

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

Michael W. Underwood, et al.,
Plaintiffs,

v.

No. 13-CH-17450
Cal. 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 & Benefit Fund of Chicago, et
al.

Defendants.

Plaintiffs' Motion for Reinstatement and To Set a Status Hearing

1. Pursuant to S.Ct. Rule 369, with 10 days notice to the adverse party being given, Plaintiffs seek to have the above titled case *Michael W. Underwood et al. 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.*, reinstated.
2. This action is brought by City of Chicago retirees to retain their constitutionally protected retiree health benefits.
3. This litigation continues the retiree healthcare litigation initiated by the City in 1987, with the counter claims by and for the retiree-Participants that were upheld over the City's motion to dismiss, and tried in a three week trial in June 1988 before Chancery Judge

Albert Green. While the case awaited his decision, the City and the trustees entered into a ten-year class action settlement through 1997, which, though imposed over the participants' objection and request for summary judgment on their claims, nonetheless preserved their rights, if no permanent resolution was achieved, to revive and reassert their claims to the fixed-rate health plan provided by the City and subsidized by the Funds. No permanent resolution having been reached by the end of 1997, the Participants moved to revive their claims, and over the objection by the City and the Funds, and the Circuit Court, the Illinois Appellate Court ordered the Participants' claims reinstated; eventually resulting in a new 2003 agreement/Class Settlement covering all those who were then participants, again on an interim basis through June 30, 2013, again reserving participants' rights to assert their healthcare claims, which the Plaintiffs assert for themselves and their repeatedly certified participant classes, in the Amended Complaint here. Ex. 1.

4. This case was filed on July 23, 2013; the City removed the case to the United States District Court for the Northern District of Illinois on or about August 9, 2013.
5. On the City's motion to dismiss, Judge Holderman dismissed the case on or about December 13, 2013.
6. On Appeal, on February 25, 2015, the United States Court of Appeals, for the Seventh Circuit Court, vacated the District Court's judgment, and ordered the District Court to remand the Illinois state law claims to the Illinois state court system. Ex. 2.
7. On or about March 23, 2014, the District Court to remand the case to the Illinois Circuit Court of Cook County, Illinois, where this case was originally. Ex. 3
8. On or about April 6, 2015, the Clerk of the United States District Court transmitted a

certified copy of the Order entered on March 23, 2015, remanding this case back to the Circuit Court of Cook County, Illinois. Ex. 4.

9. Now that the Circuit Court has reacquired jurisdiction, Plaintiffs seek a reinstatement order to proceed in this case, and Plaintiffs request a Status Conference.

WHEREFORE, Plaintiffs request that this case be reinstated and that the Court set a status hearing.

Respectfully Submitted,
s/Kenneth T. Goldstein
One of the Attorneys for Plaintiff

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

**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,)
)
Plaintiffs,)
)
vs.)
)
CITY OF CHICAGO, a Municipal Corporation,)
)
Defendant,)
)
and)
)
Trustees of the Policemen’s Annuity and Benefit Fund)
of Chicago;)
)
Trustees of the Firemen’s Annuity and Benefit Fund of)
Chicago;)
)
Trustees of the Municipal Employees’ Annuity and)
Benefit Fund of Chicago; and)
)
Trustees of the Laborers’ & Retirement Board)
Employees’ Annuity & Benefit Fund of Chicago)
Defendants.)

FILED
10/2/2013
THOMAS G. BRUTON
CLERK U.S. DISTRICT COURT

JURY TRIAL DEMANDED

Case No. 13-CV-5687

Previous Nos. in Cook County
Circuit Court
01 CH 4962
87 CH 10134
Removed From 2013 CH 17450

**AMENDED CLASS ACTION COMPLAINT
By Participants in the City of Chicago’s Annuitant Healthcare Plan
For Declaratory Relief Against the City of Chicago and
the Trustees of the Police, Fire, Municipal Employees and Laborers
Annuity and Benefit Funds**

1. This Amended Complaint seeks permanent relief for annuitant healthcare participants in litigation that has continued off and on for 26 years.
2. Background of the Case. This case was originally filed October 19, 1987 (City v. Korshak, et al., (Trustees) and Ryan, et al. (Participants)), Circuit Court of Cook County, No. 87

CH 10134) by the City to enable it to terminate its Annuitant Healthcare coverage for participants in the City's four Annuity and Benefit Plans, and recover monies expended under the Plan in prior years. The trustees/board members of the four affected annuity and benefit funds, and the annuitant healthcare plan participants class asserted counterclaims, seeking to force the City and the Pension Funds' trustees to continue annuitant healthcare coverage under the terms of the Annuitant Healthcare Plan as in effect on October 1, 1987 (through the August 23, 1989, date the Pension Code was amended in this respect.) After dismissing the City's claims, the case proceeded on the counterclaims by the Funds and Participants' claims against the City. A trial was conducted in 1988 before Hon. Albert Green. Prior to the verdict, the City and Trustees entered into a 10-year class action settlement that was approved by the Circuit Court over the participant class' objections, and affirmed by the Illinois Appellate Court.

3. At the conclusion of that ten-year settlement, the participants moved to revive the litigation, were initially denied by Judge Green, reversed by the Illinois Appellate Court, reviving the litigation, under Docket No. 01 CH 4962, which eventually was resolved in 2003 by another ten-year agreement, this time approved by all parties and the court, settling the dispute for the period through June 30, 2013; again with rights of participants to thereafter reassert their rights/entitlement to healthcare coverage in their retirement.

4. Participant Class Counsel's motion to revive the litigation under the City v. Korshak case was denied, the judge now assigned to that calendar ruled that assertion of the Participants' retained rights would have to be done in a new action. Hence, this Complaint is filed to assert Participants' rights to healthcare in their retirements. The City removed this case, and Plaintiffs shortly thereafter filed this Amended Complaint.

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5. With respect to the claims asserted herein by the participants, the participants sue as plaintiffs, seeking relief against the City as a defendant (for its actions and announced intention to reduce the healthcare benefits provided to class members), and seeking a declaration that the Funds, as additional defendants, must continue their current subsidy for class members for life without reduction.

6. Class members' uniform claim is that under the 1970 Illinois Constitution Article XIII Section 5, they are each entitled to the unreduced level, determined at the date they began participation in any of the four affected Annuity & Benefit Plans, of annuitant health benefits provided by the City and as then subsidized by their particular Plan.

7. Class/Subclass Definitions. Class members' claims are identical across the four Funds, varying only by which of the following categories/subclass the particular participant's entitlement to healthcare arises from (as the retiree or his/her spouse/dependent):

- i) a person who retired by 12/31/1987 (the "Korshak" sub class) (this was the initial class certified in the 1987 Korshak Settlement)).
- ii) a person who retired after 12/31/1987, but before 8/23/1989 (the "Window" or "Jacobson" sub class) (the class that retired after the Korshak class date, but prior to the enactment of P.A.86-273 incorporating language of the Korshak settlement)).
- iii) a person who began their participation in one of the Funds (initial hiring date) before 8/23/1989 (thus entitled to benefits of participation no less than when they entered the system); and
- iv) a person who began their participation after 8/23/1989 (participants who were hired after P.A.86-273's enactment).

8. For purposes of the Original litigation, continuing through all of the Settlements, undersigned counsel Krislov is the court-certified class counsel for the first two subclasses. In the 2003 Settlement, the Funds trustees represented the post-8/23/1989 retiree participants. However, going forward, the Krislov firm has been engaged by participants in all four

categories, and the Krislov firm asserts that it is the appropriate class counsel for the court to certify for all four participant classes.

9. Summary of the case. From before October 1987, to a period beyond August 23, 1989, the City's annuitant healthcare plan was continued without change.

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

- (a) Contract. The city bound itself contractually to cover the then-existing annuitants healthcare for life charging premiums equal to the statutory supplement paid by the pension funds; the premiums were subsidized by the Funds--the annuitants' entire premium for Police and Fire annuitants, \$25 per month for Municipal and Laborers.
- (b) Detrimental Reliance/Estoppel. The city, through its authorized officials, affirmatively induced the annuitants to act to their detriment, in joining and continuing their coverage the City's annuitant healthcare plan, in reliance upon the City's assurance of lifetime medical care coverage, and the City is now estopped from terminating or reducing those benefits.
- (c) Illinois Constitution. The Annuitant Healthcare Plan, as in effect on October 1, 1987 through August 23, 1989, was a benefit of participation in an Illinois statutory pension or retirement system, so 1970 Illinois Constitution, Art. 13, Section 5, prohibits the city's attempt to eliminate or reduce Lifetime fixed rate subsidized Medical Care as a retirement benefit.
 - (i) The City of Chicago Retirement Medical Plan is a pension and retirement benefit of City of Chicago employment.
 - (ii) A participant's right to coverage under the plan vests, and cannot be reduced after his entry into the system.
 - (iii) A participant's right to coverage under the City's Retiree Healthcare Plan vests no later than his retirement, and the terms of the benefits cannot be reduced thereafter.
- (d) Illinois Constitution, Special Legislation. The statutory provisions (P.A. 86-273 and P.A. 90-32/June 27, 1997) as they purport to change the terms

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or protection of class members' healthcare coverage are invalid special legislation because they apply only from employment by a named municipality. (1970 Ill. Const. Art. IV, Sec. 13).

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

12. Pursuant to the Settlement Agreement, the participants, at the end of 1997, were restored to whatever rights they held at the beginning of the case.

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

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

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

- (i) Declare that all participants are entitled to permanent coverage under the plan in effect on the day they joined the system, with any improvements as were added thereafter.
 - (a) For the participants by a person who retired prior to 8/23/1989:

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

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

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

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

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

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

Plaintiffs, Class Members believe that there is no material dispute as to the

following facts:²

² References and Authorities Cited. Unless otherwise described:

- 1) All statutory references are to either the provisions of Illinois law in effect during the period October 1, 1987 through August 23, 1989, including generally, provisions of the Illinois Municipal Code, Ill.Rev.Stat. Ch. 24 ("Municipal Code §____") or to the Illinois PensionCode, Ill.Rev.Stat. Ch. 108-1/2 ("Pension Code §____")(1986), or to their subsequent provisions under the Pension Code under the current ILCS format 40 ILCS 5/.
- 2) Trial Exhibits are referred to as identified in the Trial of this matter June 20-22, 1988, either as introduced at trial or by stipulation. "DX" means Defendants' Exhibits, "CX" indicates a City Exhibit.
- 3) Testimony by individuals is referred to by their last name and the appropriate page in the trial transcript.

June 20, 1988 Witnesses - Afternoon Session

Witness	Role	Page
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Parties:

15. Plaintiffs. Each of the Named Plaintiffs listed in Exhibit 1 hereto is a participant in one of the four City of Chicago Annuity and Benefit Funds, having the indicated hire and retirement date.

16. The CITY OF CHICAGO (the "City") is a municipal corporation organized in accordance with Section 1-1-1 of the Illinois Municipal Code, Ill.Rev.Stat. Ch. 24, ¶1-1-1. The City is sued as a defendant.

James B. Waters, Executive Director	Police Fund	4-48
James Capasso, Jr., Executive Director	Laborers Fund	49-65
Norman S. Holland, Trustee	Fire Fund	66-94
Thomas J. Stack	Municipal Fund	94-99

June 21, 1988 Witnesses - Morning Session

Witness	Role	Page
Edward Arenz	Blue Cross	8-36
Peter Jundersits	Annuitant	37-43
Richard Gayne	Annuitant	43-53
Charles T. Wilhelm	Annuitant	53-59
Edwin Ogonowski	Annuitant	59-63
Benedict J. Scacchitti	Annuitant	63-70
Bernard P. Sweeney	Annuitant	70-74
Sam Venturella	Annuitant	74-81
Robert Shackleton	Annuitant	81-84
Fred Hince	Annuitant	84-93
Maryanne Hester	Spouse	93-98
Constance Becker	Widow	98-101

June 21, 1988 Witnesses - Afternoon Session

Witness	Role	Page
Sharon Gist Gilliam	City Chief Operating Officer	3-82
Daniel K. Kubasiak	Former City Budget Officer	83-108

June 22, 1988 Witnesses

Witness	Role	Page
Ronald Picur	City Comptroller	114-149
S. Nathan Williams	City Risk Manager	150-169
Al John Fattore	City GS Director of Finance	169-188

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

18. The Funds as Necessary Parties. The Funds are necessary parties in any event, because of their involvement in the statutory scheme. However, they are sued as cross-defendants only for a declaration that they are not permitted to reduce their subsidy for class members from the highest levels enjoyed by each participant; currently \$95 monthly for those not Medicare qualified, \$65 for those who are Medicare qualified. However, for some participants, the early statutory provisions provide for the Trustees to provide health insurance. Under that circumstance, the claim may exist for those participants to be provided insurance by the Trustees if the City does not provide coverage.

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

20. City Officials. By their offices with the City, (i) the City Comptroller is a member of the Board of Trustees of the Firemen's and Municipal Fund and his designee sits as a

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

21. The City's Medical Benefits Program. Since approximately 1964, the City has maintained a medical benefits program in which annuitants are entitled to participate. Many of the Funds' annuitants have participated, with the active City of Chicago employees, in the group medical benefits program sponsored by the City. That program, since the mid-1970's, has been administered on a self-funded (*i.e.*, the City pays these claims itself rather than obtaining "insurance" coverage from an outside third party provider), "claims made" basis (meaning that sufficient money is appropriated each year for claims expected in that year only).

22. The City's healthcare program has generally been administered by private carriers who are reimbursed by the City (often referred to as "ASO" for "Administrative Services Only."

23. Annuitant Participation. Based on the most recent reconciliation report for 2011, the participants total 24,721, including annuitants of all four Annuity & Benefit Funds, plus survivors and dependents who participate in the City's Annuitant Medical Plan for their primary medical coverage.; Policemen's Fund participants 9,183, Firemen's Fund 3,253, Municipal Employees' Fund 9,522 and Laborers' Fund 2,763.

24. These annuitants are now predominantly over age 65. Due to age and existing medical conditions, some (probably most of them) would be unable to obtain their own medical coverage at an affordable cost or to qualify for alternative medical coverage at all. Based on

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their initial hire date, many of them cannot qualify for Medicare coverage from their City employment; some are without sufficient qualifying employment quarters at all, and can obtain Medicare coverage only by paying additional premiums.

Relevant Constitutional and Statutory Provisions

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

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

1970 Illinois Constitution, Art. 13, §5.

26. Group Health Benefits for City Annuitants have been a benefit of Participation in the City's Annuity & Benefit Funds since at least 1982. The City of Chicago's annuitant healthcare plan in existence from 1982 through at least 1989, was the statutory result of a "handshake" agreement between the City's Byrne administration, the Police and Fire Unions and/or Funds trustees, under which the City agreed to provide healthcare coverage to annuitants at a fixed-rate monthly premium(\$55 for non-Medicare qualified, \$21 for Medicare-qualified persons) that was to be subsidized by the Police and Fire Funds' payment of the annuitant's monthly premium, that was financed by a special tax levy for the Funds. This was understood and intended to be both a benefit of a person's employment by the City and participation in the annuitant's respective annuity and benefit fund.

27. Statutory Levy/Subsidy. Incorporating this agreement, P.A.82-1044 was enacted into the Illinois Pension Code obligating the Policemen's Fund (5-167.5) and the Firemen's Fund (6-164.2) to contract to provide group health insurance for all annuitants, with the basic monthly

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premium to be contributed by the City in an amount of \$55.00 per month for annuitants who are not qualified for the Medicare program; \$21.00 for Medicare-qualified annuitants.

28. No medicare coverage for existing subclass of retirees whose original hire date precedes April 1, 1986. Local government employees who were originally hired and began their work prior to April 1, 1986 (federal Combined Omnibus Budget Reconciliation Act of 1985 ("COBRA," PL 99-272 § 13205(a)) cannot qualify for healthcare coverage under the Medicare plan by their government employment, regardless of their length of service.

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

Arenz at 29 (as to 1987 Class).

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

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

32. Unique Position of these retirees, and their substantial numbers. Consequently, the class member annuitants who began their service for the City prior to April 1, 1986 are the last class of City workers who will not be protected by the Medicare program. Although the number of these participants is currently known only to the City and the Funds, it certainly numbers a substantial portion of the class, since even with only twenty years of service, the

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earliest of the Medicare-qualified by government work would not have begun retiring before 2006.

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

* * *

- (b) The Board shall contract with one or more carriers to provide health insurance for all annuitants.

* * *

- (d) The Board shall pay the premiums for such health insurance for each annuitant with funds provided as follows:

The basic monthly premium for each annuitant shall be contributed by the city from the tax levy prescribed in Section 5-168 [6-165 for Firemen's Fund], up to a maximum of \$55 per month if the annuitant is not qualified to receive Medicare benefits, or up to a maximum of \$21 per month if the annuitant is qualified to receive Medicare benefits.

If the basic monthly premium exceeds the maximum amount to be contributed by the city on his behalf, such excess shall be deducted by the Board from the annuitant's monthly annuity, unless the annuitant elects to terminate his coverage under this Section, which he may do at any time.

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

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

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

"Each employee annuitant in receipt of an annuity on the effective date of this Section and each employee who retires on annuity after the effective date of this Section, may participate in a group hospital care plan and a group medical and surgical plan approved by the Board if the employee annuitant is age 65 or over with at least 15 years of service. The Board, in conformity with its regulations, shall pay to the organization underwriting such plan the current monthly premiums up to the maximum amounts authorized in the following paragraph for such coverage.

As of the effective date the Board is authorized to make payments up to \$25 per month for employee annuitants age 65 years or over with at least 15 years of service.

If the monthly premium for such coverage exceeds the \$25 per month maximum authorization, the difference between the required monthly premiums for such coverage and such maximum may be deducted from the employee annuitant's annuity if the annuitant so elects; otherwise such coverage shall terminate."

37. Municipal and Laborers provisions purport to create non-protected benefits.

Different from the already existing provisions for Police and Firemen, the 1984 legislation creating Pension Code Sections 8-164.1 and 11-160.1 characterizes the group hospital and

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

38. Legal issue of the legality of creating a non-protected benefit of participation. It has never been determined that the Municipal and Laborers Funds' limiting statutory language is effective to strip these benefits of participation in a statutory pension plan of their Art. XIII, Sec.5 protection against diminution or impairment.

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

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

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

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

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

43. Thus, from April 1, 1982 through August 23, 1989, annuitants received their healthcare coverage as a benefit of participation in their Funds, who obtained that coverage from

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the City, who acted as the self-insured carrier for the plan, and paid all of the “insurer’s” costs of the Funds' annuitants medical benefits program to the extent that they have exceeded the premium rates.

44. Communication of Coverage to Annuitants. In approximately 1984, the City prepared a booklet advising individual annuitants of their rights, benefits and the terms of the City's annuitant medical care plan. This document was distributed to employees at or about the time of their retirement and was also submitted to existing annuitant participants as part of the re-enrollment process.

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

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

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

48. It thus became widely understood among City employees that they could rely on this subsidized fixed-rate plan for their lifetime following retirement from their City employment; at no out-of-pocket premium cost for Police and Fire annuitants own coverage, subsidized at \$25 per month for Municipal and Laborers annuitants.

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

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

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

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

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

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

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

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

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

57. 1985 Appropriation Language. In the 1985 City Budget, line item .042 was described as:

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

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

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

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

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

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

Year	Dept. Request	Mayor's Recom.	Appropriation	Actual Expenditures
1979	[open]	[open]	[open]	\$37,002,963
1980	[open]	\$48,000,000	[open]	\$46,742,071
1981	\$56,906,000	\$56,906,000	\$56,225.00	\$64,569.800
1982	\$66,200,000	\$66,200,000	\$65,870,000	\$75,100,196
1983	\$75,250,000	\$75,250,000	\$74,650,000	\$86,289,215
1984	\$88,500,000	\$88,500,000	\$87,200,000	\$84,465,869
1985	\$89,288,200	\$89,288,200	\$89,438,000	\$91,506,685
1986	\$97,942,000	\$97,942,000	\$97,942,000	\$83,705,038
1987	\$107,158,500	\$107,158,500	\$107,158,000	

Source: DX37-43.

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

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

Coverage for you and your eligible dependents will terminate the first of the month following:

- the month a deduction is not taken from your annuity, or

- the month you reach the limiting age for City-paid benefits, if you have not arranged for deductions from your annuity check.

In addition, coverage for you and your eligible dependents will terminate the earliest of

- the date it is determined that you have knowingly submitted false bills or bills for ineligible dependents for reimbursement under this Plan
- the date the Plan is terminated, or
- the date the Plan is terminated for the class of annuitant of which you are a member

for hospital and medical care provided to eligible employees and their families including employees on duty disability leave.

Source: DX33, City X3.

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

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

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

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

69. No Premium Charge for Annuitant. The operation of the Plan was that Police and Fire Funds' annuitants were not required to pay anything out-of-pocket as premiums for their

own coverage,³ Municipal and Laborers' Funds' annuitants had to pay either nothing or \$30.00 per month (depending on their Medicare qualification) and paid their own funds for only the additional cost of family dependent coverage.

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

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

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

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

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

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

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

76. 1984 "Trial Balloon" to Raise Costs of Coverage. A proposal was also submitted under which the premiums would be increased for participation under the City's plan. Gilliam at 20; DX15.

77. A certain September 10, 1984 report called "City of Chicago Annuitant Medical Care Benefits," DX12, noted that expenditures were exceeding the "premiums" received, and proposed that the rates paid by the annuitants be increased by 100% effective two months later, in November of 1984, and increased by another substantial percentage three months after that, in January of 1985. DX33; CX52.

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

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

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

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

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

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

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

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

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

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

88. Subsequently, on or about May 8, 1987, the City's Corporation Counsel contacted each of the pension funds, advised them of the Ryan judgment's \$25 million potential, and the

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City's belief that the medical payments (in similar \$25 million amount) had been illegally paid and would have to be recovered from each pension fund unless they agreed to waive the Ryan claim. Each fund rejected the offer.

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

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

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

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

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

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

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

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

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

Back to the Present:

98. May 15, 2013, the City declares its intention to reduce benefits beginning January 1, 2014, and to eliminate all of the City's retiree healthcare plans by January 1, 2017. (Attached Exhibit 2, City Letter dated May 15, 2013). Anticipating the June 30, 2013 end of the applicable settlement periods, the City on May 15, 2013 issued a letter to all retiree healthcare participants that it intends to:

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

Ex. 2, City Letter dated May 15, 2013.

99. The Funds Subsidies after June 30, 2013. Per P.A. 86-273 and its following statutes, the Funds statutory authority to subsidize the healthcare ended June 30, 2013, but was recently extended by P.A.98-43, signed into law June 28, 2013, extending the current statutory authorization of the subsidies at their current levels until the earlier of January 1, 2017, or such date as the City terminates its retiree healthcare plans.

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

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

II. Class Allegations

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

103. The "Window" or Jacobson subclass-Retirees during the 1/1/1988-8/23/1989 "window". As part of the 2003 Settlement, the action was also certified for the additional or expanded group to include the participants via a person who retired after 1987, but prior to

August 23, 1989, who share the Korshak class' claim to common law vesting (entitlement to permanence for the benefits as they existed on one's retirement date), plus statutory and constitutional protections against diminution of benefits which have already begun at a certain level. (This group, who had filed a parallel case in federal court, led by the Retired Chicago Police Assn. and participant plaintiffs led by first named plaintiff Jacobson, are commonly referred to as the "window" retirees; persons who retired during the 1/1/88-8/23/89 "window" period, after the Korshak class date and before 86-273 was enacted.)

104. **Pre-8/23/1989 Hirees' subclass.** The third group of class members, who share common legal issues, are those who "vested" in their retirement benefits by their joining one of the relevant Funds on or before August 23, 1989, regardless of their retirement date. (This group might be called the "Pre-8/23/89 Hiree Vesters"). Their entitlement is based primarily on their claim to the 1970 Constitution, Art. XIII, Section 5's protection against diminution or impairment of their benefits of participation in one of the four Funds determined at their entry into the system, i.e., their hire date. Buddell v. Bd. of Trustees, State Universities Retirement System, 118 Ill.2d 99, 103, 514 N.E.2d 184, 186 (1987).

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

106. All four participant groups, as classes or subclasses, readily qualify for class certification as to many issues of entitlement to a fixed-rate subsidized retiree healthcare

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program against the City and their respective Fund, and no participants' entitlement conflicts with any others.

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

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

109. Adequacy of Representation. Undersigned counsel Krislov has been engaged by hundreds of participants and will present representative parties for each of the four participant categories, who will fairly and adequately protect the interest of the classes. The proposed participant class representatives understand the nature of the claim, the purpose of the litigation, their role in it, and have no interests antagonistic to the class. And participants' undersigned counsel is well experienced and capable of representing the class or classes, and has long acted as the certified class counsel in this specific case, already.

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

COUNTS AND CAUSES OF ACTION

COUNT I - Diminution of Pension Benefits - State Constitution

111. Plaintiffs re-allege paragraphs 1 through 108.

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

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

113. Participants' healthcare coverage, terms and Fund subsidy under the Illinois Pension Code, as it existed on their entry into their particular retirement system (and with improvements thereafter) are benefits of membership in a pension or retirement system of a unit of Illinois local government, that Art. 13, §5 prohibits from being diminished or impaired.

114. The defendants' actions and declared rights to reduce that benefit constitute unlawful impairment of the participants' contractual rights under Art. 13 §5 of the 1970 Illinois Constitution.

COUNT II - Common Law Breach of Contract

115. Plaintiffs' re-allege paragraphs 1 through 112.

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

117. Also, independent of the Art. XIII, §5 of the 1970 Illinois Constitution, under common law principles of contract, the plaintiffs and pre-8/23/1989 retirement or hire date class members have a contractual right to the plan in effect during the period October 1, 1987 to August 23, 1989, at the \$55/21 fixed-rate-for-life healthcare premiums, subsidized by their

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respective Funds (the entire annuitant premium for Police and Fire annuitants, the \$25 or higher subsidy paid at any time for Municipal or Laborer annuitants) without reduction.

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

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

COUNT III - Common Law Estoppel

120. Participants re-allege paragraphs 1 through 117.

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

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

COUNT IV - U.S.C. § 1983

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

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

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

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

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

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

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

COUNT V - Impairment of Contract - Federal Constitution

130. Plaintiffs re-allege the foregoing paragraphs.

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

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

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

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

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

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

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

III. Conclusion

137. For the above reasons, participants in each class protected by the Illinois Constitution and by the doctrine of estoppel, are entitled to judgment declaring their rights to a lifetime healthcare coverage under the best terms in effect during their participation in one of the City’s four Annuity and Benefit Plans against both the City of Chicago and the Trustees of their respective Annuity and Benefit Funds.

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Prayer for Relief

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

- A. Certify the case as a class action for City of Chicago Retiree Healthcare Plan Participants, with the four proposed subclasses:
 - i. Korshak subclass-12/31/1987 annuitant participants,
 - ii. Window subclass-retired Post-Korshak, but pre-8/23/1989,
 - iii. Pre-8/23/1989 Hiree Vesters, and
 - iv. Participants –First hired date after 8/23/1989;all represented by undersigned Counsel;
- B. Declare the pre 8/23,1989 retiree participants’ entitlement to resumption of the fixed-rate subsidized \$55/\$21 monthly premium retiree healthcare plan, fully subsidized by the Funds;
- C. Declare that PA 86-273 and PA 90-32 are (i) invalid to the extent the statutes purport to either create a class of non-protected benefits of membership or (ii) invalid as applied to the class to convert existing protected benefits into non-protected benefits;
- D. Issue a preliminary, and eventually a permanent injunction prohibiting the City and Funds from reducing the group health benefits provided to class members from the level any of them have been provided as a participant, from when plaintiffs and the class members began their participation in the Plan to the present;
- E. Award Plaintiffs Attorneys fees and costs;
- F. Any and all other relief the Court deems just and proper.

Dated: September 17 2013

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

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EXHIBIT 1

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	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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	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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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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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	Gvozdеноvich	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	Jazdyk	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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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	Paoletto	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	Pappalardo	John C.	4/1/2010	6/8/1981	CPD	Police
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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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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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

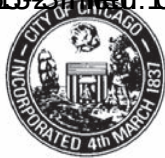
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	A	B	C	D	E	F
1	Last Name	First Name	Retired	Years of Service/ Hire Date	Category	Fund
322	Webb	James E.	12/31/2001	10/23/1972	CPD	Police
323	Webb	Laura M.	4/6/2002	9/29/1980	CPD	Police
324	Weber	Matthew E.	6/16/2000	6/4/1973	CPD	Police
325	Weiner	Ben	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	Total Additional Named Plaintiffs:		338			

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EXHIBIT 2

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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

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In the
United States Court of Appeals
For the Seventh Circuit

No. 13-3790

MICHAEL W. UNDERWOOD, *et al.*,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO, ILLINOIS,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 13 C 5687 — **James F. Holderman**, *Judge.*

ARGUED DECEMBER 10, 2014 — DECIDED FEBRUARY 25, 2015

Before EASTERBROOK, SYKES, and HAMILTON, *Circuit Judges.*

EASTERBROOK, *Circuit Judge.* Since 1982 Chicago has provided free or subsidized health care to retirees who receive pension benefits through funds for police, fire, and some other job classifications. In June 2013 the most recent ordinance establishing these benefits expired. It had been enacted in 2003 and contained a sunset clause providing for termination after 10 years. When the City notified the retirees

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A True Copy

Teste:

Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit



that they would have to pay more for medical coverage in 2014, they filed suit in state court against the City. (They also named the funds but did not serve them with process, so they did not become parties.)

The suit's principal contention is that any reduction of health care or increase in the retirees' contribution toward it violates Art. XIII §5 of the Illinois Constitution (the Pensions Clause), which says that "[m]embership in any pension or retirement system of ... any unit of local government ... shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." The complaint also asserted that the City's policy violates the Contracts Clause of the United States Constitution, Art. I §10 cl. 1, which says that "[n]o State shall ... pass any ... Law impairing the Obligation of Contracts". The federal claim allowed Chicago to remove the suit to federal court, which it did. See 28 U.S.C. §1441. The district court dismissed the suit on the pleadings, ruling that the Pensions Clause does not apply to health care and that the Contracts Clause claim fails on the merits. 2013 U.S. Dist. LEXIS 174455 (N.D. Ill. Dec. 13, 2013).

While the case was on appeal, the Supreme Court of Illinois held that the Pensions Clause applies to health benefits. *Kanerva v. Weems*, 2014 IL 115811 (July 3, 2014). Both sides then filed briefs asking us to decide the merits of the plaintiffs' claim, which entails a contention that any participant in a pension plan who receives health benefits—even if from another source, such as the City of Chicago—is entitled to keep them no matter what terms the payor attached. On plaintiffs' understanding, if a city promises health coverage during one mayor's term of office, or for one year following a worker's retirement, or until 2013, or any other limit, the

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retiree is nonetheless entitled to benefits for life. Chicago contends that this is not a sound understanding of the Pensions Clause, which says that membership is “contractual” and does not imply that the terms on which benefits were established can be overridden. Cf. *M&G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926 (2015) (health benefits vest for purposes of federal law when analysis under the ordinary law of contracts shows that a lifetime promise has been made; courts should not use a presumption for or against vesting).

We are reluctant to resolve a novel issue of state constitutional law. The Supreme Court of Illinois has not addressed the subject on which the parties disagree. Each finds some support in state decisions, but the Supreme Court has not tackled the issue directly, and it could not have done so until after holding in *Kanerva* that the Pensions Clause applies. The state’s highest court has granted review in *Matthews v. Chicago Transit Authority*, 2014 IL App. (1st) 123348 (Apr. 25, 2014), petition for leave to appeal allowed, 2014 IL LEXIS 954 (Sept. 24, 2014), which may shed light on the issues, but that case has yet to be briefed, and the eventual decision in *Matthews* may or may not control this case. Health benefits in *Matthews* were created by a collective bargaining agreement, and the holding may be limited to how a CBA’s silence about the duration of health benefits interacts with the Pensions Clause; but the court also could choose to embrace (or reject) plaintiffs’ contention that all health benefits vest automatically by virtue of the Pensions Clause.

There is, moreover, a potentially important question that the parties have not addressed: What “benefits” does the Pensions Clause protect? Plaintiffs assume that it covers in-kind benefits such as health care, no matter the cost to the

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employer. Yet pensions promise a particular amount of money (for defined-benefit plans) or the balance in a particular fund (for defined-contribution plans), not a particular quantum of buying power. If the cost of automobiles, food, or health care rises, the Pensions Clause does not require the state to supplement pensions beyond the promised level. A parallel approach for health care would imply that the Pensions Clause locks in the amount of the promised subsidy but does not guarantee a particular level of medical care. *Kanerva* implies as much by saying that the state's *contributions* to health-insurance premiums are the protected benefit. But it did not tackle that issue directly. Silence makes it hard for a federal court to resolve this appeal.

The state-law issues came to federal court via the supplemental jurisdiction. We are free to resolve the federal claims and return the state claims to state court. 28 U.S.C. §1367(c)(1), (3). Although plaintiffs' appellate briefs asked us to decide the whole case, a post-argument supplemental memorandum asked us to remand the state-law claims. Chicago maintained its position that all issues should be resolved now. Given the uncertainty surrounding the state-law claims, their importance to employees across Illinois, and the fact that the district court did not even begin to address them on the merits (having held that the Pensions Clause does not apply), we conclude that a remand is the best step—if the federal claims can be resolved without deciding the state-law claims too.

The Contracts Clause does not create a right to have all contractual claims enforced in federal court. It provides instead that states may not enact any law impairing the obligation of contracts—that is, taking away entitlements that pre-

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dated the change. See, e.g., *General Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992); *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978); *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213 (1827).

The Contracts Clause covers legislative as opposed to executive action. See, e.g., *St. Paul Gas Light Co. v. St. Paul*, 181 U.S. 142, 148 (1901); *E&E Hauling, Inc. v. Forest Preserve District of Du Page County*, 613 F.2d 675, 678 (7th Cir. 1980). Plaintiffs attempt to satisfy this requirement by contending that various state statutes have impaired their rights to health benefits. But to the extent that they contest state statutes, they have sued the wrong party. Chicago is not responsible for the content of state law.

So have plaintiffs identified any legislative action by the City that impairs contractual rights? They have not. They do not accuse the City of making legislative changes that prevent implementation of contracts.

Many decisions hold that legislation can *breach* a contract without impairing the *obligation* of contracts. That's the point of *E&E Hauling* and the cases on which it relied. See, e.g., *St. Paul Gas Light*, 181 U.S. at 149; *Hays v. Port of Seattle*, 251 U.S. 233, 237 (1920); *Jackson Sawmill Co. v. United States*, 580 F.2d 302 (8th Cir. 1978). A statute or ordinance preventing enforcement of contracts would create a problem under the Contracts Clause, see *E&E Hauling*, 613 F.2d at 680–81 & n.7. But plaintiffs do not contend that Chicago has adopted legislation overriding or otherwise blocking the enforcement of contracts about health benefits.

Illinois law provides plaintiffs with ample remedies, if their state-law theories are correct. Cf. *Mid-American Waste*

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Systems, Inc. v. Gary, 49 F.3d 286 (7th Cir. 1995); *Simmons v. Gillespie*, 712 F.3d 1041 (7th Cir. 2013); *Kay v. Chicago Board of Education*, 547 F.3d 736 (7th Cir. 2008). Far from superseding contracts, Illinois law arguably gives promises *more* force than they would have under the common law. The 2003 ordinance had a time limit; no one contends that its expiration was a breach of contract. Older promises, which plaintiffs and the district court characterize as “handshake deals,” likewise are not enforceable as contracts. The Illinois Statute of Frauds, see *McInerney v. Charter Golf, Inc.*, 176 Ill.2d 482, 490 (1997), prevents the enforcement of oral promises that extend more than a year into the future, as these “handshake deals” did. (We have omitted details about the sequence of promises underlying the plaintiffs’ claims. The district court’s opinion recounts them; they do not matter to analysis under the Contracts Clause.) Plaintiffs contend that the Pensions Clause of the Illinois Constitution gives the City’s promises greater force than the common law of contracts provides, but that is a proposition of state law only and does not create a claim under the federal Contracts Clause.

At oral argument plaintiffs’ counsel suggested that Chicago may have violated the Takings Clause of the Fifth Amendment by discontinuing or reducing health benefits. No such argument appears in the briefs, and a takings claim would be premature. The federal Constitution does not forbid takings; instead it requires just compensation. This means that any takings claim belongs in state court, which may award compensation. See *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). An unripe takings claim cannot keep this suit in federal court.

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The federal judiciary has an institutional interest in allowing states to resolve novel issues of state law. It would be an abuse of discretion for a district court to retain the state-law claims, once the federal claims have been resolved, and it would be a mistake for us to say anything more about them. Because the Supreme Court of Illinois has granted review of a case whose disposition may cast light on plaintiffs' claims, and because this suit began in state court, relinquishing supplemental jurisdiction is preferable to certifying one or more questions to the state judiciary. The judgment of the district court is vacated, and the case is remanded with instructions to remand the state-law claims to state court under §1367(c).

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL W. UNDERWOOD, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 CITY OF CHICAGO, *et al.*,)
)
 Defendants.)
)
)

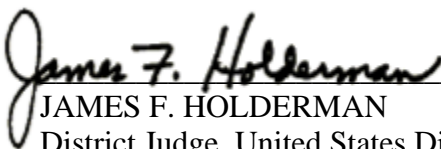
No. 13 C 5687

ORDER

JAMES F. HOLDERMAN, District Judge:

As directed by the Seventh Circuit’s opinion in *Underwood v. City of Chicago*, No. 13-3790, --- F.3d ---, 2015 WL 780532, at *3 (7th Cir. Feb. 25, 2015) (Dkt. No. [77]), plaintiffs’ remaining Illinois state law claims are remanded to the Circuit Court of Cook County, Illinois, where this case was originally filed.

ENTER:



JAMES F. HOLDERMAN
District Judge, United States District Court

Date: March 23, 2015

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN



Thomas G. Bruton
CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

312-435-5670

April 6, 2015

Clerk, Attention: Dorothy Brown
Circuit Court of Cook County
Richard J. Daley Center
50 W Washington Street
Chicago, IL 60602

Re: Underwood et al v. City Of Chicago et al
USDC No: 13-cv-5687

Circuit Court No: 2013 CH 17450

Dear Clerk:

A certified copy of an order entered on 3/23/2015 by the Honorable James F. Holderman, remanding the above-entitled case back to the Circuit Court of Cook County, Illinois is herewith transmitted to you for your files.

Sincerely yours,

Thomas G. Bruton, Clerk

By: /s/ Melissa Rivera
Deputy Clerk