; and the Funds will cause the Notice to be mailed, by first class mail, to each of their annuitants;

D. Scheduling a hearing to determine the reasonableness, adequacy, and fairness of the Proposed Settlement and whether it should be approved by the Court;

E. Providing that any Class Member may exclude himself/herself from the Class and the Action in the manner and with the consequences described in the Notice and providing that all requests for exclusion must be received by the Court no later than 21 days after the date of the Notice;

F. Providing that any Class Member who objects to the approval of this Settlement Agreement and show cause why the settlement proposed by this Agreement should not be approved as fair, reasonable and adequate and why a judgment should not be entered thereon, and providing, further, that any Class Member who wishes to object or who requests to appear at the hearing must notify the Court and the attorneys for the Parties to this Agreement of his/her objection, the basis for his/her objection, state whether he/she is requesting to appear at the

hearing, provide such further information as is more fully described in the objection, such notice to be postmarked no later than May 22, 2003;

G. Providing that no person will be entitled to contest the approval of the terms and conditions of this Settlement Agreement or the judgment to be entered thereon except by filing and serving written objections in accordance with the provisions of subparagraph F, above, and that any Class Member who fails to exclude himself/herself from the Class in accordance with subparagraph E above or who fails to object in the manner prescribed in subparagraph F above shall be deemed to have waived, and shall be foreclosed forever from raising objections to the settlement or from asserting any claims arising out of, related to, or based in whole or in part on any of the facts or matters alleged, or which could have been alleged or which were otherwise at issue in this Action.

IV. TERMS OF THE AGREEMENT

A. The City will make healthcare coverage available to all Class Members during the Settlement Period and the City will pay at least:

- 55% of the Defined Costs of that coverage for all Class Members: (1) who are annuitants of the Funds based on City Service as of the effective date of this Settlement Agreement, and their eligible dependents; or (2) who become Future Annuitants on or before June 30, 2005, and their eligible dependents.

- 50% of the Defined Costs of that coverage for all Class Members who become Future Annuitants after June 30, 2005, and before June 30, 2013, and who have 20 or more Years of City Service, and their eligible dependents.

- 45% of the aggregate Defined Costs of that coverage, for all Class Members who become Future Annuitants after June 30, 2005, and before June 30, 2013, and who have 15 to 19 Years of City Service, and their eligible dependents.

- 40% of the aggregate Defined Costs of that coverage for all Class Members who become Future Annuitants after June 30, 2005, and before June 30, 2013, and who have 10 to 14 Years of City Service, and their eligible dependents.

- 0% of the aggregate Defined Costs of that coverage for all Class Members who leave the employ of the City after June 30, 2005, and before June 30, 2013, and who have less than

10 Years of City Service. These persons may participate in the City's Settlement Healthcare Plans, but at their own cost.

B. The Settlement Healthcare Plans will replace all current annuitant healthcare plans.

C. A summary of the benefits of the Settlement Healthcare Plans is set forth in Exhibit B to this Agreement. Exhibit B is incorporated into and made an integral part of this Agreement. However, the Settlement Healthcare Plans will be established in complete Plan Documents.

D. During the Settlement Period, a qualified independent actuary will be engaged by, and paid by, the City and the Funds to estimate the aggregate Defined Costs of Settlement Healthcare Plan claims for the next year, based upon the records of the Claims Administrator and, for each Settlement Healthcare Plan offered by the City, to determine the contribution to be made by the City and the contributions/rates to be paid by the Class Members for the year. The City, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by participating Class Members according to the following method: (1) an estimated average unit cost per plan will be derived from the actuary's estimate of Defined Cost; (2) the City's share will be calculated for the estimated unit cost and subtracted from each unit cost; (3) the applicable Pension Funds' subsidy per annuitant will be deducted from the remainder of the unit cost; and (4) the balance will be the amount payable by the annuitant. The Funds shall pay to the City, on behalf of each annuitant enrolled in the Settlement Healthcare Plans, the subsidy amount established by statute.

E. Under the procedures set forth in Executive Order 89-4 and the City's annual Classification and Pay Plan, the City Benefits Manager will make initial determinations with regard to eligibility and disputed claims. The City Benefits Committee will handle any appeals by annuitants regarding the denial of eligibility or denial of any claims filed under the Settlement Healthcare Plans and additional plans which may exist.

F. The City shall advise the Funds and Krislov & Associates, Ltd. of any proposed contribution/rates increase at least 75 days prior to the effective date of the increase.

G. During the Settlement Period, the City may not amend or terminate the Settlement Healthcare Plans except as follows:

1. The City may terminate or amend the Settlement Healthcare Plans or make reasonable plan design changes in response to material changes in federal or state law under circumstances which include, but are not limited to, the following: if changes or termination were mandated by law; if the City's coverage were duplicative of other coverage; or if the changes brought about by state or federal law made the City's benefits unduly expensive.

2. The City will not terminate or amend the Settlement Healthcare Plans for reasons other than changes in federal or state law, as described above, for those Class Members who retired prior to August 23, 1989.

3. The City's right to amend the Settlement Healthcare Plans for reasons other than changes in federal or state law for remaining Class Members, is subject to the following restrictions:

(a) The City will make no plan design changes which do not arise out of changes in law for a period of 5 years from July 1, 2003.

(b) After July 1, 2008, the City may make changes to the design of the Settlement Healthcare Plans only with the approval of a majority of the members of a commission, the Retiree Health Benefits Commission ("RHBC"), impaneled by the City to consider proposed plan design changes. The RHBC will consist of experts who will be objective and fair-minded as to the interests of both retirees and taxpayers. The RHBC will also consist of a representative of the City of

Chicago and a representative of the Funds. The City may seek approval of the RHBC to make plan design changes solely under the following circumstances:

(i) in response to material changes in medicine or technology;

(ii) in response to court rulings or the settlement of other litigation;

(iii) in response to material changes in the structure or methods by which health benefits are contracted for or provided;

(iv) in response to material changes in market or economic conditions that would render the provision of any benefit unreasonably expensive under the circumstances.

(c) The RHBC will independently review the City's proposed amendments to the Settlement Healthcare Plans and will make recommendations as to the City's proposal. The RHBC must take into account industry trends and market conditions existing at the time of its recommendations. The decisions of the RHBC shall not be unreasonable or arbitrary and the actions of the City pursuant to decisions of the RHBC shall not be unreasonable or arbitrary.

4. In appointing members of the RHBC, the City is required to choose professionals from one or more of the following categories: health benefits professionals; actuarial and/or benefit consulting professionals; officers or principals responsible for benefits in business; professors or research academics; former officials of health insurance companies; leaders of civic organizations or retiree groups; professionals experienced in municipal finance. The City also will appoint a representative for the City. In addition, each Fund may recommend one person to sit on the RHBC and the

City will select one of the four recommendations to be appointed to the RHBC as the Funds' representative.

5. Other than for the City and Funds' representatives, the following guidelines apply to the selection of the other members of RHBC:

(a) Members or their organizations/employers cannot be then current or potential contractors with the City or the Funds for health benefit coverage or plan administration;

(b) No person appointed to the RHBC may have a conflict of interest by virtue of their employer's/organization's relationship with the City or with one or more of the Pension Funds;

(c) Members and their organizations/employers cannot be current contractors for, or affiliates, of the Funds; and,

(d) Members and those in their immediate family cannot be City or the Funds' employees, or Fund annuitants.

6. Before July 1, 2013, the RHBC will make recommendations concerning the state of retiree healthcare benefits, their related cost trends, and issues affecting the offering of any retiree healthcare benefits after July 1, 2013.

H. The City may offer additional healthcare plans at its own discretion and may modify, amend, or terminate any of such additional healthcare plans at its sole discretion. Any additional healthcare plans that the City may implement will not be subject to review by the RHBC and the City reserves full discretion to modify, amend or terminate any additional healthcare plans.

I. The Action will be dismissed with prejudice on the date of final approval of this Agreement, subject to the provisions of paragraph J., below.

J. After the termination of the Settlement Period, Class Members retain any right they currently have to assert any claims with regard to the provision of annuitant healthcare benefits, other than claims arising under the prior settlement of this Action or under the 1989, 1997, or 2002 amendments to the Pension Code, or for damages relating to the amounts of premiums or other payments that they have paid relating to healthcare under any prior health care plans implemented by the City, including this Settlement Agreement. The Funds agree that they will not, at any time, assert any: (1) claims on behalf of any annuitant for premiums or other payments made under any prior City healthcare plan, including this Settlement Agreement; or (2) claims based on the City's pre-1988 conduct or statements. However, if any separate action relating to health benefits is brought after the end of the Settlement Period against a Fund or its Trustee(s), the Fund or Trustees(s) may seek to assert a cross claim or third party complaint against the City in its defense.

During the Settlement Period, Class Members, the Funds and their current, future or former Trustees are precluded from asserting any claims regarding health care benefits against the City, except that all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Agreement are governed by the provisions of subsection V. B. 7. below.

The City reserves its right to raise any defenses.

K. The City will pay reasonable attorneys' fees, which may be recoverable by Krislov & Associates, Ltd., as class counsel of record for the Korshak and Window Classes in this Action, in the amount as agreed to by the City and Mr. Krislov or as determined by the Court. The Funds agree not to bring any claim against the City for their attorneys' fees or costs.

L. Class Members who retired before August 23, 1989, and who are not eligible for Medicare will pay rates assessed under the Medicare Settlement Healthcare Plan.

V. HEARING ON THE PROPOSED SETTLEMENT

A. On the date set by the Court for the hearing ("Settlement Hearing") on the Proposed Settlement, the Parties shall jointly request the Court to review any objections to the Agreement which have been timely filed and to conduct such other proceedings (including the taking of testimony, receipt of legal memoranda and hearing of arguments from the Parties or others properly present at the Settlement Hearing) as it may deem appropriate under the circumstances.

B. At the Settlement Hearing the Parties shall jointly request the Court to enter a final judgment and decree:

1. approving, without material alteration, the Proposed Settlement pursuant to the terms of this Agreement;
2. finding that the terms of this Agreement are fair, reasonable and adequate to the Class Members;
3. providing that each Class Member (except those who are excluded as provided for in paragraph III.E) shall be bound by this Agreement;
4. finding that the proposed Notice (Exhibit A), is the only notice required and satisfies the requirements of Sections 2-803 and 2-806 of the Illinois Code of Civil Procedure and the requirements of due process;
5. finding that the distribution and mailing of Notice as described above (¶III.C), satisfies the requirements of Sections 2-803 and 2-806 of the Illinois Code of Civil Procedure and the requirements of due process;

6. approving all requests for exclusion which have been timely submitted to the Court; and

7. retaining jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Agreement, only upon petition from the City or counsel for one of the Funds or counsel for intervenor Korshak or Window Classes.

VI. ADDITIONAL COVENANTS

A. This Agreement will not be effective unless the Illinois legislature enacts legislation increasing, for a period of time not to exceed 10 years (until June 30, 2013), the monthly subsidy to be paid by the Funds to: $85.00 for each annuitant who is ineligible for Medicare and $55.00 for each annuitant who is eligible for Medicare for the period July 1, 2003 to July 1, 2008; and $95.00 for each annuitant who is ineligible for Medicare and $65.00 for each annuitant who is eligible for Medicare, for the period of July 1, 2008 through June 30, 2013. Those Class Members who are covered by section IV.L., above, are entitled only to a Fund subsidy at the Medicare level. The legislation increasing the subsidy may also authorize payments made on behalf of retired sworn Police and uniformed Fire personnel who retired between the ages of 60 and 65.

B. This Agreement represents an integrated document negotiated and agreed to among the Parties and it shall not be amended, modified or supplemented, nor shall any of its provisions be deemed to be waived, unless by written agreement signed by the respective attorneys for the Parties. This document has been drafted jointly and is not to be construed against any Party.

C. This Agreement represents the entire and sole agreement negotiated and agreed to among the Parties to this Agreement.

D. This Agreement shall not be binding on any Party until it has been approved by the Boards of Trustees of each of the Funds, by the City of Chicago, and by the Intervenors, represented by the Korshak and the Window Classes.

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FOR SETTLEMENT PURPOSES ONLY

Major Features of Plan for Medicare Eligible Persons

This Plan design replaces the Standard Plan and the Supplement Plan

Benefit	Plan Coverage
Inpatient Hospital Benefits (No change from current Supplement Plan)	Days 1 to 60: All but $50 of the Medicare Part A Deductible for the first hospital stay in any calendar year is paid by the Plan; Covered person pays $50. Days 61-90 Plan pays 25% of the Medicare Part A Deductible; Covered Person pays $0. Days 91-150 Plan pays 50% of the Medicare Part A Deductible; Covered person pays $0. *Plan pays 100% of the cost for up to 365 days more of inpatient hospital care in lifetime of Covered Person after the Covered Person exhausts all Medicare Benefits.*
Out-Patient Hospital Benefits (No change from current Supplement Plan)	Plan pays 20% of Medicare allowable charge; no expenses covered if not covered by Medicare; Covered Person pays $100 and co-pay based on Medicare Allowable Charge.
Doctor Visits (No change from current supplement Plan if provider accepts assignment)	Covered Person pays Part B deductible; after Part B deductible, plan pays 20% of Medicare Allowable Charge; no expense covered if not covered by Medicare.
Skilled Nursing Expense (No change from current Supplement Plan)	Pays Medicare co-pays for Medicare covered days. No expense covered if not covered by Medicare.
Medicare Part A and Part B (No change from current Supplement Plan)	The Plan will pay benefits as though the Covered Person is enrolled in both Part A and Part B of Medicare without regard to-actual enrollment.
Retail Prescription Drugs	For a thirty day supply: Generic Drugs 20% of cost Brand Drugs on Formulary 20% of cost Brand Drugs not on Formulary 20% of cost plus $15 If Brand dispensed when generic available, no benefit is available. A separate $100 deductible will be applied. Drug claims cannot be submitted to BCBS

FOR SETTLEMENT PURPOSES ONLY

Major Features of Plan for Medicare Eligible Persons

This Plan design replaces the Standard Plan and the Supplement Plan

Mail Order Maintenance Drugs	For up to a ninety day supply: Generic Drugs $15 Brand Drugs on Formulary $40 Brand Drugs Not on Formulary not available at mail If Brand dispensed when generic available, no benefit is available. Maintenance medications must be purchased through the mail order program. Co-payments will increase 5% per year rounded to the nearest dollar. Drug claims cannot be submitted to BCBS.
Other services covered by Medicare (No change from current Supplement Plan if provider accepts assignment)	20% of Medicare allowable charge, after Part B deductible. Any service or supply not covered by Medicare will not be covered by the Plan unless it is specified herein.
Service or programs added by Medicare after the effective date of the plan	If Medicare offers a new program or benefit, the Plan will pay benefits as if the Covered person has enrolled for the program or benefit without regard to whether actual enrollment has occurred.
Means Test for Annuitants with total income below the poverty line	An annuitant may apply each year to have a cap on premiums if the combined adjusted gross income of the annuitant's family as reported to the Internal Revenue Service is at or below 200% of the poverty level for the family size of the annuitant. The annuitant must provide a signed release to the Plan Administrator to allow the Plan Administrator to obtain a copy of the annuitant's most recently filed tax return.
Benefit Differences for Annuitants who qualify as a result of application of the means test	1. Premium shall be capped at 20% of the total household income where total is at or below 200% of poverty level to 150% of poverty level, capped at 15% of poverty level for those at 150% to 100% of poverty level, and capped at 10% of total household income for those at 100% of poverty level or below. 2. Mail order drug co-pays shall be $7 for generic drugs, $20 for Brand Drugs on the Formulary, all other terms will apply except that co-payments will not increase each year. 3. For retail drugs, the separate $100 deductible will not apply.

FOR SETTLEMENT PURPOSES ONLY

Major Features of PPO Plan for Non-Medicare Eligible Persons

This plan design replaces the Standard Indemnity Plan and the Preferred Plan

Benefit/Service	In-Network Benefit	Out-of-Network Benefit	Out-of-Area Benefit
Lifetime Max (includes all amounts paid under prior plans)(No change from current preferred plan)	$1,500,000 per covered person		
Out of Pocket max	$1750 per individual; capped at 2 individual per family; amount increases 3% per year	$3500 Individual; capped at 2 individual per family; amount increases 3% per year	$1750 Individual; capped at 3 individual per family; amount increase 3% per year
Physician Services (No change from current preferred plan)	90%	70%	80%
Hospital Services, In-patient & Out (No change from current preferred plan)	90%	70%	80%
Skilled Nursing Facility Services (No change from current preferred plan)	80%	80%	80%
Physical, Occupational & Speech Therapy for Restoration of Function (No change from current preferred plan)	80%	80%	80%
Chiropractic Services (No change from current preferred plan)	Limited to 15 visits per year and no more than three modalities per visit; 70% payment	Limited to 15 visits per year and no more than three modalities per visit; 70% payment	Limited to 15 visits per year and no more than three modalities per visit; 80% payment

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Out-Patient Psychiatric Services No-change from current preferred plan)	80%	80%	80%
Retail Prescription Drugs	For a thirty day supply; Generic Drugs 20% of cost Brand Drugs on Formulary 20% of cost Brand Drugs not on Formulary 20% of Cost plus $15 If Brand dispensed when generic available, no benefit is available. A separate $100 deductible will be applied.		
Mail Order Maintenance Drugs	For up to a ninety day supply: Generic Drugs $15 Brand Drugs on Formulary $40 Brand Drugs Not on Formulary not available at mail If Brand dispensed when generic available, no benefit is available. Maintenance medications must be purchased through the mail order program. Co-payments will increase 5% per year rounded to the nearest dollar.		
Ambulance Services (No change from current preferred plan)	80% payment	80% payment	80% payment
Emergency Room Services (No change from current preferred plan)	90% payment	90% payment	80% payment
Medical Necessity (No change from current preferred plan)	All services must be medically necessary; many medical services are subject to separate utilization review requirements. Services which are not medically necessary will not be covered by the Plan. Any service which was subject to review, and for which review did not occur, will be considered to be not medically necessary and not paid by the Plan.		

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Deductible (all services are subject to the deductible)	$300 per person; capped at 3 individual per family; amount increases 3% per year	$700 per person amount increases 3% per year	$300 per person; capped at three individual per person; amount increases 3% per year

Means Test for Annuitants with total income below the poverty line.	An annuitant may apply each year to have a cap on premiums if the combined adjusted gross income of the annuitant's family as reported to the Internal Revenue Service is at or below 200% of the poverty level for the family size of the annuitant. The annuitant must provide a signed release to the Plan Administrator to allow the Plan Administrator to obtain a copy of the annuitant's most recently filed tax return.
Benefit Differences for Annuitants who qualify as a result of application of the means test	1. Premium shall be capped at 20% of the total household income where total is at or below 200% of poverty level to 150% of poverty level, capped at 15% of poverty level for those at 150% to 100% of poverty level, and capped at 10% of total household income for those at 100% of poverty level or below. 2. Mail order drug co-pays shall be $7 for generic drugs, $20 for Brand Drugs on the Formulary; all other terms will apply except that co-payments will not increase each year. 3. For retail drugs, the separate $100 deductible will not apply.

BOTH PLANS Eligibility of Dependents	Persons are eligible to enroll if they were covered as a spouse or dependent by a City of Chicago Medical Care Plan for employees on the employee's last day of active employment with the City. Enrollment forms must be submitted within 30 days of the date of application for annuity. A dependent may not be enrolled after the former employee's retirement. – Mentally or physically disabled children of any age who depend upon the annuitant for support may be enrolled, provided all other eligibility requirements are met and that the annuitant provides proof of incapacity when required. **A. If the former employee retired prior to January 1, 1986:** – Unmarried children under age 25 are eligible if they have been continuously covered by the plan; – Unmarried children under age 19; – Unmarried children between ages 19 and 22 if they are enroll as full time undergraduate students in good standing in a community college, college or university accredited by North Central Regional Association or its affiliates, provided all other eligibility requirements are met. **B. Late enrollment or re-enrollment:** If retirees fail to apply for coverage within 30 days of applying for an annuity, then retirees must submit proof of insurability acceptable to the Benefits Management Office. However, if a retiree retired after August 31, 1985 and before age 65, then he or she can enroll within 30 days of the 65th birthday without submitting proof of insurability, provided the retiree has not previously applied for coverage. If the employee retired prior to January 1, 1986, dependents can be covered upon provision of satisfactory proof of insurability to the Benefits Management Office, provided that they also satisfy one of the three categories set forth in section A, above. If the dependent ceases to be covered and then seeks to re-enroll, the dependent will only be eligible to age 19 unless the age 22 eligibility for full-time undergraduates applies.

	If the employee retired on or after January 1, 1986, dependents may be covered only if they were enrolled in a medical plan offered by the City to its employees on the day before the retiree's retirement. Dependents not enrolled or acquired prior to retirement are not eligible. **C. Coverage under more than one plan:** A spouse may not enroll as a dependent if the spouse is eligible for coverage in an active City employee plan or is also a City annuitant who is eligible for coverage under this plan. If a City retiree is eligible for this plan and the spouse is covered by a medical care plan offered by the City, dependents can be covered under either plan, but not both. If the dependent is a City employee or annuitant, then he or she cannot be covered as a dependent under this plan.