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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

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

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

Record of proceedings had at the
hearing of the above-entitled cause, before the
Honorable NEIL H. COHEN, one of the Judges of said
Court, on December 23, 2015, in Room 2308, Richard J.
Daley Center, Chicago, Illinois, commencing at 10:30
a.m.

A P P E A R A N C E S

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A P P E A R A N C E S (Continued)
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Benefit Fund of Chicago.

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

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

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

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

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

THE COURT: Mr. Burke.

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

THE COURT: Hi. How are you?

MR. KUGLER: David Kugler.

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

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

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

MR. KRISLOV: Clint Krislov for the

1 plaintiffs, many of whom are here.
2 MR. GOLDSTEIN: Ken Goldstein for the
3 plaintiffs.

4 THE COURT: Hi, Ken.
5 All right. Will everyone please be
6 seated.

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

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

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

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

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

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

8 And, Mr. Kennedy.

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

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

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

21 Mr. Burke?

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

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

8 MR. BURKE: Yes, sir.

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

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

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

24 MR. KUGLER: No.

1 litigation.

2 THE COURT: Very good. Mr. Kennedy.

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

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

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

15 Same with you, Mr. Kugler. Yes?

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

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

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

22 THE COURT: Mr. Krislov, yes.

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

1 today. They chose not to file anything --
 2 THE COURT: Your objection's
 3 overruled.
 4 Now, Mr. Krislov?
 5 MR. KRISLOV: Yes, Your Honor.
 6 THE COURT: It's your motion. Would
 7 you like to go forward with it and call anybody.
 8 MR. PRENDERGAST: Your Honor, may I
 9 make a suggestion?
 10 THE COURT: Sure.
 11 MR. PRENDERGAST: I think it would be
 12 helpful to the Court if each of the parties makes a
 13 15-minute or less opening statement.
 14 THE COURT: Denied. You can do that
 15 at the end.
 16 MR. PRENDERGAST: Okay.
 17 THE COURT: And the reason for that,
 18 Mr. Prendergast, is I'm well aware of the parties'
 19 positions. You've stated it to me in open court;
 20 you've stated it to me in prior submissions. I may
 21 agree or disagree. I have questions for everybody.
 22 We'll do that after we take a -- elicit any testimony
 23 from the witness stand.
 24 I will not only allow you, permit you,

1 exclude. Is that what you want?
 2 MR. KRISLOV: We would like her to be
 3 excluded during Ms. Holt's testimony.
 4 THE COURT: I'll hear about that in
 5 one second.
 6 Ms. Holt, please come up here. Watch
 7 your step, please.
 8 Are we on the record, Ms. Reporter?
 9 THE COURT REPORTER: Yes, we are.
 10 (Witness sworn.)
 11 THE COURT: Would you please state
 12 your name for the record -- please sit down -- and
 13 spell your last name for the record.
 14 THE WITNESS: Alexandra Holt, H-o-l-t.
 15 THE COURT: Now, with regard to the
 16 motion to exclude witnesses, would you like to
 17 elaborate on it?
 18 MR. KRISLOV: Yes. Ms. Currier is the
 19 other affiant who I would like to cross-examine, and
 20 I would rather that they not be able to -- that she
 21 not get a heads up from what my questions are to Ms.
 22 Holt. I just don't think it's appropriate for her to
 23 listen to testimony before she gives hers regarding
 24 her affidavit.

1 but invite you to make a statement in closing and in
 2 opposition to this motion, and you may take as long
 3 as you like. You'll have every opportunity to be
 4 heard on that.
 5 Is that all right with you?
 6 MR. PRENDERGAST: Of course.
 7 THE COURT: I think it's most
 8 efficient if we bypass attorneys having every
 9 opportunity to speak about it and just consolidate it
 10 and clearly focus on the issues as they become
 11 apparent and are apparent from the submissions.
 12 Mr. Krislov, call your first witness.
 13 MR. KRISLOV: Your Honor, we would
 14 call, first, Ms. Alexandra Holt. And we would
 15 like -- I know Ms. Currier by face. I don't know Ms.
 16 Holt --
 17 THE COURT: Ms. Holt, are you present?
 18 MS. HOLT: I am.
 19 THE COURT: Would you come up, please.
 20 One second before you go further.
 21 MR. KRISLOV: No, I'm not going to --
 22 I just wanted Ms. Currier to leave the courtroom
 23 while the testimony is going --
 24 THE COURT: It's called a motion to

1 MR. PRENDERGAST: Your Honor?
 2 THE COURT: Yes, Mr. Prendergast.
 3 MR. PRENDERGAST: I would normally not
 4 object to a motion to exclude witnesses, except what
 5 Mr. Krislov is doing here is moving to exclude his
 6 own witness. We are not calling this witness. He's
 7 calling this witness. We have no objection to this
 8 witness remaining in court, and I don't think he has
 9 any basis to exclude his own witness. She should be
 10 allowed to stay.
 11 THE COURT: Well, he's really calling
 12 the witness as what used to be called as an adverse
 13 witness, a hostile witness, because he isn't
 14 necessarily vouching for the credibility of the
 15 witness. He wishes to discuss with the witnesses
 16 their -- the substance of their affidavits.
 17 However, that being said, Mr. Krislov,
 18 I've read both an annotated -- both of these
 19 affidavits, as I promised you I would. I'm familiar
 20 with the substance of it.
 21 Ms. Holt's affidavit is not very long,
 22 and it merely discusses, and I believe it addresses,
 23 the hardship aspect which would allegedly befall the
 24 City if I were to issue this preliminary injunction,

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

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

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

15 And you may proceed.

16 MR. KRISLOV: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 ALEXANDRA HOLT,

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

21 DIRECT EXAMINATION

22 BY MR. KRISLOV:

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

1 revenue, correct?

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

8 Q Well, let me just read your statement.

9 A Uhm-hmm.

10 Q And the statement says:

11 [AS READ:

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

15 Right?

16 A That's correct.

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

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

22 THE COURT: Two thousand what?

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

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

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

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

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

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

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

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

19 THE COURT: All right. Very good.

20 BY MR. KRISLOV:

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

1 worth of retiree healthcare.

2 BY MR. KRISLOV:

3 Q Approximately how much --

4 A About \$60 million in 2015.

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

6 Does that jibe with your recollection?

7 A It's approximately 60 million, yes.

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

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

13 Q Me too.

14 MR. KRISLOV: May I?

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

18 MR. KRISLOV: Thank you.

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

21 MR. KRISLOV: Will do.

22 BY MR. KRISLOV:

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

1 THE COURT: Let's go.

2 BY MR. KRISLOV:

3 Q Would you take a look at the chart, and --

4 A Uhm-hmm. Ms. Holt, from now on, we don't
5 take uh-huhs in here because the court reporter can't
6 take that down. It's either yes or no, okay?

7 THE WITNESS: Yes, sir.

8 BY MR. KRISLOV:

9 Q So what I've taken from your budget, annual
10 budget books that are issued by the City, that for --

11 THE COURT: Whoever has a cell phone,
12 turn it off.

13 THE COURT REPORTER: Your Honor, it
14 was my laptop.

15 THE COURT: Oh, then, you're going to
16 have to leave.

17 (Laughter.)

18 BY MR. KRISLOV:

19 Q For 2012 --

20 THE COURT: Before you start reading
21 from a document, you need to get it into the record.

22 MR. KRISLOV: Well, I don't think I
23 need --

24 THE COURT: Well, I'm telling you,

1 THE COURT: I'm not dealing with
2 assumptions in the issuance of an injunction. I'm
3 not dealing with "I believe" or "may." This is not
4 the way we do things under our system of justice.

5 You have to lay a foundation.

6 Let me ask you, Ms. Holt.

7 Do you know if that document in front
8 of you truly and accurately represents the figures it
9 purports to represent in the City's budget for, in
10 this case, per the last question, 2012? Yes or no?

11 THE WITNESS: No. I didn't put it
12 together, so, no, I do not know that.

13 THE COURT: All right. Next question.

14 BY MR. KRISLOV:

15 Q You would agree, though, the City spent --
16 that the City's expenditure in 2012 was about \$99
17 million for retiree healthcare?

18 A I would agree that it was about -- around
19 \$100 million, yes, I would agree with that.

20 Q And for 2013, it was \$102 million, right?

21 A I believe that to be generally correct.

22 Q And for 2014, it was reduced to 80,609,880,
23 and I have the 2015 budget overview which you can
24 refer to, and I think it will corroborate -- I think

1 despite what you think.

2 You know, show it to the witness, ask
3 her if she can identify it and knows what it is, and
4 accepts it as real and truthful. Otherwise, it's not
5 coming in.

6 MR. KRISLOV: Well, the information --

7 THE COURT: I don't know that. You're
8 not testifying.

9 MR. KRISLOV: I'm not testifying.

10 THE COURT: Ask her questions.

11 MR. KRISLOV: Yes, I will.

12 BY MR. KRISLOV:

13 Q Ms. Holt, would you agree -- you would
14 agree that the 2012 expenditure for retiree
15 healthcare was 99,639,866, would you not?

16 A Yes, I guess -- I would like to caveat
17 that. This is a chart that you prepared. I assume
18 you've taken it from the City's budget.

19 Q Yes.

20 A I would want to -- assuming that this is
21 where the information has come from, then the
22 information in the appropriation ordinance --

23 THE COURT: Not good enough.

24 THE WITNESS: -- is correct.

1 you probably know this book better than anybody else
2 in the room.

3 A Yes. Again, speaking in rounded numbers, I
4 do agree that 80 million is correct in terms of our
5 retiree healthcare expenditure in 2014.

6 Q And that would reflect a reduction of
7 21 million, as I calculated from your figures,
8 21,716,545 that the City reduced its expenditure for
9 retiree healthcare for 2014?

10 A Yes. We did reduce our expenditure between
11 '13 and '14 by approximately \$20 million.

12 Q And that was done -- who calculated -- who
13 figured how much to reduce? How did you do that?

14 A It was based on a change in the subsidy
15 level for retirees.

16 MR. PRENDERGAST: Your Honor, let me
17 interpose a general objection here to this line of
18 questioning.

19 The purpose of this hearing is to
20 determine whether or not you should freeze the 2015
21 subsidy levels and keep them for 2016, or allow the
22 2016 reductions to go into effect.

23 The questions he's asking here about
24 2012 and 2013 are not relevant to this proceeding.

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

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

7 THE COURT: Mr. Krislov?

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

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

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

14 THE COURT: Clint.

15 MR. KRISLOV: Your Honor.

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

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

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

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

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

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

1 MR. KRISLOV: I apologize, Your Honor.

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

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

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

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

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

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

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

7 MR. KRISLOV: Yes, I have.

8 THE COURT: Yes?

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

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

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

15 THE COURT: I have.

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

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

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

1 questioning, I believe I have a right to question her
2 on how the City arrived -- why the City does --
3 THE COURT: I disagree, and that's my
4 ruling.

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

7 THE COURT: No, it's not.

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

10 THE COURT: No, it's not.

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

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

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

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

20 BY MR. KRISLOV:

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

23 Would that jibe with your
24 recollection?

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

8 THE COURT: How much?

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

13 THE COURT: Understood.

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

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

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

1 A Yes, that jibes with my recollection.

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

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

7 MR. KRISLOV: 2016.

8 THE COURT: For which -- 2016.

9 BY MR. KRISLOV:

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

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

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

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

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

1 retirees.

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

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

15 BY MR. KRISLOV:

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

19 Would that --

20 A That's correct.

21 Q And that was attributed to vacancy
22 eliminations.

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

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

3 Q And how much did that save in dollars?

4 A About \$12 million.

5 Q And then retiree healthcare was 30.1
6 million.

7 That leaves other healthcare savings
8 of how much?

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

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

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

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

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

1 personnel-related costs.]

2 Right?

3 A That's correct.

4 Q And then you say:

5 [CONTINUING:

6 91 percent of the City's total

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

11 Right?

12 A That's correct.

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

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

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

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

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

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

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

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

15 THE WITNESS: That's correct.

16 THE COURT: All right. Thank you.

17 BY MR. KRISLOV:

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

20 A I wouldn't know otherwise.

21 Q Okay. In paragraph seven, you say:

22 [AS READ:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 A That's correct. I know that.

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

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

14 Q Yes or no.

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

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

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

23 Again, courtesy.

24 Please finish your answer, Ms. Holt.

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

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

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

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

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

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

7 BY MR. KRISLOV:

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

10 A That's my understanding.

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

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

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

21 MR. KRISLOV: Okay.

22 BY MR. KRISLOV:

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

[AS READ:

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

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

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

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

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

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

If we had left the subsidy where it

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

A The corporate fund is our generating account.

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

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

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

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

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

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

A That's correct.

Q Or is it 1/10 of 1 percent?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Other options that I have, for

1 One second, Your Honor.

2 THE COURT: Sure.

3 (Brief pause.)

4 BY MR. KRISLOV:

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

8 A Uhm-hmm.

9 Q Right?

10 A Yes, I did say that.

11 Q You are a lawyer?

12 A I am.

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

15 A I do.

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

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

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

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

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

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

16 THE COURT: Denied.

17 BY MR. KRISLOV:

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

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

24 MR. KRISLOV: Okay.

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

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

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

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

22 BY MR. KRISLOV:

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

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

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

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

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

11 Q The answer that --

12 THE COURT: The answer is yes.

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

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

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

21 But you may rephrase.

22 MR. KRISLOV: Thank you.

23 BY MR. KRISLOV:

24 Q For the 2016 budget, was that reviewed

1 A I am aware of none.

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

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

7 THE WITNESS: It's my understanding --

8 THE COURT: One second.

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

13 THE COURT: That objection is
14 sustained.

15 BY MR. PRENDERGAST:

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

19 Do you have that assumption in mind?

20 A I do have that assumption in mind.

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

1 again?

2 A Yes, it was reviewed again.

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

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

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

10 THE COURT: Cross.

11 CROSS-EXAMINATION

12 BY MR. PRENDERGAST:

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

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

20 A I am aware that that statute expired.

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

1 just stopping subsidies altogether?

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

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

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

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

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

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

13 A That's correct.

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

16 A That's correct.

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

19 A That's correct.

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

22 A That is correct.

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

1 A That's correct.

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

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

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

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

1 THE COURT: Redirect.
2 REDIRECT EXAMINATION
3 BY MR. KRISLOV:

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

8 A It's part of our appropriations ordinance.

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

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

13 Q And you don't need another ordinance in
14 order to have the retiree healthcare plan for that
15 year, correct?

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

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

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

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

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

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

19 BY MR. KRISLOV:

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

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

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

1 programs?
 2 A I can't speak to that specifically.
 3 Q Okay. So if the retirees have inferior
 4 plans at the conclusion of your phaseout, that's
 5 really not your problem?
 6 THE COURT: Would you repeat it so I
 7 could hear? I didn't hear the verb.
 8 If the retirees what?
 9 BY MR. KRISLOV:
 10 Q I said if the retirees have, after the City
 11 has phased this out, inferior plans to choose from,
 12 that's not your problem as far as the City's
 13 concerned?
 14 MR. PRENDERGAST: Objection. Lack of
 15 foundation.
 16 THE COURT: No.
 17 You can answer the question.
 18 THE WITNESS: Well, I don't know if I
 19 would say it's not our problem, per se. I mean,
 20 obviously, all of these are very difficult decisions
 21 that have to be taken seriously.
 22 THE COURT: Answer the question, Ms.
 23 Holt.
 24 THE WITNESS: I'm sorry, Your Honor.

1 THE COURT: Any redirect -- recross,
 2 I'm sorry.
 3 RECCROSS-EXAMINATION
 4 BY MR. PRENDERGAST:
 5 Q If, Ms. Holt, the City of Chicago had only
 6 been concerned about the financial --
 7 THE COURT: Say that again. I'm
 8 hearing coughing, I didn't hear the question,
 9 Richard. I'm sorry.
 10 BY MR. PRENDERGAST:
 11 Q If the City had only been concerned about
 12 the financial aspect of the reduction of healthcare
 13 costs, would that have been the only consideration,
 14 and not caring one thing about the retirees, as the
 15 Court notes, the heart issue, okay, then in mid 2013,
 16 purely on a financial basis, what would the City have
 17 done?
 18 A We would have completely cut the subsidy
 19 for all retirees at that point in time.
 20 Q Thank you.
 21 Second question. Counsel talked to
 22 you about various appropriation ordinances.
 23 Do you recall his questions?
 24 A I do recall his questions.

1 I don't know whether they're going to
 2 have inferior plans or not. I can't speak to that.
 3 THE COURT: That's not the question,
 4 Ms. Holt. The question is --
 5 THE WITNESS: Yes, sir.
 6 THE COURT: -- after you decide to
 7 phase them out, ending in 2017, it's the City's
 8 position that they're on their own and the City's not
 9 concerned about it, correct?
 10 THE WITNESS: That's --
 11 THE COURT: Yes or no.
 12 THE WITNESS: Yes. That is correct.
 13 THE COURT: From a financial point of
 14 view. We're not talking about heart. We all care
 15 about our people, but this is the City speaking.
 16 You're an agent of the City. You just care -- you're
 17 just talking about the financial concern of the City.
 18 And after the total -- the termination
 19 of the phaseout period, the City, from what you're
 20 just saying, is only concerned with the financial
 21 aspect, not the heart aspect, correct?
 22 THE WITNESS: That is correct.
 23 MR. KRISLOV: No further questions,
 24 Your Honor.

1 Q Were each of those appropriation ordinances
 2 time limited?
 3 A Yes. Each appropriation ordinance was time
 4 limited to the fiscal year for which it relates.
 5 MR. PRENDERGAST: Thank you.
 6 MR. KRISLOV: The only question --
 7 just one question on the --
 8 THE COURT: Proceed.
 9 REDIRECT EXAMINATION
 10 BY MR. KRISLOV:
 11 Q The appropriation ordinance, each year's
 12 appropriation ordinance is the amount to be spent for
 13 that year, right?
 14 A Yes, it's the amount to be spent for that
 15 year and that year only.
 16 THE COURT: Okay. You're done.
 17 MR. KRISLOV: Wait. Let me -- she
 18 threw in the "that year only."
 19 BY MR. KRISLOV:
 20 Q The ordinance doesn't say "in that year
 21 only," the ordinance says for that year, right?
 22 A No. It is for that year only, both based
 23 on the ordinance, as well as state appropriation law,
 24 as well as the accounting laws that we have to spend.

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

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

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

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

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

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

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

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

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

23 BY MR. KRISLOV:

24 Q Do you know whether the language of the

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

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

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

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

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

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

24 So tell me about the City's policy

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

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

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

6 THE COURT: Let the woman finish her
7 answer, please.

8 MR. KRISLOV: Your Honor.

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

13 Go ahead. Finish, Ms. Holt.

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

23 BY MR. KRISLOV:

24 Q I'm with you on that.

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

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

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

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

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

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

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

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

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

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

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

5 Q And his current residence?

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

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

9 (Laughter.)

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

15 BY MR. KRISLOV:

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

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

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

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

11 THE COURT: Thank you, Ms. Holt.

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

14 MR. KRISLOV: Yes.

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

19 THE WITNESS: Yes.

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

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

24 BY MR. KRISLOV:

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

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

5 A That's correct.

6 Q One has a very high deductible?

7 A Yes, that's correct.

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

10 A That's correct.

11 Q Okay. And you would not --

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

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

16 BY MR. PRENDERGAST:

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

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

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

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

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

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

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

14 MR. KRISLOV: Fair enough.

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

20 BY MR. PRENDERGAST:

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

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

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

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

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

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

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

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

1 A To my knowledge, they did not.

2 REDIRECT EXAMINATION

3 BY MR. KRISLOV:

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

7 A They were labor representatives, yes.

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

10 A That's my understanding.

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

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

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

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

21 MR. KRISLOV: She already testified --

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

1 BY MR. KRISLOV:

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

6 A I'm not aware of that.

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

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

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

16 BY MR. KRISLOV:

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

19 THE COURT: If you know.

20 THE WITNESS: I don't recall.

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

23 MR. PRENDERGAST: May I?

24 THE COURT: Sure.

1 MR. PRENDERGAST: Thank you.
 2 RECCROSS-EXAMINATION
 3 BY MR. PRENDERGAST:
 4 Q There were labor representatives on the
 5 committee, right?
 6 A That's correct.
 7 Q They represented people who are currently
 8 in labor unions?
 9 A That's correct.
 10 Q Labor unions with the employees of the
 11 City, correct?
 12 MR. KRISLOV: Objection. Calls for a
 13 conclusion that she has no knowledge of, and she's
 14 not --
 15 THE COURT: Really? The purpose of
 16 cross-examination in any examination is for you to
 17 determine what her knowledge is.
 18 If you want to testify, and you are
 19 her conscience, you may so testify. That objection
 20 is utterly overruled, because you don't have
 21 firsthand knowledge of that.
 22 So you may inquire, though.
 23 Go ahead.
 24 BY MR. PRENDERGAST:

1 MR. KRISLOV: Your Honor, could I have
 2 everything stricken after "yes"?
 3 THE COURT: No. You ask a question,
 4 you get the answer.
 5 MR. KRISLOV: Yeah, but, Your Honor,
 6 to take issue with you on this --
 7 THE COURT: Don't bother. My ruling
 8 is the same. Your objection is noted for the record.
 9 You may do whatever you want with it, but let's move
 10 on.
 11 Anything else on her firsthand
 12 knowledge as to who the labor unions represented?
 13 BY MR. KRISLOV:
 14 Q You don't have firsthand knowledge as to
 15 who the labor unions repre- --
 16 THE COURT: Asked and answered. She
 17 said yes, she does, and the employees of City of
 18 Chicago.
 19 Next question.
 20 BY MR. KRISLOV:
 21 Q You would agree that they do not represent,
 22 because I think you said this before, they don't
 23 represent --
 24 THE COURT: Then why ask it again?

1 Q The labor union representatives represented
 2 people who are in unions who are future retirees,
 3 correct?
 4 A That is correct.
 5 Q And that commission report had a profound
 6 impact on the pensions of future retirees, did it
 7 not?
 8 A I would say it had a profound impact on the
 9 retiree healthcare of future retirees.
 10 MR. PRENDERGAST: No further
 11 questions.
 12 THE COURT: Go ahead, Mr. Krislov.
 13 You may attack her firsthand knowledge as to that
 14 subject matter of that report only, nothing more.
 15 REDIRECT EXAMINATION
 16 BY MR. KRISLOV:
 17 Q The fact is, you don't know who they were
 18 representing on the board, do you?
 19 A No. Our labor representatives represent
 20 the employees of the City of Chicago. We have well
 21 over 30 labor unions, all of whom represent different
 22 factions of our city employees.
 23 The labor representative who are on it
 24 represent those employees.

1 BY MR. KRISLOV:
 2 Q The people who were, then --
 3 THE COURT: Asked and answered.
 4 BY MR. KRISLOV:
 5 Q -- retirees --
 6 THE COURT: Asked and answered, Clint.
 7 MR. KRISLOV: Okay, you --
 8 THE COURT: I heard her testimony.
 9 She did say that.
 10 MR. KRISLOV: Okay. We're done.
 11 THE COURT: Well, Ms. Holt, have a
 12 Merry Christmas.
 13 THE WITNESS: Thank you, Your Honor.
 14 (Witness excused.)
 15 THE COURT: Call your next witness.
 16 MR. KRISLOV: Nancy Currier.
 17 THE COURT: All right.
 18 Ms. Court Reporter, do you need a
 19 break?
 20 THE COURT REPORTER: Only if you do.
 21 THE COURT: I don't. I'm good.
 22 Hello.
 23 THE WITNESS: Hi. How are you?
 24 THE COURT: I'm very good. Would you

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

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

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

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

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

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

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

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

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

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

20 BY MR. KRISLOV:

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

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

1 right?

2 THE WITNESS: Correct.

3 THE COURT: Answer accordingly.

4 THE WITNESS: Okay.

5 THE COURT: Next question.

6 MR. KRISLOV: Thank you, Your Honor.

7 BY MR. KRISLOV:

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

11 A Yes, I am.

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

14 A Yes.

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

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

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

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

3 THE COURT REPORTER: Your Honor?

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

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

11 THE WITNESS: Correct.

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

14 Do you understand me?

15 THE WITNESS: Yes, I do.

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

18 THE WITNESS: Okay.

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

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

8 A Correct.

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

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

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

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

19 A Those were done with the same methodology.

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

22 A Yes, Segal projects a cost.

23 Q And the same thing for 2016?

24 A Correct.

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

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

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

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

[AS READ:

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

Right?

A That's correct.

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

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

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

A No. It's prospective coverage.

Q It's only prospective?

A Uhm-hmm.

Q Second:

[CONTINUING:

If during the time of absence from the

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

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

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

A Correct.

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

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

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

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

Q And have you checked that out?

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

Q Did you know that --

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

They have drug copayments that go into

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

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

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

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

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

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

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

A You can drop an ACA plan without penalty.

Q At any time?

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

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

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

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

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

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

A No, I'm not.

Q Not at all?

A No.

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

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

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

A This premium cost that you have to look at,

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

5 Q If you can --

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

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

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

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

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

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

18 (Document tendered.)

19 THE WITNESS: Thank you.

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

22 THE WITNESS: Yes, it is.

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

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

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

5 Q Okay. Are you a lawyer?

6 A No, I'm not lawyer.

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

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

15 BY MR. KRISLOV:

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

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

20 MR. KRISLOV: Correct.

21 BY MR. KRISLOV:

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

1 purpose of identification, yeah?

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

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

5 Either way, we have the same document.

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

9 Proceed.

10 BY MR. KRISLOV:

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

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

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

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

3 A Correct.

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

8 A Correct.

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

13 A No.

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

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

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

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

1 plan --

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

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

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

8 A Correct.

9 Q Regardless of your income?

10 A Correct.

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

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

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

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

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

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

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

5 A That's the statement, yes.

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

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

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

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

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

24 A Yes.

1 would know how many people have applied?

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

4 Q You have no idea?

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

10 Q Okay. And you don't know whether any --
11 you don't know if any of the people have applied for
12 2015 or '16?

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

15 Q Ballpark?

16 A (No response.)

17 Q No idea?

18 A I'd be guessing.

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

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

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

5 Q Below a certain annuity or --

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

11 So go over that.

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

16 A I don't know.

17 Q Okay.

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

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

22 A Correct.

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

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

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

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

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

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

5 A Correct.

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

8 THE COURT: City.

9 MR. LAYDEN: Yes, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. LAYDEN:

12 Q Good morning, Mrs. Currier.

13 Let's start with the means test.

14 Mr. Krislov asked you some questions about that.

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

17 A Yes.

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

20 A We mail out an application.

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

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

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

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

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

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

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

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

24 Q At what level of income does a retiree have

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

3 A Yes.

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

6 A We have a benefits --

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

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

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

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

15 Objection overruled.

16 You may go on.

17 BY MR. LAYDEN:

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

21 A Yes, we do.

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

23 A We send --

24 Q What kind of -- excuse me.

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

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

5 Q Is that of the federal poverty level.

6 A Of the federal poverty level, correct.

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

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

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

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

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

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

23 Q Yes.

24 A Yes. It's better under the federal

1 government.

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

4 A Correct.

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

7 A I think the judge took it back.

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

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

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

14 (Document tendered.)

15 BY MR. LAYDEN:

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

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

20 Do you see that?

21 A Yes.

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

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

4 A Yes, there are plans out there.

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

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

9 (Document tendered.)

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

12 THE COURT: Sure.

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

14 BY MR. LAYDEN:

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

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

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

21 A Correct.

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

24 Why is there a vertical column for the

1 the City's current plan?

2 A Yes, they do.

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

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

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

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

11 A Correct.

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

15 A Correct.

16 Q So this is in effect now?

17 A Correct.

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

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

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

24 Q And are there plans under the ACA where

1 age of retirees?

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

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

6 A Smoking status also plays into the premium.

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

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

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

15 A Correct.

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

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

23 Q And where was this information obtained
24 from?

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

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

1 So you took somebody who has an age of
 2 55, correct?
 3 A (Nodding.)
 4 Q And then you took -- another thing you did
 5 is you looked at their smoking status, correct?
 6 A Correct.
 7 Q Then you went to an ACA -- the ACA website,
 8 correct?
 9 A Correct.
 10 Q And you put in that data.
 11 A (Nodding.)
 12 Q And as a result of that, you got the
 13 corresponding premium associated for coverage for
 14 that person under the ACA, correct?
 15 A Correct.
 16 Q You did that for each age, each smoking
 17 status identified on this exhibit, correct?
 18 A Correct.
 19 MR. KRISLOV: Your Honor, can I -- I
 20 mean, I'm letting him go on in the --
 21 THE COURT: That's nice of you, but
 22 I'm the one who lets him.
 23 MR. KRISLOV: I understand, but I
 24 don't want --

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

1 A As compared to the City's standard plan,
2 for example, the ACA plans do have some advantages.

3 They cover preventive care. They have
4 office visits. You can go to the doctor's office and
5 pay a copayment and not have to meet the deductible.

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

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

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

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

16 THE COURT: One second.

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

20 MR. KUGLER: If that was the --

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

1 you're no longer eligible for coverage.

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

4 A No, it does not.

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

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

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

16 A Correct.

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

22 A No, it does not mean that.

23 Q Can you explain how that works?

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

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

3 Do you understand, you, young lady?

4 UNIDENTIFIED GALLERY MEMBER: Yes.
5 And I apologize.

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

8 Proceed.

9 BY MR. LAYDEN:

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

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

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

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

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

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

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

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

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

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

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

10 Under the ACA, how does a copay work?

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

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

20 A Correct.

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

23 A Correct.

24 Q Can you explain what kind of things are

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

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

8 Q 100 percent under the ACA plan?

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

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

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

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

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

20 A Correct. One is on a PPO network.

21 Q Is another network called the Choice
22 network?

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

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

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

6 A Yes, it is.

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

10 A Correct.

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

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

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

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

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

1 that network.

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

5 A In terms of the size of the network?

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

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

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

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

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

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

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

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

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

9 REDIRECT EXAMINATION
10 BY MR. KRISLOV:

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

12 A Blue Choice.

13 Q Blue Choice has the more limited network?

14 A Yes.

15 Q And that doesn't include Advocate?

16 A No, it does not.

17 Q Northshore?

18 A I don't know about Northshore.

19 Q Northwestern?

20 A No, Northwestern is not in there.

21 Q University of Chicago?

22 A No.

23 Q And Rush?

24 A No.

1 Q Okay. Those five are the premier hospital
 2 groups in town right now, right?
 3 A Those are some of the premier.
 4 Q The -- and for someone who makes the bad
 5 choice to happen to move out of the Chicago area --
 6 you can retire anywhere in the country, right?
 7 A Correct.
 8 Q And you're still free to move from --
 9 A You can move out of the country, I believe.
 10 Q Even in.
 11 But let's say they stay in the country
 12 so we keep this a domestic problem.
 13 That Choice network would be utterly
 14 worthless to the people, right?
 15 A Right. It's for the people in -- I believe
 16 it's a six-county region.
 17 Q Okay.
 18 A In Illinois.
 19 Q And only for those hospital groups within
 20 that network?
 21 A Correct.
 22 Q And -- oh, also, for the rates with -- for
 23 the rates for a single person without Medicare, that
 24 would not include their children, right?

1 Q Your team being?
 2 A The people in the benefits office.
 3 Q Okay. But you did not -- this wasn't
 4 your -- did you put this -- physically, who put the
 5 chart together?
 6 A People on my team --
 7 Q People -- representatives --
 8 A -- put this chart together.
 9 Q You did not --
 10 A I reviewed the chart.
 11 Q You reviewed the chart, but have you
 12 compared it to the actual data? I presume you took
 13 this as your people do an accurate job, and you
 14 generally rely on them?
 15 A I rely on them, yes.
 16 Q Okay. As far as the deductible that will
 17 vary, you aren't saying -- your focus -- sorry.
 18 Strike all that; start fresh with you.
 19 What these figures focus on is the
 20 premium?
 21 A Correct.
 22 Q It does not address, for any given policy,
 23 or individually, or in the group, what the
 24 deductibles are for those policies, the chart

1 A Correct. That's single person.
 2 Q Right. So if they wanted to have their
 3 kids covered for -- what did you talk about? Dental
 4 and other preventive care?
 5 A Right.
 6 Q They would be extra. They'd have to pay
 7 extra for that?
 8 A Correct.
 9 Q Yeah. So that's not in the -- and if they
 10 wanted their spouse in, too, that's not in these
 11 rates either? This is just --
 12 A Which chart are you referring to, Mr.
 13 Krislov?
 14 Q The one that you've been -- the one that
 15 you've testifying for --
 16 A This one with the --
 17 Q Yes. This is -- this just --
 18 A This is a single person at age 55.
 19 Q Right. So if they want dependent or spouse
 20 coverage, that's an additional charge?
 21 A Correct.
 22 Q Okay. And so we could agree -- oh, let me
 23 ask you. Who put this chart together?
 24 A My team.

1 doesn't?
 2 A The chart does not.
 3 Q The chart doesn't talk about out of pocket?
 4 A No, it does not.
 5 Q Doesn't talk about networks?
 6 A No, it does not.
 7 Q So all this chart deals with is just the
 8 premium?
 9 A Correct.
 10 Q And you would agree, as we all in the room
 11 would agree, I think, that the evaluation of a
 12 particular policy is not just based on the premium.
 13 It would be based on the premium, of course; the out
 14 of pockets; the deductibles; the network is certainly
 15 important as well; the lifetime maximum. All sorts
 16 of stuff, right?
 17 A Yes, including your own health status.
 18 Q Including your own health status, although
 19 for these purposes, I guess -- so why would it matter
 20 if your health status -- because you can't be rated
 21 under the Affordable Care Act, right?
 22 A Well, you know yourself how many times
 23 you're likely to go to the hospital. You should have
 24 a good idea how many visits to the doctor you're

1 going to use, whether you're sickly, whether you're
2 healthy.

3 Q Fair enough. Okay.

4 A How many drugs you use. You know how many
5 you're using in the fall that you're probably going
6 to have to use in the following year.

7 Q Sure. Your health condition factors into
8 the equation as well, based on what you need?

9 A Correct.

10 MR. KRISLOV: I think we're done with
11 Ms. -- oh, sorry. Almost.

12 BY MR. KRISLOV:

13 Q The -- in order to get the cap, the means
14 test cap, you have to -- I take it from your
15 testimony, you have to fill out a form 4506T, which
16 gives the City a transcript of your tax returns.

17 A Correct.

18 Q You full tax return?

19 A No, just the transcript. Just a basic
20 transcript of your tax return. It's not the full
21 thing.

22 Q It's got all of your revenue from all
23 sources. It must have --

24 A It's got your adjusted gross income on

1 BY MR. LAYDEN:

2 Q Ms. Currier, going back to this exhibit,
3 the one that has the comparison of the ACA premiums
4 and the City premiums.

5 Mr. Krislov asked you some questions
6 about whether the premium would go up under the ACA
7 if a particular person applying had a spouse or
8 dependent.

9 Do you remember that question?

10 A Correct.

11 Q And if they had a spouse or dependent, the
12 premium would be greater than what's reflected here?

13 A This is just for single coverage.

14 Q So the premium could go up under the ACA if
15 they added a dependent or a spouse; is that right?

16 A Correct.

17 Q And, similarly, if you were doing an apples
18 to apples comparison, and you looked under the City
19 plan, and they're adding a spouse or dependent, do
20 their premiums go up?

21 A Correct.

22 MR. LAYDEN: Nothing further, Your
23 Honor.

24 THE COURT: Ms. Currier, I release

1 there, so I know we get that. But it -- I don't
2 believe it's the full thing. It's the transcript of
3 it.

4 Q Okay. So whatever comes in the transcript,
5 whatever data the IRS sends out in respect to the
6 request for a person's transcript, and you're
7 essentially looking for -- you get, whether you're
8 looking for it or not, you get all that person's -- a
9 summary of all that person's reports to the IRS?

10 A Right. But we just look at the AGI. We're
11 not examining sources of income.

12 Q Well, but it might be a concern for a
13 retiree to give you all that information if you --

14 A If they apply for a means test under the --
15 excuse me. You didn't ask me that question.

16 Q That's okay.

17 That's the only way they get that is
18 if you get a transcript of their --

19 A Correct.

20 MR. KRISLOV: Okay. Okay. Then I'm
21 done.

22 THE COURT: Recross.

23 MR. LAYDEN: Just a few, Your Honor.

24 RE-CROSS-EXAMINATION

1 you.

2 THE WITNESS: Thank you.

3 THE COURT: Thanks for coming in. I
4 appreciate it. Please have a happy holiday. Thank
5 you.

6 (Witness excused.)

7 THE COURT: Any other witness you'd
8 like to call?

9 MR. KRISLOV: No, Your Honor.

10 THE COURT: Any witness that the City
11 would like to call?

12 MR. PRENDERGAST: Your Honor, the City
13 doesn't have any witnesses.

14 I take it that the affidavits that
15 have been questioned here are in evidence.

16 THE COURT: They are.

17 MR. PRENDERGAST: Okay. And I take it
18 that the Court is looking at the exhibits attached to
19 their --

20 THE COURT: I have.

21 MR. PRENDERGAST: -- submissions and
22 ours as in evidence for purposes of this hearing.

23 THE COURT: I'm considering them all
24 in evidence for purposes of this hearing.

1 Any objection to that, Mr. Krislov?
 2 MR. KRISLOV: No objection.
 3 THE COURT: All right. And the Funds,
 4 any witnesses the Funds would like to call to the
 5 stand?
 6 MR. BURKE: Judge, we have no
 7 witnesses.
 8 MR. KENNEDY: Judge, the Laborers'
 9 Fund has no witnesses.
 10 MR. KUGLER: No witnesses, Your Honor.
 11 THE COURT: Very good. Both sides --
 12 or all sides rest.
 13 Are you ready to argue?
 14 MR. KRISLOV: Judge, if we can have
 15 five minutes before we do the argument.
 16 THE COURT: Ms. Court Reporter, how
 17 much time would you need?
 18 THE COURT REPORTER: Five minutes will
 19 be fine, Judge.
 20 THE COURT: We'll see you all at five
 21 after 1:00.
 22 (Brief recess.)
 23 THE COURT: Are we ready to proceed?
 24 MR. KRISLOV: We are, Your Honor.

1 THE COURT: All right, Mr. Krislov.
 2 You're the movant. You may argue.
 3 MR. KRISLOV: Your Honor, while I
 4 might think that we're entitled to summary judgment,
 5 all we're looking for today is a preliminary
 6 injunction to block the change in rates from going
 7 into effect January 1st.
 8 And if you want -- I know, because of
 9 our conversation with my colleagues on the other side
 10 we had yesterday, who we're asking for it for is a
 11 little -- differs a bit. So let's put them into two
 12 categories.
 13 THE COURT: Differs from what?
 14 MR. KRISLOV: Differs a little bit
 15 from what I --
 16 THE COURT: What you filed in your
 17 motion?
 18 MR. KRISLOV: No, no. I mean, I --
 19 what I filed in the motion.
 20 Our view is that all people who were
 21 pre- -- were participants, meaning their hire date
 22 was before August 23 of 1989, are covered by your
 23 decision which holds that their interest is protected
 24 by the Constitution, their benefit is protected by

1 the Constitution --
 2 THE COURT: I said all people who
 3 retired.
 4 MR. KRISLOV: No, you didn't say
 5 either. What you said is all people who --
 6 THE COURT: Let's stop right there.
 7 MR. KRISLOV: Yes.
 8 THE COURT: On page ten of my opinion,
 9 and I quote, I said:
 10 [AS READ:
 11 The 1983 and 1985 amendments were in
 12 effect when the Korshak subclass, the Window
 13 subclass, and subclass 3 entered into the Funds'
 14 retirement system. There does not appear to be any
 15 dispute between the parties that the 1983 and 1985
 16 amendments apply to these subclasses.
 17 The Court notes that in its May
 18 15th, 2013, letter, the City states that it would
 19 continue to provide a healthcare plan with a
 20 continued contribution from the City for the
 21 lifetime of the annuitants who retired prior to
 22 August 23rd, 1989.
 23 I then concluded:
 24 [CONTINUING:

1 Therefore, Count 1 clearly states a
 2 cause of action for declaratory relief as to the
 3 City's and Funds' obligations under the 1983 and
 4 1985 amendments. The exact nature of these
 5 obligations, however, I said, is not properly
 6 decided on a 2-615 motion.]
 7 But all of those amendments dealt with
 8 folks, per your complaint, who retired before
 9 August 23rd, 1989, as I said.
 10 And I think my ruling was clear that
 11 not only for that reason, but for the reason that the
 12 1989 and the years thereafter amendments, were all
 13 time limited, I specifically said they did not apply.
 14 Not because I want it that way, but because that's
 15 what the law requires, I said, and I concluded, for
 16 the reasons enunciated in there, which I'll go
 17 through again.
 18 So it's clear to me that the parties
 19 who were -- who are covered under the 1983 and 1985
 20 amendments is every retiree who retired prior to
 21 August 23rd, 1989, and those are the ones who have
 22 the lifetime benefits to be supplied by the City;
 23 that the City -- another discussion -- does not claim
 24 that they're not going to give. They claim they

1 don't have to, but they claim they're going to, so --
2 as I understand their position.

3 But everyone after that date, per my
4 ruling, is covered by the 1989, the 1997, and the
5 2003 amendments to the Illinois Pension Code, which I
6 said at page 11 were time limited at creation. I
7 also added, for good reason. They were enacted
8 solely to codify the time-limited settlement
9 agreements between the parties, to wit, these folks'
10 unions who bargained in good faith with the City, and
11 they bargained for time limitations. They were time
12 limited by their own terms.

13 Regardless of the basis of it
14 factually, the only important thing is what the
15 legislature did. This Court, I, even though I'd like
16 to be, I am not a super-legislature. I cannot change
17 the terms of enactments decided by the Illinois House
18 and Senate.

19 By the express terms of the amendments
20 in 1989, 1997, and 2003, they were time limited, and
21 that's at creation, and by their express terms.
22 Therefore, I said the amendment specifically did not
23 provide the annuitants with lifetime or permanent
24 healthcare benefits.

1 the '89, '97 and 2003 amendment.

2 You may disagree, and I know you do,
3 and I know that's going to be subject to review, most
4 likely, but that's my ruling, and that's what I held.

5 So your objection to the contrary, or
6 your read to the contrary, you're wrong, much to my
7 regret. But that's the way of the law.

8 MR. KRISLOV: I don't want interrupt
9 you, but do I get a chance to talk?

10 THE COURT: Thanks for that. I
11 appreciate it.

12 MR. KRISLOV: I don't want start until
13 you're done.

14 THE COURT: Ball's in your court.

15 MR. KRISLOV: Here's where your
16 decision is right, but your interpretation is wrong,
17 with all due respect. And I do, frankly, enjoy
18 practicing before you, because it may be combative,
19 and I apologize for my seeming -- or my coming off as
20 combative with you at times.

21 THE COURT: I don't feel that.

22 MR. KRISLOV: I enjoy the interplay
23 with you.

24 Here's where your -- the statement you

1 Not my doing, just my read of the
2 statutes, which are clear and don't require any
3 interpretation.

4 Because they were time limited at
5 creation, I have to enforce the specific terms of
6 those amendments, which means that they were time
7 limited, non-permanent, non-lifetime, and they lapsed
8 on their own accord. Therefore, there's nothing to
9 diminish or impair.

10 It's true, the pension clause
11 grants -- guarantees a right to have pension
12 benefits, but not -- to be not diminished or
13 impaired, but it doesn't -- as I've said, it doesn't
14 magically create a right to receive a lifetime
15 benefit, a forever friend in healthcare.

16 My politics aside, and what I think
17 should be done aside, it doesn't serve to magically
18 create a right to receive benefits that have not been
19 specifically granted, and that's what I said.

20 So that's why I found that although
21 Count 1 does state a cause of action for everyone,
22 August 23rd, 1989, and before, who retired that
23 date, it does not -- it does not state a cause of
24 action for declaratory relief as to obligations under

1 just made is right, that the people who can claim --

2 THE COURT: Well, let me ask you a
3 question before you opine on whether I'm right or
4 wrong.

5 That's my decision.

6 MR. KRISLOV: If I can --

7 THE COURT: You have not filed a
8 motion for reconsideration -- let me finish -- a
9 motion for clarification. The City has; you could
10 have, you did not.

11 If you think of this as a motion -- as
12 we said yesterday in our conversation with all the
13 parties, if you think of this as a motion for
14 reconsideration of my decision, then you should have
15 stylized it that way. I'm not going to review my
16 decision. I think I'm right for the reasons
17 enunciated, much to my regret. But I am bound to
18 follow the law, and that's my decision.

19 It's not an interpretation of my
20 decision, Clint. It's my decision. If you don't
21 like it, you know what to do. Not that. You know
22 what to do. You can appeal me, and you will. But
23 that's my decision.

24 MR. KRISLOV: On the preliminary --

1 THE COURT: I haven't interpreted
2 anything.

3 MR. KRISLOV: Do I get a closing
4 argument?

5 THE COURT: Yeah, sure.

6 MR. KRISLOV: Okay.

7 Your Honor's decision that people who
8 were -- Your Honor's decision, I believe, and I was
9 interpreting until maybe yesterday and this morning,
10 was that people who could claim protection because
11 they were participants under the 1983 and 1985
12 amendments have a protected benefit. That is what
13 Buddell says. It is participants. It is not that
14 you retired before that date. It's that you were a
15 participant in the Fund on that date.

16 And in that respect, what we're
17 talking about is the people who were participants in
18 the -- one of the four pension funds, meaning a hire
19 date before August 23rd of 1989. That's what this
20 battle is about.

21 If it were just over the retirees, the
22 people who -- the Korshak and Window classes who
23 retired by that date, there would not be a dispute,
24 because the City says they're going to honor that.

1 participated during the '83 and '85 amendment period,
2 not necessarily retired by August 23rd.

3 MR. KRISLOV: Right.

4 THE COURT: Then is it your corollary
5 position that it's the Funds who are responsible for
6 those participants' health benefits?

7 Because you've already --

8 MR. KRISLOV: Not only --

9 THE COURT: Let me finish.

10 MR. KRISLOV: Yes.

11 THE COURT: You've already taken the
12 position, you've conceded here in court during our
13 last argument, for one, that you were not going
14 against the City on the '83 and '85 amendments; you
15 were going against the Funds. So if that's the case,
16 isn't it also true that it's the Funds who are
17 responsible for the participants, the folks who
18 started to participate during the '83 and '85
19 amendment period?

20 MR. KRISLOV: Yes, but not solely.

21 Because if you read Kanerva, Kanerva talks about a
22 group healthcare plan that the state adopted. It was
23 not a pension plan -- it was not a Pension Code plan.
24 It was a group health plan that the state provided to

1 And that was the class that I represented then.

2 But here's what Buddell says -- and we
3 do have that in our motion. Buddell says that you
4 are protected throughout your participation -- from
5 your participation. And Kanerva basically says that
6 as well.

7 Kanerva says that the benefits flow
8 from your being a participant in the Funds. They do
9 not -- they're not limited. The City's whole
10 argument, really, in response to our motion is that
11 all you should enforce is what the four corners of
12 the Pension Code imposes on somebody.

13 And on the '83 and '85 statutes, I
14 have acknowledged that the Pension Code provisions
15 say that the Funds are obligated to get coverage for
16 their participants. That was fulfilled by the City
17 providing that coverage.

18 Now, the other thing that is from
19 Kanerva is that Kanerva --

20 THE COURT: So let me stop you there
21 for a second.

22 MR. KRISLOV: Yes.

23 THE COURT: With regard to your
24 argument that it's participants who -- it's folks who

1 its former employees, conditioned on their being
2 annuitants, or eligible to become annuitants --

3 THE COURT: So how does that play here
4 where the statutes say it's the Funds that shall
5 supply, and it's the City that shall just finance it
6 through tax levies, but it's the Funds that shall
7 supply -- and you conceded that it was the Funds who
8 should do so and not the City.

9 MR. KRISLOV: No, I didn't say not the
10 City. I conceded --

11 THE COURT: You did, actually.

12 MR. KRISLOV: No. I said that the
13 statute does not require the City to provide the
14 healthcare coverage, but Kanerva says where the City
15 does that. I mean, the City does this by ordinance.
16 The state does it by state statute. You don't have
17 to have it in the Pension Code.

18 But Kanerva is absolutely clear.

19 That's where you and I differ. Kanerva says that the
20 state provided benefit to people who are participants
21 in the Funds, in one of the state retirement funds --
22 that's all that makes you eligible to participate in
23 the state group health benefit -- that that is
24 protected as well by Article 13, Section 5.

1 And so the City, having provided the
2 -- what it's providing now, the annuitant -- the City
3 of Chicago Annuitant Health Benefit plan, that by
4 doing that, that is a benefit which is limited in its
5 eligibility to -- conditioned on people who are
6 receiving an annuity or will receive an annuity from
7 one of the four Funds.

8 It is the same thing. The City having
9 signed onto that deal, the City having created a
10 retirement benefit of the annuitant healthcare plan
11 is obligated to continue providing that without
12 reduction. That's what Kanerva says Article 13,
13 Section 5 protects.

14 THE COURT: What's the effect --
15 taking your position, what is -- as gospel, excuse
16 me -- what is your position with regard to the
17 effect, then, of employees who began after
18 August 23rd, 1989, where their -- wherein the
19 amendment stated that it was time-limited benefits?
20 Brand new employees. What's your position about
21 that? Once given, they're lifetime, regardless of
22 time limitations?

23 MR. KRISLOV: They're a different --
24 they're in a different category for three reasons.

1 The 1997 was a different bird because
2 we were temporarily out of it because that was during
3 the period when Judge Green had refused to reinstate
4 the case, but before the appellate court ordered the
5 case reinstated. So no one knows exactly what the
6 effect -- and it wasn't a union-negotiated deal, any
7 of these three.

8 The '89 was imposed over our strenuous
9 objections. Went up to the Supreme Court. While we
10 disagree with the due process of it, I concede we are
11 bound by it. The pre-'89 class is bound by it.

12 THE COURT: So the post-'89 class, you
13 agree, then, are subject to the time limitations,
14 and, therefore, Kanerva does not apply?

15 MR. KRISLOV: Here's the -- with an
16 asterisk.

17 Somebody who just came into -- let's
18 say they were hired in 2004. They did not agree to
19 waive their rights. They're sort of stuck with -- I
20 understand --

21 THE COURT: What rights?

22 MR. KRISLOV: Well, whatever rights
23 they have as a participant --

24 THE COURT: What rights do they have

1 THE COURT: Well, first -- I'm not
2 interested in what category. I'm interested in your
3 conclusion. What's your position?

4 MR. KRISLOV: We will show in our
5 amendment that we think the City's --

6 THE COURT: I don't have an amendment
7 before me.

8 MR. KRISLOV: I know. I know.

9 THE COURT: I'm asking you what your
10 position is now, today, on your motion for
11 preliminary injunction.

12 MR. KRISLOV: Well, for the motion for
13 a preliminary injunction, if we limit it to the
14 showing of likelihood that you said that people have
15 under the '83 and '85 amendments, that would be --
16 there is an exceedingly strong entitlement to people
17 who were participants on that date.

18 To people who were not participants on
19 that date, I would agree the '89, not the '97, but
20 the '89 and the 2003 settlements we are bound by and
21 that they were settlements that for people who were
22 in the class on the settlement date, those were
23 negotiated for those periods of time with a revival
24 of whatever rights.

1 in 2004? Every right they have to any healthcare
2 benefits are time limited by the statute. It's not a
3 right. It's not a right. It was given by the City
4 with a time limitation.

5 MR. KRISLOV: Sorry. I was referring
6 to whatever benefits they had --

7 THE COURT: Well, you think of things
8 in terms of rights and entitlements, and I don't
9 think that's the right way to think of this.

10 MR. KRISLOV: Well, they had a --
11 their rights are to have the protection of whatever
12 interest is protectable under the Pension Code.

13 THE COURT: That's what I'm asking
14 you.

15 MR. KRISLOV: I understand Your
16 Honor's conclusion that people who started during a
17 time-limited statute, that that only covers that
18 period, think there is an argument to be made, and I
19 will make it in our amended complaint, that whatever
20 is provided during the period service as a floor, and
21 that it can't be that -- it could be increased, but
22 it can't be decreased.

23 For purposes of today, the core that
24 deals with virtually every -- maybe not everybody,

1 but the bulk of the people who's -- who are concerned
2 today, and the City as well, I think would not
3 dispute this --

4 THE COURT: Isn't the bulk of the
5 people those who retired before August 23rd, 1989?

6 MR. KRISLOV: No. Those who retired
7 -- those who started working before August 23 of
8 1989.

9 THE COURT: I see.

10 MR. KRISLOV: That's the bulk of the
11 22,000 people. If you think about it, if they
12 started working for the City before August 23rd of
13 '89, police and fire people could not start retiring
14 on full benefits until 2009.

15 So the earliest of the subsequent
16 people -- or the earliest of the hired people
17 wouldn't have started retiring until six years ago.
18 And for municipal and laborers, probably most of them
19 are still working for the City.

20 But here's -- and this is where I
21 think it's fundamental. And I think if you reread --
22 if you read Kanerva, if you read Buddell, the deal is
23 your rights are determined from when you became a
24 participant to when you die. And so limiting it to

1 done it, because I don't think we have it -- I don't
2 think that we were aware of the City's.

3 THE COURT: Okay, so we're just not
4 going to play it on the run here. We're going to
5 deal with what you've raised.

6 MR. KRISLOV: So in any event, if you
7 accept -- because I think if you read Buddell, you
8 must, that the protections apply for whatever the
9 plan -- whatever plan the City provided when you were
10 -- while you were a participant, date of hire to date
11 of death. That's what's protected, and that's what
12 Kanerva says is protected.

13 Now, what I think you have done in
14 your decision is satisfy that there is a clearly
15 ascertainable right that requires protection.
16 Irreparable injury, the forcing them off of their
17 coverage. It's one thing to say, well, they're going
18 to have to pay more, but we can pay you back. Some
19 people will forego their coverage because they can't
20 afford it, and some people will wind up in lesser
21 plans, and some people will drop coverage altogether,
22 or have to do whatever.

23 This is -- going without your
24 healthcare is an irreparable injury. And the City

1 the retirees would also -- the City's effort to limit
2 it to the pre 8-23-89 retirees would violate the
3 Illinois Constitution's protections of equal
4 protection.

5 The City cannot make a distinction
6 between who gets protections under Article 13,
7 Section 5.

8 THE COURT: Well, that's something you
9 haven't raised --

10 MR. KRISLOV: Well, we've raised
11 the --

12 THE COURT: -- the equal protection
13 argument between classes.

14 MR. KRISLOV: Right. No, we haven't,
15 except that it's only -- well, we raise that in our
16 reply because the City says --

17 THE COURT: I'm talking about in your
18 complaint.

19 MR. KRISLOV: In our complaint, we
20 assert that everybody -- I believe that we assert
21 that everybody is covered.

22 THE COURT: I'm talking about an equal
23 protection argument.

24 MR. KRISLOV: No, I don't think we've

1 can't always recover. If it turns out that the City
2 wins in the end, there is no limitation period on the
3 City going back after, or the pension funds going
4 back after somebody who didn't pay the appropriate
5 amount.

6 All it really had -- and there's --
7 so -- and giving you back money, and even with
8 interest after you lose your healthcare coverage, is
9 not an adequate remedy at law. We have a likelihood
10 of success on the merits, because Kanerva -- this is
11 the City parallel to Kanerva, period. It is --

12 THE COURT: I know you say that, but I
13 am still stuck in terms of a distinction between the
14 subclasses of plaintiffs. And there's a distinction
15 between them. You would like to paint with a large
16 brush, and I understand that. That enures to your
17 benefit to do that.

18 But I have to shoot with a rifle, not
19 a shotgun, and it seems to me that there is a
20 distinction between the subclasses. You just
21 conceded, actually, that there are. That folks who
22 were -- even under your theory folks that were hired,
23 who entered into the program post-August 23rd,
24 1989, may, during the time-limited aspects -- are not

1 covered by this preliminary injunction. And yet you
2 seek to have an order which does cover that.

3 How do you jibe that?

4 MR. KRISLOV: Because we acknowledge
5 that their entitlement is a little different. You
6 know, call it scalpel, call it rifle, shotgun, we
7 acknowledge that their entitlement is a little -- is
8 different than the pre-8-33-89 hires.

9 We do think that when it comes down to
10 it, the City's determination in the 2013 letter,
11 where it says the settlement's over, we're
12 unilaterally going to extend your plan -- extended
13 term and benefits of the settlement through the end
14 of the year, once the City unilaterally chose to do
15 that, it was stuck with that permanently, and that it
16 says --

17 THE COURT: Really?

18 MR. KRISLOV: Yes.

19 And that it says, but we're going to
20 phase you out between now and 2017 --

21 THE COURT: What analogy in life or
22 law do you have by which you could argue that if I
23 give you the right to enter into my theater free of
24 charge until December 31st of this year, I have

1 were giving it for life when they gave it for only
2 six months to 2013, or another two years. You know,
3 what's right is right. That's the opposite side of
4 the coin.

5 And if that's the case, the City, or
6 any municipality, will never give anybody anything
7 for fear of being stuck with an argument that you're
8 giving, that if I give it to them for a limited
9 period of time, that's it. We're stuck forever.

10 And that seems to me not to be in the
11 interest of these folks or public policy, because
12 it's in these folks' interest to have the City give
13 them something. But when they say they're giving
14 them something for a specific period of time, it's --
15 it would be Kafkaesque to have something for a
16 specific period of time end up being forever.

17 So tell me, what law do you have to
18 support the proposition that a time-limited grant is
19 a forever grant?

20 MR. KRISLOV: Article 13, Section 5
21 says --

22 THE COURT: It doesn't grant anything.
23 It just protects that which is given, and if it was
24 given in a time-limited way, that's what it protects.

1 magically given you the right to enter into my
2 theater forever?

3 MR. KRISLOV: If you as a public
4 employer gives me a benefit that is --

5 THE COURT: That's time limited by its
6 own terms.

7 MR. KRISLOV: Well, it's not time
8 limited by its -- the mere fact that it's --

9 THE COURT: Yes, it is, Clint. We all
10 know it's time limited. It is time limited. It's
11 time limited by its specific terms, and it's time
12 limited by the legislation.

13 I can't rewrite legislation, and I'm
14 not going to, to give you a preview.

15 But tell me, what right do you have
16 under the law to claim that something that's time
17 limited is for life?

18 And if that's the case, and if you are
19 going to argue that, wouldn't the City be entitled to
20 some sort of reformation because they didn't know
21 that? There wasn't a meeting of the minds? There
22 was no deal? Because they didn't know they were
23 giving it for life.

24 And there's no law saying that they

1 MR. KRISLOV: And we'll find out from
2 the appellate court whether giving it in a time
3 limited way was effective under that letter.

4 Because when the City says, we're
5 going to extend things to the end of the year, and
6 then we're going to phase them out and drop you off
7 by the end of 2016 --

8 THE COURT: Sure. Of course. You're
9 going to have a reviewing panel review my decision.
10 So this really is, really, a motion for
11 reconsideration.

12 MR. KRISLOV: No.

13 THE COURT: But I'm not going to
14 change that, because I think it's right.

15 MR. KRISLOV: It's fine.

16 THE COURT: Much to my regret, but
17 there's nothing I can do about that, because I'm
18 duty-bound to follow the law.

19 MR. KRISLOV: I understand how Your
20 Honor interprets that --

21 THE COURT: And that's what I will do.

22 MR. KRISLOV: I understand that. But
23 that doesn't require -- that doesn't require you to
24 do that with respect to the people who were hired

1 before August 23 of '89.

2 THE COURT: I'm going to listen to
3 what the City has to say about that, in this, your
4 motion to reconsider.

5 MR. KRISLOV: It's not a motion to
6 reconsider.

7 THE COURT: It is, because I've
8 already excluded those folks, but you think I'm
9 wrong. Now you're arguing they should be included
10 it.

11 MR. KRISLOV: No, with all due
12 respect, Your Honor, your decision says that people
13 claiming their entitlement under the '83 and '85
14 amendments. And that means people who were
15 participants during that time.

16 THE COURT: Okay.

17 MR. KRISLOV: Not people who had
18 retired before that.

19 THE COURT: All right. Maybe the City
20 will agree. Who knows. But let's hear what they
21 have to say.

22 MR. KRISLOV: In any event, the City's
23 argument is basically that all that you can enforce
24 are what is specified in the Pension Code, and that's

1 that they were members of on August 23rd, 1989, is
2 one the four funds. It is not -- they don't have to
3 be a retiree by that date to be protected.

4 THE COURT: I understood that. I
5 understand your position on that. But now we're
6 going to the other question I asked you, the folks
7 who joined afterwards.

8 MR. KRISLOV: For the people whose
9 first hire was afterwards, I don't think that they
10 can claim -- if a date limitation is effective --

11 THE COURT: Subject to my being right
12 about that.

13 MR. KRISLOV: Subject to your being --
14 subject to -- you know, and we'll probably challenge
15 that in the appellate court.

16 THE COURT: Sure.

17 MR. KRISLOV: If the date limitation
18 is effective, their entitlement really stems more
19 from the 2013 extension by the City, and the City --

20 THE COURT: Which you think giving it
21 for six months meant that, willy-nilly, it magically
22 becomes life, yes?

23 MR. KRISLOV: I would delete the term
24 "willy-nilly," and "magically." I would say that

1 not right. That's not what Kanerva says.

2 Kanerva dealt with a group health
3 benefit that was outside the Pension Code, and they
4 acknowledge that in their decision. They say that --

5 THE COURT: Well, we're not talking
6 about what was granted or not granted. We're just
7 talking about the time limitation. And the reason
8 we're talking about that is because the first
9 aspect -- there's four aspects before I can grant the
10 issuance of a motion for preliminary injunction, and
11 that is that there is an ascertainable claim of
12 relief.

13 MR. KRISLOV: Right.

14 THE COURT: And it seems to me that
15 you're acknowledging that there's an argument, if you
16 agree with what I said, that these folks who joined
17 the program after August 23rd, 1989, were not
18 members, and, therefore, have no standing for this
19 preliminary injunction, right?

20 MR. KRISLOV: Is "program" meaning the
21 healthcare program or the retiree --

22 THE COURT: Yeah, the one that's the
23 subject of your class action.

24 MR. KRISLOV: No, no. The program

1 when the public employer grants a benefit --

2 THE COURT: For a day, it becomes for
3 life; for six months, it becomes for life.

4 MR. KRISLOV: If it is done for
5 partici- -- if eligibility is determined solely by
6 their being a participant in one of the Funds, that
7 may be the result.

8 THE COURT: Okay.

9 MR. KRISLOV: If they said, instead,
10 we will grant people who work for us -- who no longer
11 work for us, we'll grant them a benefit. We'll give
12 them \$1,000. We'll give them whatever.

13 THE COURT: Not the case here.

14 MR. KRISLOV: If eligibility is not
15 referenced to their participation in the Funds, then
16 the City can probably turn it on and turn it off.

17 Once you make eligibility determined
18 by their being a participant in the Funds, but by
19 definition, they do that. They're stuck. And that,
20 I think, is what Kanerva says.

21 THE COURT: That's where you and I
22 disagree.

23 MR. KRISLOV: Maybe so.

24 THE COURT: No, it's clearly so.

1 MR. KRISLOV: All right. We disagree
2 about other things, too.

3 THE COURT: Probably not many, but
4 that one we do.

5 MR. KRISLOV: Okay. So anyway, if I
6 can go back to the pre-August 23, '89, participants.

7 THE COURT: Folks who were
8 participants in the program before that date.

9 MR. KRISLOV: Participants in their
10 pension fund.

11 THE COURT: That's what I meant.

12 MR. KRISLOV: They are the ones who
13 are protected for, and the benefit that's protected
14 is the annuitant healthcare plan.

15 THE COURT: I understand.

16 MR. KRISLOV: That's what's protected.
17 And that's why, for those people who are the bulk of
18 the people -- if you said we would grant an injun- --
19 we can grant a preliminary injunction only for those
20 people whose hire date precedes August 23rd of '89,
21 for preliminary injunction purposes, that's fine.

22 And the Funds can't tell you that
23 that's a prob- -- all that you have to do is tell the
24 Funds that they are not to withhold at the higher

1 that the rates were higher than were appropriate,
2 every year, the settlement -- the audit
3 reconciliation resulted in an average of \$5 million
4 being returned to retirees.

5 THE COURT: Sure. But if you have
6 limited benefits, what's there to reconcile?

7 MR. KRISLOV: If the benefits of
8 the --

9 THE COURT: If the benefits are time
10 limited, and the City can do -- if I'm right, and the
11 City can do whatever they want with regard to that,
12 including nothing as of December 31st, 2013, and
13 give no extensions -- they did -- but then what's
14 there to reconcile after 2013?

15 MR. KRISLOV: If the rates are not
16 reflective -- what they said is they do a ballpark.
17 They do an estimate based on the same reports -- the
18 same estimate that they've done in the past. The
19 rates they're charging them are excessive. They're
20 more than would be done if they did the rates in an
21 audited, reconciled fashion.

22 The rates that they want to impose are
23 suspect as it is. The City says -- and the City
24 artfully changed things from at least 50 percent

1 rates beginning January 1st. That is the sum --
2 the total sum that you have to do.

3 The other thing is that the City
4 cannot just pick -- I told you, I argued that the
5 City cannot just pick which among those people it
6 will honor under Article 13, Section 5 between the
7 pre-'89 retirees and the pre-'89 hires. The City
8 also -- the City paints this as a subsidy, and it's
9 not.

10 The City, as --

11 THE COURT: I've talked about that.
12 That's just semantics. We know what it is.

13 MR. KRISLOV: Right, but it's
14 important to say that, to recognize that it is the
15 City who's the insurer, and that's how it comes into
16 its obligation in a secondary fashion, which is, by
17 agreeing with the Funds. The Funds should have, and
18 their obligation was to go out and find coverage for
19 their participants, which they did by the City's
20 agreement. And the City, once having entered into
21 that, is stuck with it.

22 Further, the new rates are as suspect
23 as the old rates were. We have been coming back for
24 the ten years of the settlement, after we discovered

1 to -- or at least 55 percent to as much as 50
2 percent. And it may still be, we don't know the
3 legitimacy of the rates, but based on the past, the
4 future rates are no more reliable than the past ones.

5 The bottom line to most of this is
6 that for the pre-August 23, '89 hires, they have a
7 right to enforce the plan as it was on August 22nd.
8 '89. And the City, as Ms. Holt basically said, we
9 couldn't raise -- and most of the other people's
10 rates, because they were -- sorry.

11 We couldn't deal with most of the
12 other people's salaries, benefits, whatever, because
13 they were protected by unions. Our participants have
14 only the Constitution of the State of Illinois and
15 this Court for their protection.

16 THE COURT: I'm just one of many
17 courts. And I'm going to do my best to get it right,
18 and what can I tell you? You're going to have to
19 just trust in my desire to get it right.

20 I'm not the only court, as you've
21 proven many times.

22 MR. KRISLOV: They say trust but
23 appeal.

24 THE COURT: Sure. Trust but verify is

1 the old expression.

2 MR. KRISLOV: I think that that's what
3 that guy said.

4 THE COURT: That's what he said.

5 MR. KRISLOV: But the bottom line,
6 Your Honor, is that in terms of -- until this Court
7 decides the merits of the issue, and we have until
8 January to file our amended complaint, which I
9 believe will address everything fine, for the time
10 being, we ask that you hold the City off in
11 increasing the rates.

12 All that we're talking about is
13 delaying the City's imposition of these new rates for
14 a few months until this Court deals with the issue on
15 the merits. If Your Honor doesn't agree with me on
16 everything today, it's not necessary, but we
17 certainly have created a fair question. And there's
18 nothing, really, in the City's equities to say that
19 holding them off for a couple of months until you
20 decide what the merits are so we can get it teed up
21 for them to appeal or us to appeal, whatever --

22 THE COURT: Well, if it's only a
23 couple of months, and if they can be made whole by
24 money with interest, only a couple months, why is

1 appropriate. Whoever can appeal at that time can
2 appeal. But for the moment, the City can hold off on
3 raising the rates, because it can always get the
4 money back from the retirees.

5 As I understand it, the Funds assert
6 there's no limitation period on correcting the amount
7 that they withhold from people.

8 All that we need to do -- and some of
9 these people have had massive increases -- some of
10 the increases are such that their premium is more
11 than their annuity. And for others, they're paying
12 as much as \$26,000 for family coverage. That's a lot
13 of money.

14 And having to forego your family
15 coverage, or having to go with a lesser plan in which
16 none of your doctors are in -- I mean, what they've
17 testified to is the networks you can go in with
18 these -- the Choice plan -- you know, everything, if
19 there's a fairness statute, you know who things are
20 being done to. If there's a choice statute, you know
21 that you're reducing your choices. They have been
22 taken out of the plan. You no longer have a network,
23 Northshore, Northwestern, University of Chicago,
24 Rush, Advocate. If you take those out, you may have

1 damages at law not adequate to your clients, and,
2 thereby, as a matter of law, say that an injunction
3 should not issue?

4 MR. KRISLOV: Because going without
5 your City coverage -- and of all the plans that
6 people may prefer to keep their City coverage live,
7 going without your City coverage, is irreparable
8 injury. And it isn't even -- and for those people
9 that go off, they won't be addressed retrospectively.
10 They'll only be addressed prospectively if they come
11 back.

12 There is no -- and giving them --
13 refunding them the additional amounts if they're gone
14 is no replacement. And refunding it with interest
15 doesn't replace the risk, the fear of having to go
16 without your health insurance that you depend on.

17 These people are, for the most part,
18 we're talking about 22,000, or the bulk of them, who
19 are retirees. Their health is not great. The older
20 they get, the older they are, the sicker they get in
21 numbers. And so between the balance of equities, is
22 it fairer to say to the City, hold off for a few
23 months. We'll get this worked in whatever way we
24 think -- whatever way the Court deems to be

1 a few nice hospitals, but you have eliminated the
2 bulk of the medical care that is done by the premier
3 institutions in the Chicago area.

4 And so when you balance the equities,
5 who's undergoing a hardship? Not for the City. The
6 City just has to put off its phaseout for another
7 couple or three months. For the retirees, for the
8 participants in the plan, they have real risk. They
9 have real life, human experiences that the City
10 doesn't.

11 As I've said, Your Honor, the retirees
12 only have the Illinois Constitution and this Court.
13 And so for the time being, we ask this Court to hold
14 the City off in raising its rates January 1st.

15 THE COURT: Thanks.

16 MR. KRISLOV: Thank you, Your Honor.

17 THE COURT: Mr. Prendergast, may I
18 start with a question to you, or you start with a
19 question for me.

20 MR. PRENDERGAST: I'm happy to answer
21 any questions.

22 THE COURT: I'm rereading my opinion
23 of December 3rd, and I read that before the federal
24 district court, page five, the plaintiffs filed their

1 amended complaint which identified the four putative
 2 subclasses of plaintiffs, the Korshak subclass, those
 3 retiring prior to December 31st, 1987; the Window
 4 subclass, those retiring between January 1st, 1988,
 5 and August 23rd, 1989; and the third subclass was
 6 subclass 3. And that was any participant who
 7 contributed to any of the four Funds before
 8 August 23rd, 1989's, amendments to the Pension
 9 Codes -- forget the fourth one for a second -- which
 10 would encompass the class of folks that Mr. Krislov
 11 just referred to as the hirees, anyone who was hired
 12 before August 23rd, 1989, because they would have
 13 been a participant, a participant who contributed
 14 before that date.

15 You then go to my opinion at page ten,
 16 and I say the 1983 and '85 amendments were in effect
 17 when the Korshak subclass, the Window subclass, and
 18 the subclass 3 entered into the Funds' retirement
 19 system. That means the hirees that Mr. Krislov
 20 referred to.

21 The '83 and '85 amendments were in
 22 effect when the hirees entered into the Funds'
 23 retirement system as participants before August
 24 23rd, 1989, and I wrote:

1 centers on the fact that those retirees, you have to
 2 be relying on the '83 and '85 amendments.

3 THE COURT: I'm talking about the
 4 hirees, not the retirees.

5 MR. PRENDERGAST: Yeah, they're hired
 6 but, at that point, the '83 and '85 amendments are
 7 the amendments in place.

8 THE COURT: Yes. We are relying on
 9 those.

10 MR. PRENDERGAST: And for purposes of
 11 the '83 and '85 amendments, the one thing that
 12 counsel has conceded, at least ten times, including
 13 this morning, is that they're not relying on the '83
 14 and '89 [SIC] amendments, because for good reason --
 15 I'll give two reasons. One is the '83 and '89
 16 amendments don't impose any obligation on the City.
 17 We've talked about that.

18 THE COURT: '83 and '85.

19 MR. PRENDERGAST: '83 and '85, I'm
 20 sorry, don't impose any obligation on the City.

21 And, two, because even if they did --
 22 and this is where I'd kind of like to start. Even if
 23 they did, the amount that the City would pay under
 24 the 2016 plan is greater than the amount that the

1 [AS READ:

2 There does not appear to be any
 3 dispute between the parties that the amendments
 4 from '83 and '85 apply to these subclasses.]

5 That means the hirees. So doesn't
 6 the -- these are lifetime benefits I held, according
 7 to my opinion, through the '83 and '85 amendment,
 8 because they were not time limited. And Kanerva
 9 holds that that which is given cannot be diminished
 10 or impaired.

11 Doesn't that mean that the City cannot
 12 diminish or impair any benefits that enure to the
 13 benefit, for lack of another word, of the hirees
 14 before August 23rd, 1989?

15 In other words, doesn't that mean that
 16 Mr. Krislov is absolutely right, that with regard to
 17 his request for a preliminary injunction, it should
 18 issue with regard to raising the subsidies, the rates
 19 to be charged these folks, including the folks of the
 20 hirees, the people who entered as participants into
 21 the Funds' retirement system before August 23rd,
 22 1989?

23 That's my question.

24 MR. PRENDERGAST: Well, the answer

1 City would pay under either the '83 or '85
 2 amendments. The amount is greater.

3 Now, this case is about the pension
 4 clause. It is about whether or not there is a
 5 diminution, or a reduction, or whatever word we want
 6 to use, in a pension benefit. We're accepting the
 7 fact that under Kanerva healthcare costs are pension
 8 benefits.

9 But as you mentioned just now in your
 10 conversation with Mr. Krislov, rights must -- using
 11 your words, rights must be specifically granted in
 12 order to be protected.

13 So if the rights that they were
 14 granted are the rights under the '83 and '85
 15 amendments, in other words, if we lose our motion to
 16 reconsider, so I'm not going there right now --

17 THE COURT: But it is inextricably
 18 bound with his request for the issuance of
 19 preliminary injunction, so you can go there if you
 20 want.

21 MR. PRENDERGAST: And I will, with my
 22 prepared remarks.

23 But to answer your question, and
 24 jumping a little bit ahead of them, the '83 and '85

1 amendments require the City to pay less than the
2 2016, okay? Therefore, there is no diminution.
3 There is no reduction. You cannot --

4 THE COURT: So you're saying that
5 assuming Mr. Krislov is right, and all hirees before
6 August 23rd, 1989, are included as participants,
7 and their right to receive paid benefits for
8 healthcare is immutable, it cannot be diminished or
9 impaired, you're saying that, nevertheless, it is
10 subject to the terms of the '83 or '85 amendments; is
11 that correct?

12 MR. PRENDERGAST: That's correct.

13 THE COURT: In terms of the amount
14 that the City has to pay?

15 MR. PRENDERGAST: Yes, because that's
16 the statutory basis. And I'm going to jump around
17 here a little bit from my prepared remarks, because I
18 really think it's important to go to this.

19 We are talking about the diminution or
20 reduction in a pension benefit.

21 So you have to look at '83 and '85 and
22 say what were they. In '83, the police department --

23 THE COURT: You mean what was that
24 which was granted?

1 to pay, whether it's the City or the Funds, paid \$55
2 for the firemen and police officers who were
3 non-Medicare, and \$21 for those that were Medicare.
4 And under the '85 amendment for labor and for
5 municipal, it was \$25 a head across the board.

6 THE COURT: Regardless of Medicare or
7 not.

8 MR. PRENDERGAST: Exactly, right.

9 Okay. That amount is considerably
10 less than what the City paid in 2015 and what's
11 considerably less than what the City will pay in
12 2016. Therefore, the City is paying more in 2016
13 than under the only possible statutory bases that
14 they can rely upon for a diminution or reduction in
15 pension benefits.

16 If they're paying -- if the City is
17 paying more -- they're paying more than they used to
18 pay, then that's not a diminishment in what the City
19 is contributing. It is an enhancement of what the
20 City is contributing. There's no way you can do the
21 math any other way.

22 THE COURT: Explain that to me again.

23 MR. PRENDERGAST: Sure. I'm a
24 fireman. I'm 1986. We're going to use this -- I got

1 MR. PRENDERGAST: What was it that the
2 City was required to do, or what anybody was
3 required. City wasn't required to do anything under
4 the '83 amendment or the '85 amendment.

5 But let's just use the numbers. Let's
6 suppose that you hold that the City does have
7 obligations to do what the '83 and '85 amendments
8 require. I don't think that is correct, but that's
9 okay. Let's assume that.

10 THE COURT: I've already said that.

11 MR. PRENDERGAST: Under the '83
12 amendment, the City of Chicago had to contribute \$55
13 for police and fire who were not Medicare -- I'm
14 sorry, the Funds. The Funds had to do that. But,
15 again, I'm only assuming for purposes of argument --

16 THE COURT: Take for the sake of
17 argument the truth of what I said in my opinion, that
18 the Funds are an instrumentality of the City, and
19 there's really no substantive difference between the
20 two. So it's the City that had to do it. Take that
21 as granted.

22 MR. PRENDERGAST: Right. So we're
23 working in that framework for purposes of my answer.
24 And my answer is, the party that had

1 hired in 1986. We're using "hire." That's what he
2 wants to use. I'm hired in 1986.

3 I say I've got pension benefits. My
4 pension benefits include healthcare. I say, what
5 makes you think so? The answer is 1983. They passed
6 a statute. I'm entitled for the City -- the argument
7 being for the City rather than the Funds, but we'll
8 stay with that. I'm entitled for the City to pay \$55
9 because I'm not on Medicare. The City has to
10 contribute \$55 a month. The City contributes a lot
11 more in 2016 than \$55 dollars a month.

12 So for purposes of a preliminary
13 injunction, that is one that pertains to only 2016,
14 the City is now paying more than it would have had to
15 pay under the 1993 amendment to the Pension Code.
16 Consequently, there is -- there cannot be a
17 diminution in the benefit --

18 THE COURT: So there's no reason for
19 the issuance of a preliminary injunction --

20 MR. PRENDERGAST: Absolutely.

21 THE COURT: -- with regard to those
22 now raised rates relative to the '83 or '85, because
23 it's no harm, no foul, vis-a-vis the retirees.

24 MR. PRENDERGAST: Yes. If the only

1 basis that can be cited, and, obviously, it can't be
2 the later statutes because it's time limited, if the
3 only basis, statutory basis, and there has to be one,
4 for the healthcare right is the '85 statute, or the
5 '83 statute if you're a fireman or policeman, you're
6 getting more now from the City than you got back
7 then. There can be no diminution.

8 We've covered that as clearly as we
9 can in our response to his request for preliminary
10 injunctive relief. He hasn't given us much of an
11 answer. But his answer seems to be, well, that's not
12 what Kanerva holds. You don't have to just look at
13 Pension Code. Kanerva makes it clear. You don't
14 look at just the Pension Code.

15 That's true. Kanerva wasn't based on
16 the Pension Code. What happened in Kanerva was, the
17 state argued that if it's not in the Pension Code,
18 there's no entitlement. And the court said, not so.
19 There's another statute. And that other statute was
20 the Group Health Insurance Act.

21 And under the Group Health Insurance
22 Act, that's the act under which they were entitled,
23 the state employees, were entitled to healthcare
24 benefits. There was a statutory basis.

1 reaction is no good act goes unpunished.

2 THE COURT: Well, that's absolutely
3 true. But here's another one. A deal's a deal.

4 MR. PRENDERGAST: Okay. So let's talk
5 about the deal. What was the deal? We will extend
6 benefits to a specific date, no magic about it, the
7 end of 2013. We will then wean you off this process
8 over a period of four years, through 2016, each year,
9 each step down being time limited.

10 Each one, the 2013 limitation ended in
11 2013, next 2014, 2015, 2016. They're all time
12 limited. There's absolutely no difference --

13 THE COURT: What about -- I'm not
14 talking about the folks who entered into the system
15 during those time limiteds. I'm talking about the
16 folks who entered into the system before they went
17 into effect.

18 MR. PRENDERGAST: Oh, yeah, and so am
19 I. I'm talking about --

20 THE COURT: Let's just talk about
21 those folks. Everybody in class 1, 2, and 3 being
22 the hirees, those who participated in the system
23 prior to August 23rd, 1989, you gave them benefits,
24 benefits as stated in those statutes. You chose to

1 So the Supreme Court said, we don't
2 care if it's in the Pension Code. There's another
3 statute here. Well, here, there isn't another
4 statute. The only statute for the people we're
5 talking about here is the '83 and the '85 statute.
6 And it, number one, in our view, doesn't apply to the
7 City of Chicago. But if it did impose obligations on
8 the City of Chicago, those obligations are far less
9 than what the City is doing now. Therefore, there
10 can be no diminution, and, therefore, there cannot be
11 a preliminary injunction.

12 THE COURT: Understood, your position.

13 Let me ask you a question, and getting
14 more to the core and the substance.

15 Mr. Krislov has said that that may be,
16 but you've given, and you've given without -- for
17 these '83, '85 participants, including the hirees,
18 you've given more than those enactments require, and
19 because they're not time limited at creation, it was
20 something you just gave, and you cannot take away
21 that which you've already given at the levels that
22 you've given it.

23 What's your response?

24 MR. PRENDERGAST: Well, my gut

1 increase them. And as you said, no good benefit goes
2 unpunished.

3 Was that not immutable?

4 MR. PRENDERGAST: Oh, no.

5 THE COURT: Why not?

6 MR. PRENDERGAST: Because they were
7 time limited. In the middle of 2013, the limitation
8 on the extension was the end of 2013.

9 THE COURT: Can you time limit
10 something that's been given for life? Can you just
11 change in midstream -- I understand why the City
12 wants to. No one loves the City more than me or any
13 of these folks here, I assume. No one wants the City
14 to be destitute. We all know what's going on. We
15 all know what the cause of it is, and we're all
16 looking for an answer. And I do understand that.

17 But when you've given something for
18 life, as you acknowledge has been given -- forget the
19 numbers. This is what Mr. Krislov's point is.
20 Forget the numbers. You gave the benefits for life.
21 Can you now take them away?

22 MR. PRENDERGAST: We didn't give them
23 benefits for life.

24 THE COURT: There's no time

1 limitations in the '83 and '85 statutes.

2 MR. PRENDERGAST: Oh, those benefits?

3 THE COURT: Yes. That's the ones I'm
4 talking about.

5 MR. PRENDERGAST: My point is, if
6 that's the benefits -- Your Honor, time and again,
7 they've said the '83 and '85 amendments don't apply
8 to them. Do you know why? The '83 and '85
9 amendments -- they don't want the '83 and '85
10 amendments.

11 THE COURT: Because they don't want to
12 be stuck at lower amounts.

13 MR. PRENDERGAST: Not only do they not
14 want to be stuck at the lower amount, they know they
15 have no constitutional claim if you're relying on the
16 '83 and '85, because the City pays less under the '83
17 and '85 amendments than it's going to pay for 2015.
18 We're now in 2015. They're seeking an injunction for
19 2016, where the City's going to pay more than the '83
20 and '85 amendments would require the City to pay.
21 That can't be a diminution, period.

22 THE COURT: Okay. So let's get to the
23 answer to my question.

24 By giving it to them, how can you take

1 THE COURT: They're subject to the
2 conditions that were stated in the '83 and '85
3 statute. Everyone agrees about that. There are no
4 time limitations on those benefits. So how can you
5 start weaning them off something about which there
6 were no time limitations?

7 MR. PRENDERGAST: We didn't wean them
8 off of that, Your Honor. We weaned them off of what
9 they were paid under the settlement statute that
10 ended in 2013. We're paying them more than 1983 and
11 1985. We don't have to wean them off of that. For
12 2016, we're paying more than we're required to by
13 statute, under the '83 and '85 statutes, if you hold
14 us accountable to the '83 and '85 statutes.

15 THE COURT: Let's assume I hold you
16 accountable for the subclass 1, 2, and 3. That
17 means, as I was discussing with Mr. Krislov, the
18 hirees before August 23rd, 1989. And they're in the
19 Korshak class and the Windows class.

20 What do you owe them?

21 MR. PRENDERGAST: Korshak and Windows
22 are classes 1 and 2.

23 THE COURT: Yes. Class 3 is everyone
24 who participated before August 23.

1 it away?

2 MR. PRENDERGAST: Because, for the
3 very reason that part of the your question said time
4 limited, and that's why I said they weren't. They
5 were not time limited. They had six -- they were
6 extended by six months, and six months only, to the
7 end of 2013.

8 And then they announced that they were
9 going to go through three years or four years of
10 stages of reductions for the very reason that Ms.
11 Holt testified to, and that is, they wanted to give
12 people a time to wean off of this and get into the
13 Affordable Care Act and give them an opportunity.

14 THE COURT: How can you wean people
15 off of something that they've been given for life?

16 MR. PRENDERGAST: It wasn't given for
17 life.

18 THE COURT: In '83 and '85, those
19 participants.

20 MR. PRENDERGAST: Oh, no.

21 THE COURT: Let's keep our eye on the
22 ball. I'm talking about subclass 1, 2, and 3, those
23 who began as participants before August 23rd, 1989.

24 MR. PRENDERGAST: Your Honor --

1 MR. PRENDERGAST: That's what they
2 say, so --

3 THE COURT: Yes, that's what they say.
4 But that's what we're dealing with.

5 MR. PRENDERGAST: Your opinion is
6 still otherwise, but we're not going to get into
7 revisiting it. Let's stay with one and two for a
8 minute.

9 What else has the City done that it's
10 now apparently being punished for?

11 Korshak and Windows class members,
12 have been extended lifetime healthcare by the City.

13 THE COURT: Yes.

14 MR. PRENDERGAST: Okay. They're gone.
15 They're taken care of. There's no injunction you
16 have to enter for them. They're going to get
17 lifetime healthcare for -- that's what they asked for
18 them. They cannot use a settlement statute that was
19 time limited as a basis for a diminution claim,
20 because, as you held, when it was time limited, the
21 rights under that statute ended, so you have to go
22 back to '83 and '85.

23 When you go back to '83 and '85, you
24 find that the City was paying less for '83 and '85,

1 or the Funds were paying less --

2 THE COURT: Than they are now --

3 MR. PRENDERGAST: The numbers are
4 less.

5 THE COURT: -- under the time limited
6 enactments.

7 MR. PRENDERGAST: So there's no
8 diminution.

9 THE COURT: Does that then, also then
10 apply to the subclass 3?

11 MR. PRENDERGAST: It would apply to
12 any retiree that claims a diminution of healthcare
13 benefits.

14 THE COURT: Well, I'm asking
15 specifically. Is it your position that applies to
16 the hirees, people who were hired and participated in
17 the program, and may still be working, before
18 August 23rd, 1989?

19 MR. PRENDERGAST: A person who, in
20 this case, it's brought on behalf of the retirees, so
21 let's stay with retirees if I could.

22 THE COURT: Yes, who was hired before
23 August 23rd, 1898 and retired thereafter.

24 MR. PRENDERGAST: Retired thereafter.

1 applies to 2016 only. So it's not a question of
2 lifetime benefits. It's a question of whether the
3 City has to give up \$30 million that is appropriated
4 --

5 THE COURT: I understand.

6 MR. PRENDERGAST: -- for 2016. And in
7 this case, the City's -- the amount the City would
8 pay under the '83 and '85 amendments is so much less
9 than what it's going to pay for 2016, that there's
10 nothing to enjoin. That's our position with respect
11 to that.

12 So it's really much more, Judge, in my
13 opinion, a question of -- put in that context. That
14 is a question of which class is covered or not.
15 We're at a preliminary injunction stage. They have
16 to prove everything necessary for preliminary
17 injunction.

18 THE COURT: Well, but,
19 Mr. Prendergast, Mr. Krislov has just acknowledged,
20 or conceded earlier today, that the post-hirees,
21 post-August 23rd, 1989, hirees would not be included
22 in his request for a preliminary injunction because
23 they're not entitled to anything.

24 MR. PRENDERGAST: It doesn't say that

1 Okay. What are they entitled to? The only statute
2 that applies to them is the '83 and '85 statute.

3 THE COURT: Are those the benefits
4 you're giving for the lifetimes of the class 1, class
5 2 folks, those same benefits?

6 MR. PRENDERGAST: Well, for purposes
7 of the preliminary injunction, we're only dealing
8 with 2016. For the purpose -- as this case proceeds,
9 you're going to hear a lot of evidence going a lot of
10 different ways. A lot of arguments about whether you
11 can stop altogether at 2016, or whether you have to
12 pay the '83 or '85 benefits.

13 Although I must say to you, Judge, if
14 all they're looking for is the '83 and '85 benefits,
15 this case isn't going to last very long.

16 THE COURT: From your mouth.

17 MR. PRENDERGAST: To God's ears. And
18 they're clearly not. They are running away from '83
19 and '85 at record speed. They've done everything
20 they can to tell you that's not where they're going,
21 and the reason is because it doesn't get them
22 anywhere.

23 And so -- but for purposes of a
24 preliminary injunction, the preliminary injunction

1 in his papers, I must say.

2 THE COURT: Well, I understand. But
3 he argued that today, if we accept my version of what
4 the law is vis-a-vis Kanerva, with that exception,
5 which, by the way, I'm accepting, he acknowledged
6 that if I'm right on that, then the post-August 23rd,
7 1989 class has no ascertainable claim of relief.
8 They have no standing to complain, because they're
9 not covered. So that's done. I accept that.

10 MR. PRENDERGAST: Maybe one and two is
11 done.

12 THE COURT: So now we're just dealing
13 with the hirees.

14 MR. PRENDERGAST: We're just dealing
15 with people who --

16 THE COURT: Who were part of the
17 program, who participated in the program before
18 August 23rd, 1989.

19 And it seems to me your argument is
20 that a preliminary injunction should ensue vis-a-vis
21 those at least -- so your argument is, it should be
22 granted in part, denied in part, but it should be
23 granted vis-a-vis those folks to the extent of the
24 benefits that they were entitled to under the '83 and

1 '85 amendments, yes?
2 MR. PRENDERGAST: No. The reason is
3 because this is an injunction for 2016. There's no
4 need for an injunction because they're going to get
5 more --

6 THE COURT: Because they're going to
7 get that anyway.

8 MR. PRENDERGAST: That's right.

9 THE COURT: At least at this point.

10 MR. PRENDERGAST: At this point,
11 they're going to get that.

12 THE COURT: But in the end, there's a
13 claim that those -- even those benefits are going to
14 be extinguished.

15 MR. PRENDERGAST: And in the end, at
16 the end of 2016, they may be back here, if necessary,
17 talking about an injunction if it's needed --

18 THE COURT: To prevent that from
19 happening.

20 MR. PRENDERGAST: Yeah, but that's not
21 today. And by the way, Judge, I expect, based upon
22 your remarks the last time we were here, and based
23 upon my assessment of what's got to be done in this
24 case, this case is going to be over before 2016.

1 Judge, I do think that --

2 THE COURT: That's why throughout your
3 brief, you argue in the alternative, that even if the
4 City's implicated in this, or part of this -- and I
5 understand.

6 MR. PRENDERGAST: And I have to argue
7 in the alternative until we get past that point.

8 THE COURT: Of course you do.

9 MR. PRENDERGAST: But I have to say
10 that it's been my experience that parties are held to
11 their pleadings, and they are held to what they say,
12 especially when they say it time and time again.

13 So they have said that the '83 and '85
14 amendments don't apply, and we all know, there has to
15 be a statutory basis. Even under Kanerva, there was
16 a statute that the Supreme Court relied upon, because
17 it's got to come from some basis, either a contract,
18 or it's got to come from a statute.

19 And the contract claim is out on your
20 ruling. And by the way, I know Mr. Krislov has said
21 on several occasions here, something -- one thing or
22 another is going to be in his amended complaint.
23 That's not the complaint that's before the Court
24 right now. That's the complaint we're dealing with

1 THE COURT: Once again, from your
2 mouth.

3 MR. PRENDERGAST: Yeah, right. But, I
4 mean, you know, there will be some discovery, I
5 suppose, and there will be motions and the like.

6 But we're not talking preliminary
7 injunction motions. Preliminary injunction motions
8 are to address an immediate need, and there is no
9 immediate need.

10 THE COURT: I understand.

11 MR. PRENDERGAST: Mike points out, I
12 think something I thought was implicit in my remarks,
13 and that is, remember, please, this preliminary
14 injunction that they're seek is against the City, and
15 they concede that the '83 and '85 amendments don't
16 apply to the City.

17 THE COURT: Well, that's true. They
18 concede that. It's really an interesting case. They
19 concede that.

20 But, I held that the Funds are an
21 instrumentality of the City. So from my point of
22 view, the City's in it. That's my ruling, which you
23 want me to revisit.

24 MR. PRENDERGAST: Well, you know,

1 for preliminary injunction purposes.

2 So let me go to -- some of this has
3 been covered, but if I could go to what I expected to
4 talk about -- maybe I'll be redundant, but that's the
5 lawyer's prerogative, especially when you give them
6 unlimited time.

7 Under the Pension Code, pension
8 benefits cannot be impaired or diminished. We all
9 agree on that. That's understood. Under Kanerva,
10 retiree healthcare benefits can be pension benefits,
11 as long as, like any other benefits, they are created
12 by statute or contract. We're good with that. We're
13 not trying to revisit you -- we don't want you to
14 revisit Kanerva on the central issue of Kanerva,
15 which is can healthcare benefits be pension benefits.
16 The Supreme Court's answered that question for us.

17 The plaintiffs' contract claim, that's
18 been dismissed. It was dismissed by the district
19 court. It's been dismissed by this Court.
20 Plaintiffs' have not asked you to reconsider that
21 ruling, even in argument today.

22 The plaintiffs' reliance on the
23 McDonough affidavit and deposition and the Kordeck
24 affidavit from back 30 years ago was raised before

1 you made your ruling, and you still held that doesn't
2 establish the basis for a contractual claim. The
3 materials, of course, were before you when you
4 dismissed the contract.

5 Plaintiffs cannot claim a likelihood
6 of success on the merits, on the limited settlement
7 statutes, because you have ruled on that as well and
8 dismissed those counts. So that argument about
9 success on the merits goes out.

10 I do want to emphasize, by the way,
11 that that first requirement is a requirement for them
12 to establish a likelihood of success on the merits.
13 It is not a requirement just to establish that
14 they've stated a claim.

15 Mr. Krislov has a habit, and I'm not
16 being pejorative, but he does have a habit of
17 characterizing every denial of a motion to dismiss as
18 if he's won the case. That's not the case here. He
19 has to establish, for purposes of preliminary
20 injunction, a likelihood of success on the merits.

21 And the contract claim can't do it.
22 The time limited statutes can't do it. The estoppel
23 claim can't do it, because since you have dismissed
24 them, they can't possibly establish a likelihood of

1 In terms of the likelihood of success
2 on the merits, at least for purposes of preliminary
3 injunction, since they're getting more on their 2016
4 plan, 2016 plans than they would ever get under the
5 '83 and '85 amendments, they can't possibly show a
6 basis for a success on the merits under the '83 and
7 '85 plan.

8 And, therefore, on that ground alone,
9 and they have to satisfy all the criteria, on that
10 ground alone, the motion for preliminary injunction
11 has to be denied.

12 As we pointed out, this is their sixth
13 attempt to get a preliminary injunction with respect
14 to this phaseout program.

15 Mr. -- counsel states that, well, the
16 previous ones all involved a finding that the pension
17 benefits were not -- I'm sorry -- healthcare benefits
18 are not pension benefits, and Kanerva reversed all
19 that, but that's not correct. There's been -- all of
20 the arguments that he's making now were made in all
21 of those motions for preliminary injunctive relief.
22 And no one parsed out that, well, maybe you'll win on
23 some other ground.

24 But the point is, we're here today.

1 success on the merits. So that leaves the
2 constitutional claim, which was Count 1.

3 And so what he has to establish is if
4 there's been a diminution or impairment of pension
5 benefits. And if he doesn't have a likelihood of
6 success on that one, and he talked about summary
7 judgment. But I have to tell you, Judge, if he's not
8 relying on the '83 and '85 amendments, that summary
9 judgment motion comes from our side, not his.

10 So as we've just discussed --

11 THE COURT: And even if he does,
12 according to our colloquy during the last half hour,
13 it's coming from you, too, to the extent that it was
14 offered by those amendments.

15 MR. PRENDERGAST: Yes. So that leaves
16 him -- when you get rid of the contract -- there was
17 a reason they had a contract claim, because they
18 wanted to say well, we'll anchor this on a contract.
19 And there was a reason why they wanted to go to those
20 others statutes, because they wanted to say we want
21 to anchor these on a statute that we can use.

22 But what's left is the '83 and '85
23 statutes. We've already talked about that, and
24 that's their statutory basis for a claim.

1 We're here on this motion for preliminary injunction.
2 I don't mean to suggest the last five or six times
3 that he's lost sets precedent, but it is getting to
4 be habit for him.

5 I've talked about why the '83 and '85
6 amendments don't apply. Talked about it doesn't make
7 any difference whether they apply or not. There's no
8 irreparable harm.

9 And you have raised a very significant
10 point, and that is, if the pensioners have to pay in
11 in 2016 amounts greater than 2015 because of the
12 reduction in the subsidy, they have an adequate
13 remedy at law. And they clearly do. If they
14 ultimately win, the difference, plus interest, gets
15 paid back to them.

16 They have not made a compelling
17 argument why that's not an adequate remedy at law.
18 They have argued that people are retired, they have
19 less money than people who are working. That's also
20 true, but it still doesn't mean they don't have an
21 adequate remedy at law, especially in the context of
22 a class-action claim.

23 I mean, we're not talking about one
24 plaintiff in front of you where you can parse that

1 out. There's 23,000 members of this class. So that
2 concern no longer justifies a preliminary injunction.

3 And so now we turn to the one thing
4 that they hammered on in this case, since they filed
5 it. They've hammered on the idea that people would
6 have to make choices. That's why this January date
7 is critical. People would have to make choices of
8 staying in or getting out.

9 But if they get out, and they went to
10 one of those lower-priced Affordable Care Act plans,
11 or even one of the premier plans that has all the
12 bells and whistles you want, they wouldn't be able to
13 get back in without an ability to prove insurability.
14 That has been the irreparable harm argument here
15 since day one.

16 So finally, we decided, you know, that
17 one's got come off the table. We went back to the
18 City, and we said let's revise that. Can you revise
19 that? Is that impossible? That won't require you to
20 do anything. It won't require the Funds do anything
21 in January of 2016 to unscramble the eggs.

22 But it would extend people the
23 opportunity if they become uninsurable because they
24 have bad health to still come back to the City plan

1 resolved with the cooperation and effort of everyone,
2 including the Court, and your calendar, to resolve
3 this case by September 30th, 2016.

4 I'm authorized to tell you one other
5 thing. It's not in that document, but I'm on the
6 record as an officer of the court, representing the
7 City of Chicago.

8 If at the end of the day they win this
9 case, and then they say -- but it's January 2017, and
10 it's after September, and they say, we won, I want
11 back in the City plan, they're going to be allowed to
12 go back in the City plan.

13 So this irreparable harm argument they
14 have made from the beginning is no longer existent.
15 All they have to do -- that gives them all the
16 choices they want. They can stay with the plan, in
17 the City plan if they want to. They can get out if
18 they don't want to. I'm happy you heard the
19 testimony of witnesses today that Mr. Krislov thought
20 would be helpful to the Court, because I think one
21 thing you should have come away with, I believe, from
22 that testimony is that the City makes a great deal of
23 effort to deal with its retirees, to put them on
24 notice of everything from change -- any changes, any

1 if they wanted to.

2 And so the exhibit, which I forget the
3 number of, and you saw it, which is only dated the
4 18th of this month. That's when it became official,
5 but it addresses --

6 THE COURT: It's your Exhibit 6 in
7 your submission.

8 MR. PRENDERGAST: That's correct,
9 Judge.

10 That program now allows people, if
11 they leave and they go into an Affordable Care Act
12 plan, or any other plan, if for some reason they find
13 out this wasn't really good for me, this wasn't -- I
14 don't like the deductibles here, I don't like the
15 copay, or whatever their concern is, they can come
16 back. They can come back anytime between
17 September 30th -- until September 30th of this
18 year, nine months out. And I know you point up when
19 say this.

20 THE COURT: 2016.

21 MR. PRENDERGAST: 2016.

22 THE COURT: Not this year.

23 MR. PRENDERGAST: I'm sorry. 2016.

24 But there's nothing about this case that can't be

1 options that they have, they're fully aware of it.
2 They've got a phone bank ready to answer any
3 questions that they have.

4 And certainly, you know, to the extent
5 that they ask questions of Mr. Krislov and he wants
6 to send those questions in, the City is going to
7 answer them.

8 The point is, they have all the basis
9 that they need to make choices. But if they make, in
10 their view, the wrong choice, and they get out of the
11 City plan, they can get back in. And that has not
12 been before you before this. I thought --

13 THE COURT: What limitations are you
14 putting upon their ability to get back in? You say
15 you've extended it now, as an officer of the court,
16 to -- at least into 2017. What limitations?

17 MR. PRENDERGAST: The same limitations
18 as are in the plan right now. For example --

19 THE COURT: No, what time limitations?

20 MR. PRENDERGAST: Oh, I think there
21 will --

22 THE COURT: Up until the end of this
23 case, whatever that's defined as; isn't that right?

24 MR. PRENDERGAST: I should clarify.

1 If they win this --

2 THE COURT: If this goes up the
3 Supreme Court and takes two or three years, and it
4 comes back, and they won, the City is game, yes?

5 MR. PRENDERGAST: The City is game.
6 The City will let them back into the plan, whatever
7 the plan is, if there is a plan.

8 If they lose the case, they'll say we
9 have to have a plan. If they win -- I'm sorry. If
10 they win the case, they're going to say, we have to
11 have a plan, and it's going to be ordered.

12 If they lose the case, there won't be
13 a plan to come back to. Which is one of the reasons
14 that it would be very prudent for those who have a
15 concern, and I mean the pensioners, to explore, like
16 a lot of people who are in the private sector,
17 explore the Affordable Care Act.

18 Because, as you heard in the testimony
19 today, there are considerable advantages to the
20 Affordable Care Act. Counsel points out that there
21 are going to be hospitals that are not covered by the
22 Affordable Care Act, and that's true. They can't go
23 to Northwestern or Chicago. People in Peoria don't
24 go to Northwestern or Chicago either, generally

1 that got in. If they want to stand up here when I'm
2 through and show it to you, it will surprise both of
3 us. But that's not there. There has not been a city
4 ordinance that grants healthcare benefits to anyone,
5 and there's no state statute that does so, with the
6 possible exception, possible exception, because we
7 have a motion to reconsider, of the '83 and the '85
8 amendments to the Pension Code.

9 And since the Kanerva case relied upon
10 another statute, there was a statutory basis. And as
11 this Court has said, there has to be. You have to
12 have a basis for the claim before the pension clause
13 can protect it. If there's nothing to protect, you
14 can't say there's a pension clause, so I get a
15 pension. That's not how it works. You've got to
16 have a basis for doing that.

17 In terms of the balancing of the
18 equities, if an injunction is entered requiring the
19 City to subsidize at the 2015 rates rather than the
20 2016 rates, the cost to the City will be
21 approximately \$30 million.

22 That 30- -- Ms. Holt, I was happy that
23 she was called. I didn't -- if I had put her on
24 direct, I would have spent the first five minutes

1 speaking. But they have good hospitals in Peoria.
2 Loyola's an excellent hospital. There are a lot of
3 excellent hospitals that are covered by the
4 Affordable Care Act.

5 So the idea that they can't get
6 healthcare -- I mean, there's a difference between
7 saying people should be able to get healthcare and
8 saying they should be able to get healthcare, forget
9 networks, forgetting limitations on hospitals,
10 forgetting limitations on doctors that don't want to
11 provide that healthcare, that's not a constitutional
12 claim. That's a beef. That's a political argument.
13 That's something they can take to their legislature.

14 But speaking of the legislature, I do
15 want to mention something, because I'll probably
16 forget to mention it.

17 In their papers, they say that
18 Mr. McDonough, in his affidavit or his deposition, I
19 think it's his deposition, testified that there was a
20 city ordinance that was passed that granted
21 healthcare.

22 Not only was there no such city
23 ordinance, it's not in his affidavit or in his
24 deposition. I don't know where that leaked in, how

1 going through her credentials, and they would have
2 been impressive. But it's not important, because I
3 think she's an impressive witness. She knows the
4 budget. She knows how to balance the budget. She
5 knows what's happened in the City of Chicago in
6 previous years when they haven't balanced the budget,
7 and they've gone off and sold the Skyway, sold
8 parking meters, found other things to sell in order
9 to raise money.

10 The objective now is to get the City
11 back on a solid footing, fair to the taxpayers, fair
12 to the residents of the city in a way that will make
13 the city great and keep it from going in the wrong
14 direction fiscally.

15 So she explained what goes into the
16 budget, and that means we looked at everything. And
17 one of the exhibits they talked about were the cuts
18 that they have to make. They aren't only cuts in --
19 it isn't just a step down in the amount that they
20 paid to subsidize healthcare. It cuts across the
21 board. Elimination of positions. Cutting programs.

22 I think it's -- I forget the number --
23 \$3- or \$400 million in new real estate taxes were
24 enacted this year. Other fees were enacted this year

1 pursuant to the budget that they passed for 2016 so
2 they could balance that budget. \$30 million is an
3 imbalance. It's not an imbalance you make up by
4 snapping your fingers or flipping a switch. There's
5 a lot that goes into that, and it may mean cutting
6 300 jobs, or it may mean cutting 150 jobs and \$15
7 million worth of programs.

8 But it is an impact on the taxpayers,
9 on the residents. As she pointed out correctly, when
10 you raise taxes, you have to raise taxes across the
11 board. There's people up in Lincoln Park that afford
12 the tax increase. I can afford a tax increase. I'll
13 make it. There's lots of people who can't. A lot of
14 them are retirees. A lot of people who are going to
15 be put to the test of paying the other way in taxes.

16 And so balance that against the
17 hardship to the retirees. Well, we have before you a
18 fair amount of evidence for a preliminary injunction
19 hearing on the alternatives that the retirees have.
20 The alternatives would be the Affordable Care Act,
21 the opportunity to get insurance at lower prices so
22 they don't have to.

23 And in context of the discussion about
24 the breaks you get if you are below the poverty

1 income, because if they don't, then they're not going
2 to get hit as hard under the Affordable Care Act or
3 under the City plan. And, basically, what we were
4 told is, that's an unreasonable intrusion into their
5 privacy.

6 Well, it's a relevant fact. We'll
7 develop it in the course of discovery in this case to
8 find out what the real impact is, and we will make
9 our judgments accordingly.

10 But fact of the matter is when you
11 balance the availability of lower-priced insurance
12 under the Affordable Care Act, the availability of
13 insurance under the City plans, the lower-level City
14 plans, against the fiscal hit that the City has for
15 the \$30 million adjustment, I think the balance of
16 the equities falls in favor of the City.

17 And I know it's more popular to talk
18 about how people on pensions are hurt more, but I'm
19 saying to you that when you take \$30 million out,
20 everybody gets hurt. Taxpayers get hurt, residents
21 who do not have excess income see their taxes go up
22 even more than the \$347 million, I believe it was, in
23 new real estate taxes this year, more than the new
24 water fees, more than the other new fees that went up

1 level, I should say below two and a half times the
2 poverty level, or on the Affordable Care Act side,
3 four times the federal poverty level, four times the
4 federal poverty level is \$46,500. If you're making
5 \$46,500 or less, that's -- then you get substantial
6 additional breaks under the Affordable Care Act.

7 It's only two and a half times, but it
8 is two and a half times for the poverty level for the
9 city program, which, you know, if you're making
10 \$30 million, people making less than that.

11 One of the things that the witnesses
12 were asked here today was, how do you know? You
13 know, how do you know what people are making, you
14 know? Well -- and the only ones we know are the ones
15 that ask for the break, you know, that say, I'm
16 eligible to pay less.

17 So they send -- they -- basically,
18 their entire tax return is not sent to the City. The
19 first page, or the summary on the first page gives
20 your adjusted gross income is what does it.

21 So when they provided you with this
22 book full of various annuitants' letters and a
23 summary they put in the front, we were interested in
24 knowing whether or not those annuitants have other

1 this year in order to balance the budget in 2016.
2 It's a significant impact.

3 And, you know, the case law on that,
4 Your Honor, particularly when you get into the public
5 sector, is pretty clear that the public harm, the
6 impact of an injunction to the extent that it creates
7 a public harm, or public burden, has to be considered
8 by the Court. It's not just a question of, well, why
9 don't you write a check for \$30 million.

10 To a certain extent, in fact, to a
11 large extent throughout their reply brief, I think
12 that's the most important document that they filed,
13 they try to -- as was much the discussion that we had
14 with counsel, they tried to run away from the ruling
15 dismissing most of the case, and now they're down to
16 carving out, trying to carve out some group of class
17 members that are maybe part of a class and saying we
18 should enter an injunction for them.

19 But for the same reasons that we've
20 discussed at length here today, they don't have a
21 colorable claim under the '83 or '85 statutes.

22 So they turn to Kanerva, and I just
23 discussed Kanerva. Kanerva was based upon the
24 statute. There is no statute basis here. It's that

1 simple. This is not, as counsel said, a photocopy of
2 the Kanerva case. This is a different case. There
3 is no ordinance, there is no statute on which to
4 rely.

5 Had there been no statute in Kanerva,
6 the state would have won. Had there been no statute
7 establishing the state's obligation to pay pension
8 benefits, the state would have won the Kanerva case.
9 It's absolutely clear from the opinion.

10 I don't want to sound patronizing, but
11 this is a preliminary injunction; it's not the case.

12 THE COURT: I understand.

13 MR. PRENDERGAST: Okay. I need to go
14 no further on that.

15 There is an argument that they make,
16 and he alluded to it, because we've decided -- the
17 City has decided that the Korshak and the Window
18 classes are going to have coverage for life, even if
19 the City otherwise gets out of the business.

20 They've thrown in an argument that
21 there's a denial of equal protection here. Now, that
22 argument has not previously been made, and I saw it
23 for first time when we got their papers fairly
24 recently, and so we really haven't had a chance to go

1 We talked about irreparable harm.

2 THE COURT: You have.

3 MR. PRENDERGAST: And I won't go back
4 to it, other than --

5 THE COURT: Good.

6 MR. PRENDERGAST: Good. I hope that
7 means I've persuaded you.

8 THE COURT: It means I've heard it
9 all.

10 MR. PRENDERGAST: You've heard it all,
11 yes.

12 THE COURT: We've been here since
13 10:30, it's now quarter to 3:00.

14 MR. PRENDERGAST: You have been
15 awfully patient, and I appreciate that.

16 THE COURT: I'm sorry? I didn't hear
17 that.

18 THE COURT REPORTER: Do you want me to
19 read it back?

20 (Laughter.)

21 THE COURT: No, no, no. I want to
22 give everyone an opportunity to argue.

23 MR. PRENDERGAST: One argument they
24 have made is that it -- and it was rebutted by the

1 into it in any depth.

2 THE COURT: And there's no need to,
3 because new ideas brought up in a reply brief are not
4 going to be considered by the Court. And I'll just
5 note that the equal protection argument, as I noted
6 to Mr. Krislov, is not pled.

7 So, as Mr. Krislov says, it may be in
8 the future, but that's not what I'm dealing with now,
9 so no need.

10 MR. PRENDERGAST: They argue with
11 respect to the handbook. Are you familiar with what
12 I'm referring to?

13 THE COURT: I sure am.

14 MR. PRENDERGAST: Plaintiffs
15 incorrectly argue that the City abandoned its
16 argument that under the handbook, the City maintained
17 the right to terminate its retiree healthcare plan.
18 That's just not what we've done. It's not correct.

19 Plaintiffs' opening brief did make
20 claims in support of a likelihood of success on the
21 merits based on the handbook for the straightforward
22 reason that the Court dismissed that contract claim,
23 so we had no reason to revisit it in our response to
24 the preliminary injunction.

1 sworn testimony today, is that, well, what's going to
2 happen if a retiree goes to an ACA plan and then
3 says, I want to go back to the City, and the ACA
4 insurer says, well, you have to pay for the next --

5 THE COURT: The uncontradicted
6 evidence is there's a 14-day period, notification
7 period, and there can be no -- at least according to
8 the evidence I hear, no penalty for that.

9 I don't know to the contrary, but
10 that's what the evidence is that was elicited from
11 the stand.

12 See, I remember, Richard.

13 MR. PRENDERGAST: So Mike Layden, my
14 colleague who's one of the best lawyers I know, just
15 handed me a note that said let's end it.

16 THE COURT: He's not only good, he's
17 wise.

18 MR. PRENDERGAST: Thank you for your
19 time.

20 THE COURT: You're welcome.

21 Mr. Burke.

22 MR. BURKE: Your Honor, I was going to
23 argue for another five hours, but I've changed my
24 mind, and we will rely on our filings, both in the

1 underlying litigation and the one that we just pled.
 2 THE COURT: Thank you.
 3 Mr. Kennedy.
 4 MR. KENNEDY: Thank you, Your Honor.
 5 On behalf of the Laborers' Fund, we join in the
 6 City's request that you deny the motion for
 7 preliminary injunction.
 8 THE COURT: Mr. Kugler.
 9 MR. KUGLER: Yes, Your Honor. Well,
 10 granting we've been here for four hours or more,
 11 granting your preliminary injunction in full or in
 12 part is now -- there's nothing further that the
 13 Pension Fund can add to it. The Court has heard it.
 14 It's in your hands.
 15 The only thing I would say, Your Honor
 16 is, as I understand it, I believe the timing of this
 17 month, the deductions have already been made with
 18 regard to the City, or are in effect, so whatever the
 19 Court does, there may have to be some adjustment with
 20 the check that's going out currently.
 21 THE COURT: Thank you.
 22 Mr. Krislov, you've got last ups.
 23 MR. KRISLOV: Your Honor, I mean, we
 24 obviously, as we have said before, object to the

1 response.
 2 THE COURT: What's this?
 3 (Indicating.)
 4 MR. KRISLOV: No, no. The City.
 5 THE COURT: That's what I'm talking
 6 about.
 7 MR. KRISLOV: I'm talking about the
 8 Funds.
 9 THE COURT: Oh, well. Okay. I
 10 thought we were just talking -- my eye was on the
 11 City, not the Funds.
 12 MR. KRISLOV: Okay. As I say, you can
 13 ignore that.
 14 THE COURT: But it does call into
 15 question where your eye is. Mr. Prendergast has
 16 asserted, as I know, and I was here when he did it,
 17 you conceded the City had no obligation under the '83
 18 and '85 amendments. That, just so you know, is key
 19 to my answer to this problem raised by your motion.
 20 And you conceded the City has no obligations under
 21 that.
 22 Apart from my ruling, what's your
 23 response to Mr. Prendergast's argument about that?
 24 MR. KRISLOV: Our position is that

1 Funds taking a positions today, especially to say
 2 that it's some sort of hardship or difficulty to not
 3 -- they've not asserted anything like this before.
 4 All that they have to do is just not withhold from
 5 their people the January premiums at the higher
 6 rates.
 7 If they're now saying that that would
 8 be difficult, they could have spoken about this
 9 before and not blindsided us today with that
 10 argument, because they haven't made this argument
 11 before.
 12 THE COURT: They haven't made which
 13 argument before?
 14 MR. KRISLOV: They haven't made the
 15 argument that it would be difficult for them to
 16 comply with not raising the healthcare rates
 17 beginning January 1st.
 18 THE COURT: Is it not in their
 19 submission?
 20 MR. KRISLOV: They didn't make a
 21 submission.
 22 THE COURT: Is it not in the response
 23 to your --
 24 MR. KRISLOV: They didn't make a

1 while the specific language of the Pension Code
 2 provisions do not obligate the City to provide
 3 healthcare, the City has in two ways subjected itself
 4 to that obligation: Number one, by being the insurer
 5 that the Funds have obtained that insurance from;
 6 and, number two, by providing -- and this is what we
 7 seek to enforce -- the City of Chicago Annuitant
 8 Medical Benefits Plan. That is Exhibit 4 to our
 9 reply, but it's been in everything. It's attached to
 10 the complaint, it's attached to lots of things
 11 throughout.
 12 And it says eligibility. You will be
 13 eligible for coverage if you are an annuitant of the
 14 City of Chicago. Annuitant means a former employee
 15 who is receiving an age and service annuity from one
 16 of the four retirement funds. And here's what the --
 17 here's where Kanerva comes in.
 18 Once you provide as a governmental
 19 employer, whether you regard the Funds as an
 20 instrumentality of the City, or the City just does
 21 it, because the state just did it in Kanerva, once
 22 you provide a benefit that is conditioned on
 23 exclusively whatever to people who are annuitants,
 24 participants in one of the four pension funds, you

1 are stuck with it for life because Article 13,
2 Section 5 doesn't say we protect benefits of
3 pension -- we don't protect benefit -- excuse me. We
4 don't protect pension benefits. It says, membership
5 in any pension or retirement system of the state or
6 any unit of local government, dot, dot, dot.

7 THE COURT: Shall not be diminished or
8 impaired.

9 MR. KRISLOV: The benefits of which
10 shall not be diminished or impaired.

11 THE COURT: Sure.

12 MR. KRISLOV: That's the key language.
13 That's why when the City provides the plan, and it's
14 the plan that we're seeking to enforce, it's the plan
15 that is the benefit.

16 Once they provide it to people
17 conditioned on their being members of the retirement
18 system --

19 THE COURT: They don't disagree,
20 really.

21 MR. KRISLOV: Then they're stuck.

22 THE COURT: They're just saying that
23 they're limited by the amounts that were granted by
24 the '83 and '85 legislation. They're capped at that

1 But I'll tell you, it's just ordinary
2 rules of statutory construction. You look at the
3 four corners of the statute and the contract. You
4 look at the four corners of the contract, and you are
5 limited by those terms as to what was given. That's
6 just the ordinary rules of construction, whether it's
7 a constitutional amendment provision, statutory
8 provision or a contract.

9 You're asking me to read into that
10 that which is not there. You're asking me to do it
11 because of Kanerva, and I understand that.

12 But Kanerva didn't just give carte
13 blanche. It doesn't say that which has been given
14 with limitations is, carte blanche, given for life.
15 It just said that which is given is guaranteed. It's
16 not guaranteed for life. It's guaranteed within the
17 ambit in which it was given, and that's up to the
18 legislature. It's not up to you, and it's not up to
19 me. I wish it were up to me; then we'd have a real
20 nice, platonic republic, and lots of things would be
21 changing. But we don't have that, and I'm somewhat
22 limited by that which is the -- by the separation of
23 powers in that regard.

24 MR. KRISLOV: Here's what I don't

1 in terms of what they have to do, even for the
2 hirees.

3 MR. KRISLOV: That's what they have to
4 do under the Pension Code. That is not what they are
5 limited in having to do because they are -- because
6 they have taken it on.

7 That's why in Kanerva, the state, by
8 enacting a group healthcare plan, that, for these
9 people was conditioned --

10 THE COURT: But unlike Kanerva, here
11 it was time limited. It was not a, here, you're
12 getting it all for life. Apart from all your
13 assertions to the contrary in your briefs, they've
14 never said you can have it for life. In fact, they
15 didn't say it in the '83 and '85 amendments. I found
16 it, without it being in there, because it was given
17 without any --

18 MR. KRISLOV: Time limit.

19 THE COURT: -- limitation, to the
20 extent that it was given in those statutes.

21 MR. KRISLOV: See, that's where you
22 and I differ on this one, because --

23 THE COURT: There you go, and when you
24 wear the robes, I'll listen to you.

1 understand and maybe missing the point.

2 Our view of Kanerva is that Kanerva
3 says where a public employer has granted a benefit
4 that is conditioned on --

5 THE COURT: Participation.

6 MR. KRISLOV: -- participation in one
7 of the retirement systems, it is a protected benefit
8 for life. And giving it --

9 THE COURT: What if the nature of that
10 which has been given is limited? I'm giving you \$5
11 every week for the rest of your life. Somehow,
12 because you need more money, or because things
13 change -- and I'm not trying to insult anybody here,
14 believe me, I'm not -- are you trying to tell me that
15 it should be \$10 or \$20 because the value of the
16 dollar has gone down? Does it ipso facto mean that I
17 have to give you \$100 a week? Isn't it limited to
18 that which I give?

19 MR. KRISLOV: If I'm a public
20 employee, and I say here is a benefit that I will
21 give to people who are participants in the retirement
22 system, I will provide your healthcare -- I will
23 provide the following benefit. I will provide, the
24 City of Chicago --

1 THE COURT: I will give you \$55 a
2 month.

3 MR. KRISLOV: But that's not what I'm
4 seeking to enforce.

5 THE COURT: I know. But that's what
6 it says. I understand you're trying to go beyond
7 that.

8 MR. KRISLOV: That's what the Pension
9 Code wording says. That's what I concede that the
10 Pension Code wording says.

11 What I'm saying is that by
12 providing -- and Ms. Holt said all they need is an
13 ordinance, and all they need is the appropriation
14 ordinance, and they could be -- no one said that the
15 City of Chicago annuitant healthcare plan was being
16 illegally provided. Once it is provided to people
17 based solely on their being annuitants or
18 participants in the plan, you're stuck with it for
19 life. Yes.

20 THE COURT: Okay. I got it. I got
21 your ideas.

22 MR. KRISLOV: So what we're trying to
23 enforce is not the \$55 subsidy. The subsidy is the
24 Funds. Providing the plan is what the City did.

1 balancing. I don't even get to adequate remedy at
2 law. I'll let you go on. You've said it before, and
3 I don't want to stop you. But I don't even get to
4 that if you don't pass the standing issue, which is
5 the first prong of the injunctive inquiry.

6 MR. KRISLOV: And our view is if we
7 interpret your ruling, people who were participants
8 on August 23rd, '89, have enforceable rights to
9 enforce a benefit whose parameters you said are to be
10 determined. And that's what you said, that on a
11 2-615 --

12 THE COURT: Yes. Oh, yes. That have
13 yet to be determined under 2-615. I did say that.

14 MR. KRISLOV: Yes.

15 THE COURT: Absolutely.

16 MR. KRISLOV: Those -- the exact
17 nature of those obligations, however, is not properly
18 decided on a 2-615 motion to dismiss. That's where
19 we figure that -- that explaining what we think the
20 obligations are is for later in the case.

21 At this point, the people who were
22 participants as of August 23rd, '89, have
23 enforceable rights. What they are entitled to
24 protect you left to be determined, and that's what I

1 There are differences. The City is saying, look, all
2 that they provided --

3 THE COURT: Providing the tax levy is
4 what the City did per the statute, '83 and '85.

5 MR. KRISLOV: Per the Pension Code
6 statute.

7 THE COURT: Yeah, well, isn't that
8 what I'm stuck with?

9 MR. KRISLOV: No, you're not stuck
10 with that. The City is stuck with it when it legally
11 provides a benefit to people based on their
12 participation in one of the four Funds, it's stuck
13 with that for their life. And that's -- if we
14 disagree on something, I believe I'm right on that
15 one.

16 I guess we'll find out.

17 But for these purposes, at least at
18 this point, until you decide the merits of it, who's
19 more harmed? They can't say the City's harmed. The
20 taxpayers, if they have an average of \$30 per
21 person --

22 THE COURT: But I don't get to harm if
23 I don't find an ascertainable claim, I mean a right,
24 standing. I don't get to harm. I don't get to

1 interpret your ruling to be.

2 THE COURT: Then how does that jibe
3 with the likelihood of success and an ascertainable
4 claim if I haven't yet determined what rights enure
5 to those three classes?

6 MR. KRISLOV: Because at this stage of
7 the proceedings, we need -- we don't have to prove
8 summary judgment. We just have to show that there's
9 a reasonable basis that we might --

10 THE COURT: No, that's not true, and
11 that's not the law, and you know that.

12 MR. KRISLOV: Oh, I --

13 THE COURT: For purposes of injunctive
14 relief, you have to show a likelihood of success.
15 Not a reasonable probability that there's a conflict
16 here, or it's been interpreted as being a fair
17 question, at least.

18 MR. KRISLOV: Fair question, at least.
19 We've done that. And I believe that you will say
20 that you will agree that at least for these
21 purposes -- whether you disagree with me ultimately
22 or not is for the Court to decide -- but the fact is,
23 I think we have raised an absolutely, at least a fair
24 question. I think we're right. I think we will

1 ultimately prevail on that. But I think we've shown
2 enough to justify hurdle number one.

3 And it's not an all -- and failing
4 one. It is an overall -- we shouldn't fail any of
5 them by a significant amount, but it is a balancing
6 test overall, and it is to maintain --

7 THE COURT: No, it's not. I don't
8 even get to the balancing test unless you can prove
9 the first four.

10 MR. KRISLOV: Well, I think we have
11 satisfied --

12 THE COURT: And that's the law, too.

13 MR. KRISLOV: Fair enough. But
14 we've sat- -- I believe we've satisfied the first
15 one, at least, sufficient to preserve the status quo,
16 until we get to the merits of the case.

17 In terms of the post-'89 hirees, in
18 our view, is that when you give things to people
19 after that, whatever you give them, again,
20 conditioned on their being participants, that's a
21 floor.

22 But we can -- we may disagree with
23 that, and that's why for purposes of this injunction
24 that we're requesting, it's for the pre-8-23-89

1 off of the Choice.

2 So if you want to get lesser
3 coverage -- and I probably should have asked
4 Ms. Currier -- but if she's elected out of the
5 coverage and to go in the ACA, everybody who says,
6 oh, you'll be better off in the ACA is generally not
7 in it.

8 The only ordinance needed is the
9 appropriation ordinance. We're looking to enforce
10 the plan, and at this point, I think we've shown,
11 certainly for the pre-8-23-89 hires, a sufficient
12 showing of likelihood of harm, balance of equities,
13 hardship. I don't think we've missed any of the six
14 on that.

15 But I think, overall, we're not asking
16 for much. Just put off the increase until we find
17 out who's entitled to do what. And until then, we --
18 all we can rely on, that's all these people have to
19 rely on is the Constitution and this Court, and we
20 ask you to do so.

21 THE COURT: Thanks.

22 First, I'd like to compliment
23 Mr. Krislov and Mr. Prendergast and the other
24 attorneys here on their submissions. They were as

1 hires.

2 THE COURT: You're not asking for it
3 to be imposed as to the post-August 23rd, 1989,
4 hirees, or participants, correct?

5 MR. KRISLOV: We concede that that is
6 a weaker claim that you, by your ruling, do not
7 accept. How is that?

8 THE COURT: That means you want me to
9 rule. Okay. I will.

10 Anything else?

11 MR. KRISLOV: Yes. This whole
12 business of you can't get -- you know, you can still
13 get healthcare. Too bad you can't get your doctor,
14 too bad you can't get any of the hospitals you've
15 been dealing with. These are hardships. These are
16 unique hardships that everybody has been recognizing
17 is a big problem.

18 If you can't deal with the doctor that
19 you have been dealing with for years, if you must go
20 to a lesser, far distant place -- people in Peoria
21 don't necessarily go to Northwestern, but people in
22 the city go overwhelmingly, it may be 80 percent of
23 the patient treatment or more, I don't know, goes to
24 the five or six institutions that I named who are all

1 well written as anything I've ever seen as a judge,
2 and certainly better than I've ever written, and they
3 helped me focus on what the issues were.

4 The Court is guided by the law with
5 regard to issuance of injunctions. And for the sake
6 of the folks here who do not know the law as well as
7 the attorneys, let me just spend a few moments
8 explaining to you what it is and what I'm guided by.

9 An injunction is called an equitable
10 remedy. It's an order by which a party is directed
11 to perform some act or is ordered to refrain from
12 doing some act, which is what Mr. Krislov is asking
13 for here.

14 A request for a preliminary injunction
15 is called an interlocutory remedy. That means that
16 they're intended to provide immediate but durational,
17 that means not forever, relief prior to the final
18 adjudication of a controversy on the merits.

19 And by definition, that means I can't,
20 by the giving of the issuance of a preliminary
21 injunction, make a ruling on the merits. And as
22 Mr. Krislov just suggested, I have not -- with regard
23 to the motion to dismiss, I do not know, have not yet
24 decided, have not yet discussed with the attorneys

1 what the nature and extent of the folks' interest is
2 under the '83 and '85 amendments to the Pension Code.

3 An interlocutory injunction is also
4 called an extraordinary remedy by our Supreme Court.
5 And that means that I shouldn't grant one unless I've
6 taken great care to assure that it is needed under
7 the circumstances.

8 What the circumstances are is
9 dependent on every case, and being equitable in
10 nature, that means not being guided by law, but being
11 guided by aspects of equity. They're addressed to
12 the sound discretion of the trial court. In this
13 case, that's me.

14 The elements which must be shown by
15 the movant for the issuance of a preliminary
16 injunction and calling upon this Court's discretion
17 to issue an extraordinary order is, first, there must
18 be an ascertainable claim for relief by the
19 plaintiffs.

20 Secondly, there has to be showing of a
21 likelihood of success on the merits, without ruling
22 on those merits, or, as I said just a few moments
23 ago, at least a fair question that the plaintiff will
24 succeed.

1 As I've ruled in my December 3rd
2 opinion, I find that the participants, post-August
3 23rd, 1989, that means the hirees thereafter, do not
4 have an ascertainable claim for relief.

5 And the reason for that, so you know,
6 is, as I said before, alluded to, I'm guided by the
7 law. And the law says that, yes, pension benefits
8 shall not be diminished or impaired.

9 But it doesn't grant pension benefits.
10 To that, I have to look at the core body, the body
11 which issued that. In this case, it's the
12 legislature. And for the post-August 23rd, 1989
13 hirees, whatever protections they were given,
14 whatever benefits they were given were a matter of
15 statute.

16 As I said before, if it were me, it
17 would be different. But I'm not a super-legislature.
18 I've been told, every court has been told, I cannot
19 impose my will on the legislature. And there's a
20 reason for that in democratic theory. They're your
21 representatives. They're the ones who decide what
22 the law is going to be; I decide whether they did it
23 right or not, and I look at it. As I said before, I
24 use statutory construction, if needed. But the first

1 Third, there has to be irreparable
2 harm to the plaintiff if -- or in this case, a class
3 of plaintiffs -- if the injunction is not given.

4 Fourth, there has to be an inadequate
5 remedy at law. And that means, according to the law,
6 as our Supreme Court has said, that means that money
7 damages will not suffice if it's not given.

8 Lastly, or -- not lastly, but the
9 courts say that if it comes down to it, I should
10 balance the equities, the hardships to both sides. I
11 should consider that in terms of giving or not giving
12 the injunctive relief.

13 And, also, some cases have said that I
14 should consider the public interest, and the harm to
15 the public, and public policy.

16 As you've heard, and I compliment you
17 all for, (a), being here. Obviously, you're
18 concerned, and it's a concerning matter. I've
19 noticed your attention to it.

20 With regard to the first element, the
21 ascertainable claim for relief, the plaintiffs must
22 clearly establish an ascertainable right and need of
23 protection, and the failure to do so obviates the
24 need to go further.

1 rule is, I just look at the ordinary words that are
2 in the statute.

3 And in the statutes in '89 and
4 thereafter, it was clearly limited, the benefits that
5 were given to the folks post- -- who were hired
6 post-August 23rd, 1989. So that's the core grant.

7 And Mr. Krislov's argument
8 notwithstanding, the Constitution protects that which
9 was granted. It doesn't add to it. It doesn't
10 magically create a right that was not given. The
11 problem therein lies with the legislature if you have
12 a beef, not with anybody else. And that was a long
13 time ago.

14 So, clearly, as to the -- it seems to
15 me, as to the post-August 23rd, 1989 group, the
16 fourth subclass, they do not have an ascertainable
17 claim for relief, and I need go no further.

18 With regard to the prior groups, the
19 1983 and '85 amendments were in effect when the
20 Korshak subclass and the Windows subclass and
21 subclass 3 entered into the Funds' retirement
22 systems, as I stated.

23 Although Mr. Krislov and I argued
24 about the issue, I do find, of course, that those who

1 were participants prior to August 23rd, 1989, do
2 have an ascertainable claim for relief. And that's
3 what I said earlier in my December 3rd opinion.

4 What that claim for relief is, as I
5 mentioned earlier, and Mr. Krislov mentioned, is
6 going to be subject to further discussion between the
7 parties, arguments, etcetera. But as I have alluded
8 to, I use rules of statutory construction, and I
9 cannot write into a statute that which is not there,
10 even if I want to.

11 And I look at the 1983 and the 1985
12 statutes, and much as Mr. Prendergast has as argued,
13 they are limited. They are limited by their terms.
14 And the ascertainable claim for relief for those
15 three subclasses is, thus, limited thereby.

16 Therefore, they do have an
17 ascertainable claim for relief, but I have to go on
18 to see their likelihood of success on the merits as
19 to that which is being asked of me today and is being
20 asked of me in the complaint. That's the second
21 element, as you may recall I said to you.

22 Much as Mr. Prendergast has argued,
23 and I accept his argument, those retirees are subject
24 to the limitations of the statute that gave them the

1 evidence, based on myself, that the older you get,
2 the less you like change. And as my father used to
3 say, "these newfangled ways, I just don't understand
4 them, and they're confusing." And I find that there
5 is a hardship to retirees, the elderly folks, to
6 change the way things are, and to go out and look at
7 this mysterious ACA, and have to go into the
8 marketplace when it's already and always been given
9 to you. That's the problem with our paternal
10 structure of government as it's been in the past.

11 I understand things have changed for
12 all sorts of reasons, a lot of which have been
13 alluded to today. And I just wanted to say that I'm
14 sensitive to that, and I do understand that it's a
15 problem for folks to go out into the marketplace and
16 start looking and thinking, instead of just taking it
17 as it's been given to them all these years. I
18 understand that, and I've taken that into
19 consideration.

20 But it doesn't throw the balance off
21 or replace the lack of a factor, in this case, the
22 claim for relief, which is limited by that which was
23 granted by the legislature, and the lack of a
24 likelihood of success on the merits for that reason.

1 benefit, the '83 and the '85 statute, which is
2 clearly less than that which is being given by the
3 2016 enactment, or appropriation.

4 Therefore, I do not find that there
5 would be a likelihood of success on the merits with
6 regard to that which is before me today.

7 I might say to you all who are
8 seriously interested in this, my ruling today is not
9 with prejudice. If there is some other evidence that
10 comes before me, I'm open to that. But I'm trying to
11 give you the analysis that I have gone through and my
12 thinking on the subject so you know that I cannot
13 give you that beyond which the legislature has given
14 you, as much as I would like to. And I would. And I
15 did in my opinion of December 3rd, but only to the
16 extent that the legislature gave it to you.

17 With regard to the third element,
18 irreparable harm, in this case, I find that there is
19 some harm that would occur to the retirees. I find
20 that that element mitigates in favor of the
21 plaintiffs. This is inextricably bound with the
22 hardship that would befall the retirees. And let me
23 talk about that just a little bit.

24 I find, as a matter of anecdotal

1 The fourth element is the inadequate
2 remedy at law. There is case law that's been cited
3 to me that Illinois law is clear that a preliminary
4 injunction, which is being requested here, cannot be
5 premised upon a temporary loss of benefits or income.

6 The case law is cited in the parties'
7 submissions to me, especially the City's, and I have
8 read it, and it's actually true, wherein Knott versus
9 Illinois Racing Board, the court said the loss of
10 income for a brief period does not constitute
11 irreparable harm.

12 And wherein Kurle versus Evangelical
13 Hospital Association -- by the way, the citation for
14 the first case is 198 Ill.App.3d 364 at page 368,
15 and in Kurle, the citation is 89 Ill.App.3d 45 at
16 page 53, which vacated an order granting a
17 preliminary injunction as is being asked of me today,
18 because the relief requested sought back pay and
19 benefits, which is a purely economic benefit, and the
20 plaintiffs had an adequate remedy at law for the back
21 pay and the back benefits, which is true here.

22 Everything Mr. Krislov said is
23 absolutely accurate. It's just a few months, maybe.
24 And I hope everything Mr. Prendergast said is

1 accurate, that there's a chance that this is going to
2 be resolved without going much further and causing
3 more heartache to the retirees.

4 But I have to follow the law,
5 regardless of my heart, which I've been accused of
6 leading with too much. But I have to follow the law.
7 And when there's a remedy at law, as a matter of law,
8 an adequate remedy at law will prevent me from
9 issuing an injunction. In fact, injunctive relief is
10 proper when money damages are adequate to remedy the
11 wrong, absent a showing that it would be impossible.
12 And there has been no showing here. There hasn't
13 even been an argument about that here.

14 So three of the elements have not been
15 proven to me by a satisfactory burden by the
16 plaintiffs, the ascertainable claim of relief, past
17 that which was given by the '83 and '85 statutes.
18 Therefore, the likelihood of success on the merits
19 and the inadequate remedy at law, that's enough for
20 me to deny this, with my sorrow, especially on
21 Christmas, as we're approaching that.

22 I have considered the balance of the
23 equities. I have considered the hardships. And as I
24 mentioned, I'm aware of the hardships that befall the

1 right, or wrong -- but I truly believe the City is
2 implicated in this, and so that they are a proper
3 party with regard to the '83 and '85. That's
4 something that will be subject to review by the
5 City's motion to reconsider, which I will review and
6 keep an open mind on.

7 But that's my ruling as of today. So
8 for all those reasons, and with great respect for the
9 job that's been done by Mr. Krislov and
10 Mr. Prendergast and the attorneys for the Funds, the
11 motion for the issuance of a preliminary injunction
12 is denied.

13 What's next?

14 MR. KRISLOV: We need to do some
15 scheduling. And one of them -- at the moment, our
16 response to their to motion to clarify is due
17 tomorrow --

18 THE COURT: Ladies and gentlemen, I
19 know that you're done and you want to go. But I need
20 for you to still be quiet so that I can listen to
21 Mr. Krislov, your attorney, about what it is he wants
22 to do to help protect your rights. I promise it's
23 going to be over in no more than three minutes. Just
24 give me the three minutes, please.

1 elderly. And by the elderly, I mean anyone over 30.
2 (Laughter.)

3 THE COURT: But I am duty-bound by my
4 oath to follow the law, and that's the way I see it.
5 Although I understand intellectually and viscerally,
6 Mr. Krislov and I disagree on that. That's the way I
7 see it for the reasons I've stated.

8 Now, does this apply to the City, or
9 is it true, as Mr. Prendergast said, and as my review
10 of the record shows, Mr. Krislov conceded that he
11 wasn't going against the City, just against the
12 Funds.

13 MR. KRISLOV: I disagree with your
14 characterization, but...

15 THE COURT: You're entitled, and
16 you've made a record about it, and it's clear.

17 But the City is implicated in this.
18 I've ruled in my prior decision that the City was
19 used as an instrumentality of the Funds, and vice
20 versa, and, actually, the Funds of the City. And the
21 City agreed to tax levies for these '83 and '85
22 amendments.

23 And as Mr. Prendergast disagrees with
24 me, so does Mr. Krislov -- I must be doing something

1 Go ahead.

2 MR. KRISLOV: We're due tomorrow to
3 respond to their motion to clarify.

4 I would like, and I don't think
5 Mr. Prendergast has a problem with this, if we could
6 deal with that on the same schedule as our amended
7 complaint, which is due in January, January 11th.

8 So if we could --

9 THE COURT: How would you like to
10 modify the briefing schedule, Clint?

11 MR. KRISLOV: What we would do is, we
12 would file our brief and our amended complaint, and
13 we'll probably -- if our amended complaint is
14 permitted to incorporate all the things which we're
15 allowed to replead, we can deal with all of that in
16 our January 11th filing.

17 THE COURT: Well, one side of me says
18 if you're going to file an amended complaint, this is
19 all moot. Another side of me says that we should
20 keep things on parallel tracks but not together.

21 Because I think it's important for me
22 to file a written memorandum opinion and order with
23 regard to the City's motion for clarification.

24 So let's -- I'm going to separate

1 that, and that's my ruling. Just tell me when you
2 would like to file your response.

3 MR. KRISLOV: I guess on the motion to
4 clarify, we'd probably like to file on the same day
5 as we file the amended complaint.

6 THE COURT: Have I given you leave to
7 file the amended complaint?

8 MR. KRISLOV: Yes.

9 THE COURT: What is that date? What
10 day is that?

11 MR. KRISLOV: January 11th.

12 THE COURT: Any objection to the
13 motion to extend time to file the response to
14 January 11th?

15 MR. PRENDERGAST: No objection.

16 THE COURT: When would you like to
17 file your reply?

18 MR. PRENDERGAST: 14 days thereafter.

19 MR. KRISLOV: I think that's already
20 set, actually.

21 THE COURT: But aren't we pushing
22 things forward? I don't have the briefing schedule.

23 MR. KRISLOV: Their response was --

24 THE COURT: Oh, I do have --

1 next. If we're going to --

2 THE COURT: Well, that's with the
3 motion for clarification. So I'll throw it in the
4 book on then, and show up so that Deborah can ask you
5 about your schedules, and choose a ruling date that's
6 commensurate with your personal and professional
7 schedule with regard to your motion to amend. And I
8 said it would be due by 1-11.

9 Do you wish to change that?

10 MR. KRISLOV: No. We would still file
11 that on January 11th.

12 THE COURT: Okay. And they're to
13 answer or otherwise plead by 2-16, which is the date
14 I gave you. Is that still all right?

15 MR. KRISLOV: Could they answer the
16 Count 1 that's been upheld?

17 THE COURT: No. No, they can't. No.
18 Let me explain to you why.

19 No. They're going to answer or
20 otherwise respond, per our schedule, by 2-16. That's
21 what I gave the last time. That was without
22 objection then. And then we have a clerk's -- a
23 status date before me of 2-24, and that still sounds
24 good to me. Is that okay for you?

1 MR. KRISLOV: -- February 16th, I
2 think.

3 THE COURT: No, I've got it here.

4 They were asking -- you were going to
5 file your response tomorrow. That pushes things up.
6 Now you want it to the 11th. I'm going to
7 commensurately give a further extension to them to
8 file a response, a reply, since their reply was due
9 on the 8th, and I'm not going to have them file it
10 before your response is due.

11 MR. KRISLOV: Obviously.

12 THE COURT: Okay. We're on the same
13 page. You want 14 days, Richard?

14 MR. PRENDERGAST: 14 days.

15 THE COURT: I'm going to give you a
16 little bit more, because 14 days brings us the
17 25th, and on that day, that's -- my clerk's status
18 days are on Monday. So I'm going to give you until
19 January 29th to file your reply, and the clerk
20 status day will now be on February 1st at 9:00 a.m.

21 Does that meet your with your
22 schedule, Clint?

23 MR. KRISLOV: I think that's no
24 problem. I think our only thinking is what happens

1 MR. KRISLOV: What I don't understand,
2 Your Honor, is why they don't have to answer the
3 count that's been upheld.

4 THE COURT: Because it's going to be
5 superseded by your amended complaint. It's going to
6 be mooted out. It's going to be nonexistent.

7 That's why.

8 MR. KRISLOV: I understand the Court's
9 ruling.

10 THE COURT: Okay. That's as much of
11 an, "oh, I get it," from you I get.

12 MR. KRISLOV: Well, no, I get it. But
13 usually if a count's been upheld, then usually you
14 proceed to answer the count that's been upheld.

15 THE COURT: No, there is no "usual"
16 about that, and certainly not in front of me. It's a
17 complaint, which I'll take as a whole. They're going
18 to answer or otherwise plead.

19 Who knows what you're going to do with
20 regard to the first count and whether you're going to
21 amend it or modify it. You're entitled to. I don't
22 want to prevent you from doing that.

23 So we'll take every step as it comes,
24 and we'll give everybody an opportunity to be heard.

1 MR. KRISLOV: Okay. So we file our
2 amended complaint and our response to their motion to
3 clarify on January 11th.

4 THE COURT: Yes, sir.

5 MR. KRISLOV: They then file their
6 response to the reply on the clarification on
7 January 29th.

8 THE COURT: Correct.

9 MR. KRISLOV: And they have until
10 February 16th in which to answer or otherwise plead
11 with respect to the amended complaint.

12 THE COURT: Correct.

13 MR. KRISLOV: There is a clerk status,
14 I guess, on February 1, with respect to the clarify?

15 THE COURT: Correct. And there is a
16 -- and if you tell Deborah when you come on
17 February 1st, tell her there's a status date on the
18 new, amended complaint of 2-24-16 at 9:30.

19 Are we all on the same page,
20 schedule-wise?

21 MR. KRISLOV: We are.

22 MR. KENNEDY: The 2-24 had been on our
23 schedule as a ruling date on the reconsideration, but
24 now it's just --

1 everything that's occurred today, and you can go
2 home, and all these people can go home. And we have
3 a transcript anyway.

4 MR. PRENDERGAST: That will be fine,
5 Judge.

6 THE COURT: I will not be here next
7 week, so I can't sign off on anything, but Judge
8 Allen will be around. And I wish you well.

9 Happy holidays to everybody.

10 (Proceedings adjourned at 3:25 p.m.,
11 December 23, 2015.)

1 THE COURT: Well, it's not now.

2 MR. KENNEDY: I understand.

3 THE COURT: Things have been pushed
4 up. Who knows? If I can get to it, believe me, I
5 will. But I can't guarantee that, so I don't want to
6 lie to you about anything.

7 MR. PRENDERGAST: Should we put that
8 in the order, Your Honor?

9 THE COURT: Put in the "I don't want
10 to lie to you about anything" in the order.

11 MR. KENNEDY: Strike the --

12 THE COURT: Yes, please strike the --
13 which date are we striking?

14 MR. KENNEDY: The ruling date, which
15 is not --

16 THE COURT: Yeah, 2-24 is not a ruling
17 date. You're going to have to fill out another
18 briefing schedule, a modified briefing schedule as to
19 the motions to clarify.

20 Is anyone going to be around tomorrow?
21 I will. Is anyone going to be around?

22 MR. KRISLOV: I will.

23 THE COURT: So maybe you can put all
24 of these -- get a confirming order in writing for

1 REPORTER'S CERTIFICATE

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

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

12 IN WITNESS WHEREOF, I hereunto set my
13 hand as Certified Shorthand Reporter in and for the
14 State of Illinois on January 6, 2016.

15
16
17 *Jerri Estelle*



18 Jerri Estelle, CSR, RPR
19 License Number: 084-003284

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

MICHAEL W. UNDERWOOD, et al.,)
)
 Plaintiffs,))
)
 vs.) No. 13 CH 17450
) Calendar 13

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

Record of proceedings had at the
 hearing of the above-entitled cause, before the
 Honorable NEIL H. COHEN, one of the Judges of said
 Court, on March 18, 2016, in Room 2308, Richard J.
 Daley Center, Chicago, Illinois, commencing at 9:45
 a.m.

A P P E A R A N C E S

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1 A P P E A R A N C E S (Continued)

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 for the Trustees of the Laborers' &
16 Retirement Board Employees' Annuity and
 Benefit Fund of Chicago.

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

3 THE COURT: Richard.

4 MR. KRISLOV: Good morning, Your
5 Honor. Clint Krislov with Ken Goldstein on behalf of
6 Mr. Underwood and the other 300 employees.

7 THE COURT: Clint.

8 MS. BOECKMAN: Good morning, Your
9 Honor. Sarah Boeckman on behalf of Defendants Fire
10 Fund and Municipal Fund.

11 MR. DONHAM: Good morning, Your Honor.
12 Cary Donham on behalf of the Laborer's Fund.

13 THE COURT: Cary.

14 MR. KUGLER: David Kugler on behalf of
15 Policemen's Fund.

16 THE COURT: David. Hello, everybody.

17 First I have a motion to dismiss
18 that's been filed by you, Cary.

19 MR. DONHAM: Yes, sir. Yes, Your
20 Honor.

21 MS. BOECKMAN: And, Your Honor,
22 Fireman's Fund and Municipal Fund also filed a motion
23 to dismiss yesterday.

24 THE COURT: I don't have a copy of it.

1 MS. BOECKMAN: I have a copy for you
2 right here.

3 (Document tendered.)

4 MR. KUGLER: The Policemen's Fund also
5 filed a motion. I filed it back on March 8th.

6 THE COURT: How would I know? How
7 would I know, David? You never gave me a copy of it.

8 MR. KUGLER: Your Honor --

9 THE COURT: You never gave me a copy
10 of it.

11 MR. KUGLER: I apologize for that,
12 Your Honor.

13 THE COURT: It's okay.

14 All right. So I have three motions to
15 dismiss by the Funds.

16 MR. KRISLOV: You're supposed to have
17 another one from the City today.

18 MR. PRENDERGAST: Our motion to
19 dismiss is due today. I've spent the last three days
20 in Los Angeles in a mediation. We figured we'd
21 finally get it together on the laptops. The laptops
22 weren't working.

23 Here's my point. If can file it
24 Monday, I'd appreciate it.

1 THE COURT: Of course you can.

2 MR. KRISLOV: We would object, Your
3 Honor. And I'll tell you why.

4 THE COURT: Your objection is noted
5 and overruled.

6 MR. KRISLOV: Can I explain why?

7 THE COURT: Do I have the discretion
8 to allow them to file a motion to dismiss in an
9 untimely fashion when I set the time to begin with?
10 You know the law.

11 MR. KRISLOV: This wasn't set to begin
12 with this way.

13 Mr. Prendergast asked me a week ago,
14 maybe two weeks ago, for an extension because he had
15 a --

16 THE COURT: Well, he asked the wrong
17 person since you don't have control over it. I do.

18 MR. KRISLOV: Your Honor, we agreed to
19 -- we wanted to have their motion before we were
20 here. Regardless, I think we can address the whole
21 thing today, and I --

22 THE COURT: Well, regardless of your
23 position, whatever it is, because I don't understand
24 what your objection is --

1 MR. KRISLOV: I'm on vacation all next
2 week. Mr. Prendergast --

3 THE COURT: He's just filing it,
4 Clint. I'm just giving him leave to file it.
5 Today's Friday. I'm going to give him leave to file
6 it Monday, over your objection, the basis of which I
7 still don't understand. And I guess it's that you
8 gave him an extension until today, and he didn't meet
9 it because he was working.

10 MR. KRISLOV: We wanted to be in a
11 position to address the Court on -- to be able to
12 address the court on all the motions before we came
13 here. But we'll deal with that.

14 MR. PRENDERGAST: Let's be clear on
15 one thing, Judge.

16 THE COURT: We don't have to be clear
17 on anything. The motion is directed towards me.
18 It's nice that he asked you for it. It's the
19 appropriate thing. It's nice that you gave it to
20 him, and that's great.

21 But in the end, I have the final say,
22 even when I'm wrong, as pointed out to me, which I
23 have, you know, the ability to be.

24 But in this case, he's asking for two

1 days. He's asking for the weekend to file it. I
2 don't see any prejudice to you, other than your
3 vacation. And we'll survive that.

4 So your request is granted, Richard.
5 You'll file it on Monday.

6 Would you like to engage in a briefing
7 schedule on this and set it now, assuming his word
8 can be trusted, which I think it can, so that we can
9 deal with all of these?

10 Do you want to do that?

11 MR. KRISLOV: Is it my turn yet?

12 THE COURT: Let me tell you something.

13 MR. KRISLOV: I don't want to deal
14 with just --

15 THE COURT: I don't like being talked
16 to that way. I don't like facetiousness.

17 MR. KRISLOV: I'm not being facetious.

18 THE COURT: I don't like it. I don't
19 deserve it. The court doesn't deserve it.

20 MR. KRISLOV: Your Honor, I have the
21 greatest respect for this Court, but --

22 THE COURT: Well, I think you were
23 being facetious, and I don't like it.

24 MR. KRISLOV: The defendants have --

1 THE COURT: It's your turn when it's
2 your turn.

3 MR. KRISLOV: I'll wait for my turn.

4 THE COURT: I asked you a question.

5 Do you want to enter into a briefing
6 schedule today? Yes or no?

7 MR. KRISLOV: I would like to propose
8 a manner of dealing with this that is
9 all-encompassing. There are five pending motions.

10 THE COURT: What are the other
11 motions?

12 MR. KRISLOV: One motion is our motion
13 to vacate your clarification --

14 THE COURT: It's denied.

15 MR. KRISLOV: We filed it. We filed
16 it.

17 THE COURT: It's denied. I read it.
18 You said I'm wrong. You disagree with me.

19 The gist of it is that you think I
20 flipped my original opinion. I say I didn't. I said
21 it was pretty clear. The motion for clarification
22 was not made by you. It was made by the City. I
23 made it pretty clear.

24 I did read what you had to say in the

1 press. I disagreed with you when you said it. I
2 thought you got it wrong. But then it was an
3 interesting situation. Does the court have the
4 obligation to let someone who's talking to the press
5 about a case to tell him he's gotten it wrong or not.

6 I came down on the side of you're
7 entitled to say anything you want to anyone about the
8 case, at any time you want, for whatever purpose you
9 want, and it's not my obligation to tell you you're
10 wrong when you talk to the press about what you're
11 saying.

12 So you think I'm wrong, that's fine.
13 I disagree with you.

14 MR. KRISLOV: Okay. That's the
15 current motion. That's the recent --

16 THE COURT: Your motion to --

17 MR. KRISLOV: Vacate clarification --

18 THE COURT: Yes.

19 MR. KRISLOV: -- and to certify the
20 question.

21 THE COURT: Yes, it's denied.

22 I'm sorry?

23 MR. KRISLOV: The motion has --

24 THE COURT: The other part of it about

1 the certification?

2 MR. KRISLOV: Yes.

3 THE COURT: It's denied too.

4 MR. KRISLOV: Okay.

5 THE COURT: Now what else is there?

6 MR. KRISLOV: Our motion for summary

7 judgment.

8 THE COURT: Yes, that's fine.

9 MR. KRISLOV: That's fine. We'd like
10 them to respond. If we do a briefing schedule on the
11 motion to dismiss --

12 THE COURT: No, I'm not going to do a
13 motion for summary judgment until I'm done with the
14 motions to dismiss, because it may not be necessary.

15 MR. KRISLOV: Your Honor, you have
16 already upheld Count 1.

17 THE COURT: It may not be necessary.
18 I'm going to deal the with motions to dismiss. I'm
19 going to deal with that.

20 MR. KRISLOV: You're holding the --

21 THE COURT: It's entered and
22 continued.

23 MR. KRISLOV: Okay. Our renewed
24 motion for class certification.

1 THE COURT: Yes. That's something --

2 MR. KRISLOV: That's been pending for
3 a long time.

4 THE COURT: So the question again is,
5 do I deal with the motion to dismiss first, or --
6 which is my inclination, for the same reason, just in
7 terms of efficiency. If it's unnecessary, then I
8 don't have to deal with the motion for class
9 certification.

10 Based upon the recent case with the
11 Supreme Court, which upheld me, you have your motion
12 for certification in. No one can claim otherwise.
13 No one can undercut about that in terms of procedure.

14 So my question to you, Clint, is why
15 deal with the motion for certification, class
16 certification, before it's necessary, as long as
17 you're not prejudiced thereby?

18 MR. KRISLOV: Well, the question is
19 who we're representing, and, you know, it's been
20 pending for a long time, and --

21 THE COURT: I know it has, but we've
22 been dealing with other things for a long time, and
23 we've probably got those to the side of us.

24 MR. KRISLOV: Well, it may never get

1 there, it seems like.

2 Here's what I would propose. I would
3 propose that -- and I've read the Funds' motions to
4 dismiss, read all of them.

5 THE COURT: I haven't because I didn't
6 get them.

7 MR. KRISLOV: I read all of them, and
8 I got them yesterday, as the agreement was.

9 MR. PRENDERGAST: All but one.

10 MR. KRISLOV: Pardon?

11 MR. PRENDERGAST: All but one.

12 MR. KRISLOV: No.

13 THE COURT: You didn't get the City's.

14 MR. KRISLOV: I said all the Funds'
15 motions were filed yesterday, and I reviewed those.
16 They're different. And we'll see -- though we had
17 hoped to see the City's motion today so that we could
18 figure out how long it will take to deal with it.

19 Here's what I suggest is the most
20 efficient way to deal with this is that when the
21 City's motion comes in, we think, because most of the
22 Funds are rehashing arguments that they made to you
23 before, most of which were rejected, I suspect the
24 City's motion is not going to differ substantially

1 from what it did the first time.

2 What I would suggest is that, barring
3 some -- I guess we wait until we see the City's
4 motion, but presuming it's going to be essentially
5 what it was before --

6 THE COURT: What's your suggestion?

7 MR. KRISLOV: My suggestion is that
8 you, over our disagreement -- I know we disagree
9 fundamentally on this case -- but that after
10 reviewing their motion, you would rule, likely, that
11 you would still dismiss the third amended complaint,
12 the Counts 2 and 3 now with prejudice, and you would
13 uphold Count 1 the way that you had ruled and made
14 findings there was no just cause to delay enforcement
15 or appeal. Because at that point, the most efficient
16 way to deal with it is to get that case up on appeal.

17 THE COURT: Before we deal with
18 summary judgment?

19 MR. KRISLOV: Yes. You can -- I mean,
20 otherwise, we're going to spend another three to four
21 months --

22 THE COURT: And before we deal with
23 class certification?

24 MR. KRISLOV: You know, it's --

1 getting the legal question decided is the most
2 important thing. And people -- because there's no
3 injunction --

4 THE COURT: I understand what you're
5 saying. And I wanted to -- what is the Funds' and
6 the City's point of view on 308 certification? I'm
7 not sure what the certified question would be as to
8 how you would like to phrase it or I would like to
9 phrase it.

10 MR. KRISLOV: So you don't have to
11 certify the question for this purpose. All you have
12 to do -- because you'd be dismissing --

13 THE COURT: 304 language.

14 MR. KRISLOV: Yes.

15 THE COURT: So Clint would like to, as
16 good trial lawyers do, look ahead three steps, figure
17 out what's probable and what's going to happen, and
18 we don't know what's going to happen. And I'm not
19 going to make any ruling today until I've already
20 ruled on the motions to dismiss.

21 But assuming your motions to dismiss
22 are handled in the way that Mr. Krislov suggests is
23 likely, I guess the question is, you don't have to
24 make a decision today, are you all going to be

1 agreeing to 304(a) language or not? That's something
2 for you to think about.

3 And I do take your point that on the
4 legal issue, it would be nice to have that subject to
5 review as soon as possible for obvious reasons.

6 It does seem to be the most efficient
7 way. I agree with you on that. Prior to dealing
8 with class certification, prior to dealing with
9 summary judgment, it would be nice to get a somewhat
10 definitive ruling from whichever higher court it's
11 going to go to.

12 MR. KRISLOV: You and I will probably
13 get along probably lots better after we know where
14 we're going.

15 THE COURT: Mr. Krislov, you keep
16 saying that, you know. I guess you like to think of
17 yourself as being a person who's a target. But I
18 told you this on the record. It's the way I feel
19 about you off the record and on the record. I'll say
20 it again.

21 I don't have any problem with you
22 personally or professionally. In fact, I have said
23 on the record how much I admire what you do and who
24 you do it for and the people you do it for, which is

1 the people from whence I came. And the motivation
2 and the intent, it's something I admire and always
3 have.

4 So I wish you'd stop telling me, or at
5 least give me a basis for why you think that you and
6 I have problems, because I don't see them.

7 MR. KRISLOV: We just fundamentally
8 disagree on the law governing this case.

9 THE COURT: Okay. Well, that's going
10 to happen, and that's going to happen in life. But
11 it's not personal. It's just a disagreement on
12 that --

13 MR. KRISLOV: Agreed.

14 THE COURT: -- at this point, so --
15 regardless of what I want. So I don't -- I can't
16 lead with my heart. I have to lead with my mind,
17 such it is. So there you are.

18 So my suggestion is, in response to
19 what you say, Clint, is that we do deal would the
20 motions to dismiss. I can't deal with it any other
21 way. We have to deal with it in a linear fashion.

22 And assuming it ends up that way,
23 we'll take it up, and I will entertain 304(a)
24 language, and I'll listen to objections from others.

1 Why don't you all talk about it at the
2 appropriate time. If you're all behind it, it's
3 even -- this is much stronger than this, as every
4 good union person knows.

5 MR. KRISLOV: Here's why I raise it
6 this way, because what's going to happen otherwise,
7 I'd like to see the City's motion to dismiss, and
8 then I think we will all probably agree that you're
9 going to come out the same way that you did --

10 THE COURT: But one still has to fight
11 the fight before you know.

12 MR. KRISLOV: Except that if we have
13 to do full briefing on both sides on this issue, it's
14 going to consume huge resources --

15 THE COURT: Oh, that's where you're
16 coming from.

17 MR. KRISLOV: And the other part is
18 that it takes -- we're looking at three to five
19 months of doing this before we get to the point that
20 we put it up on appeal.

21 And during that time, the healthcare
22 premiums are still at that much higher level.

23 THE COURT: Sure. I understand.

24 MR. KRISLOV: And so the people are --

1 THE COURT: So what's the way around
2 this? You're trying to cut out the middleman, to
3 wit, an opinion, on the motion to dismiss that I'm
4 sure the Funds and the City feels does avoid 137
5 ramifications because it's legitimate, and it has to
6 be heard, and it has to be ruled upon, and there has
7 to be a definitive ruling from me without cutting out
8 the middleman.

9 How does one do that?

10 MR. KRISLOV: We do that by -- when we
11 see the City's motion, we would say, based on your
12 most recent rulings, the March 4th and the
13 December --

14 THE COURT: Both of them.

15 MR. KRISLOV: And the November 3rd
16 ruling, three of them, based on those, you would hold
17 the first -- the third amended complaint, that you
18 would uphold the Count 1, as you've described, the
19 rights; that you would dismiss Counts 2 and 3, now
20 with prejudice.

21 And I've learned from Mr. Prendergast
22 that you have to do -- at least one cause of action
23 has to be denied with prejudice in order to support
24 304 findings, but then you do that in a very summary

1 fashion, and then we have an appealable order.

2 THE COURT: Well, I'll tell you what.

3 My inclination, my strong inclination,
4 is to not do it that way. However, I will listen to
5 what the other side has to do. I don't want to --
6 the reason for it is because, (a) I think there has
7 to be a definitive ruling from me on their definitive
8 motions. I think they're entitled to my
9 consideration of it in the same way you were, and I'd
10 like to give them that, and I'd like the record to
11 reflect that.

12 However, if the parties agree, I will
13 certainly consider a shortcut that meets everyone's
14 agenda, legal agenda.

15 MR. PRENDERGAST: Your Honor, I would
16 like to point out, just for the record, that the
17 third amended complaint is almost 50 pages long. It
18 adds three new causes of action. You haven't yet
19 ruled on that, and we don't have a briefing schedule
20 on it, which I think is the point that you made
21 starting out, that that's where we ought to start.
22 That's what we ought to get done today.

23 The motion for reconsideration of your
24 second order has been denied. Your motion -- I

1 assume the motion for class certification is entered
2 and continued.

3 THE COURT: Yes.

4 MR. PRENDERGAST: And so we don't
5 really know where we're going to be until we get
6 there. If you deny -- if you granted our motion with
7 respect to all of the counts that we filed, and
8 that's the reason they're running late, because we
9 are not just rehashing old arguments. We have new
10 arguments because they have new claims, if you were
11 to grant our motion completely, he wouldn't need
12 304(a). His case would be dismissed. It's an
13 appeal.

14 So I think we're a little bit ahead of
15 ourselves. I think your inclination is correct. We
16 need a briefing schedule on the only motion that's
17 now before you, which is -- the motions are all
18 before you, which are the motions to dismiss. I
19 assure you I will not be asking for any more time. I
20 appreciate the extension.

21 And we can work out Monday's date for
22 a briefing schedule. All Mr. Krislov has to tell us
23 is how long he'll need to respond.

24 THE COURT: Mr. Donham?

1 MR. DONHAM: We agree with what Rich
2 said.

3 MS. BOECKMAN: The Funds would like
4 the benefit of the Court's ruling on our motion to
5 dismiss. We definitely wouldn't be opposed to an
6 expedited briefing schedule, but I think it is
7 important. Like Rich points out, there are new
8 counts on the third amended complaint. We'd like the
9 benefit of the Court's ruling on those.

10 MR. KUGLER: Likewise, Your Honor.

11 THE COURT: All right. I think that's
12 the appropriate way to go, Clint. I do understand
13 your urgency and your desire to not expend resources,
14 precious resources, financial resources and time
15 because of the premiums. I understand that.

16 But other than -- I will take up your
17 offer. I'm sure Mr. Krislov would like this to be
18 expedited, if possible, which I'll grant.

19 Other than that, they're entitled to
20 have their day and to have the Court consider their
21 motions on their own, especially in light of the
22 three additional counts, something I haven't thought
23 of but makes sense.

24 So your motion to -- your suggestion

1 is it takes two to tango -- it's denied because they
2 don't want to and because I don't really want to do
3 it that way. I'm going to do it the right way, in a
4 linear way, and give them a ruling. I think they're
5 entitled to that.

6 So can we enter a briefing schedule
7 today so we don't have to wait until Monday? I won't
8 be here next week.

9 MR. KRISLOV: I won't be here next
10 week either, but I'm not -- sorry. I won't
11 voluntarily do it in the blind. I would like to see
12 that --

13 THE COURT: Great. I'll be gone. I'm
14 going with my wife. She's telling me I'm going out
15 of town next week.

16 MR. KRISLOV: We're both going out of
17 town next week.

18 THE COURT: And if you don't want to
19 enter into a briefing schedule, that's fine.

20 When are you back from your trip?

21 MR. KRISLOV: I'll be back the
22 following week. So if we're in the following Monday
23 or Tuesday, that should be fine.

24 THE COURT: Let me check. The week

1 after Easter. I will not -- I have to go to EdCon
2 for teaching and to be taught the week of
3 April 4th.

4 Is April 8th filled?

5 THE CLERK: Yeah. But you're also --
6 the week of the 28th -- you're gone next week, but
7 you're back --

8 THE COURT: Oh, very good. How about
9 any day the week of the 28th, including April 1st?

10 What day is best for you, Clint?

11 MR. KRISLOV: Why don't we do it
12 March 29th?

13 THE COURT: Mr. Goldstein, is that a
14 good day for you? Mr. Prendergast?

15 MR. PRENDERGAST: March 29th.

16 THE COURT: Mr. Donham?

17 MR. DONHAM: Works, Your Honor.

18 THE COURT: I don't remember your
19 name.

20 MS. BOECKMAN: Sarah.

21 THE COURT: What's your last name?

22 MS. BOECKMAN: Boeckman.

23 MR. PRENDERGAST: She takes Ed Burke's
24 place.

1 THE COURT: Well, thank you. You're
2 doing the Court a great favor.

3 David, is that all right with you?

4 MR. KRISLOV: Can we do it the
5 28th instead -- we'll do it the 29th.

6 THE COURT: It's just to set a
7 briefing schedule. I'll get you in and out of here,
8 I promise. And you if you all e-mail each other and
9 talk, you can agree upon a briefing schedule and give
10 me an agreed-upon order. As long as you set the
11 clerk's status date for a Monday, you can do that.

12 So, Mr. Goldstein, will you be out of
13 town?

14 MR. GOLDSTEIN: No, I'm around.

15 THE COURT: Did he give you the right
16 to agree upon a briefing schedule?

17 MR. GOLDSTEIN: Maybe.

18 THE COURT: Okay. I know. So if you
19 all want to do that and bring it in, it will be
20 signed by me or Judge Allen in my absence, and we can
21 get that done.

22 Otherwise, we'll put it for the 29th
23 until we hear otherwise, at 9:30, get you in and out
24 of here.

1 MR. PRENDERGAST: Thank you very much.

2 THE COURT: You're welcome. Wish you

3 all well.

4 (Proceedings adjourned at 9:58 a.m.,

5 March 18, 2016.)

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REPORTER'S CERTIFICATE

I, JERRI ESTELLE, CSR, RPR, doing
business in the City of Chicago, State of Illinois,
do hereby certify that I reported in computerized
shorthand the foregoing proceedings as appears from
my stenographic notes.

I further certify that the foregoing
is a true and accurate transcription of my shorthand
notes and contains all the testimony had at said
proceedings.

IN WITNESS WHEREOF, I hereunto set my
hand as Certified Shorthand Reporter in and for the
State of Illinois on March 18, 2016.

Jerri Estelle, CSR, RPR

License Number: 084-003284

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

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

Record of proceedings had at the
hearing of the above-entitled cause, before the
Honorable NEIL H. COHEN, one of the Judges of said
Court, on May 12, 2016, in Room 2308, Richard J.
Daley Center, Chicago, Illinois, commencing at 9:30
a.m.

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 17
 18
 19
 20
 21
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 23
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1 MR. DONHAM: Good morning Cary Donham
 2 on behalf of the Laborers' Fund.
 3 THE COURT: All right.
 4 MS. BOECKMAN: Good morning, Your
 5 Honor. Sarah Boeckman on behalf of the Fire and
 6 Municipal Fund.
 7 MR. PRENDERGAST: Richard Prendergast
 8 for the City.
 9 MR. LAYDEN: Mike Layden on behalf of
 10 the City.
 11 MR. KUGLER: David Kugler, Police
 12 Fund.
 13 MR. KRISLOV: Good morning, Your
 14 Honor. Clint Krislov.
 15 MR. GOLDSTEIN: Ken Goldstein.
 16 MR. KRISLOV: On behalf of the
 17 plaintiffs.
 18 THE COURT: Welcome, everybody.
 19 Clint, did Mr. Prendergast keep his
 20 word to you and file his response in time?
 21 MR. KRISLOV: He filed it, I believe,
 22 Tuesday late. And we've gone through it.
 23 The Matthews decision, which came down
 24 from the Illinois Supreme Court, they have addressed

1 extensively in their briefs. We would like a short
 2 time for surreply on just that issue.
 3 And I would be able to do it sooner,
 4 but we also have the direct appeal motion that we
 5 have to -- the City had things on the 9th and the
 6 10th, so we have time to respond to those, and
 7 we're going to address the Supreme Court on the
 8 Matthews effect on this case as well.
 9 So if we could have until the
 10 23rd to file our surreply, and then we would like
 11 to have a hearing at your earliest convenience.
 12 THE COURT: I'll be out of town.
 13 Susan's taking me to Rome between the 26th and
 14 June 7th, so I can't accommodate you during that
 15 period of time.
 16 MR. KRISLOV: We're glad to do it the
 17 first opportunity that you might have in June if
 18 that's available.
 19 THE COURT: Sure. I'll have to read
 20 what it is you have to say, but how about the
 21 following week sometime, the week of June 13th.
 22 Is that all right?
 23 MR. DONHAM: It's okay. I have to say
 24 that the decision was filed on the 5th. The other

1 parties --
 2 THE COURT: The Matthews decision?
 3 MR. DONHAM: The Matthews decision.
 4 THE COURT: Yes, I've read it.
 5 MR. DONHAM: And we all had to respond
 6 to it in three days by the --
 7 THE COURT: What's your point?
 8 MR. DONHAM: Well, it seems like two
 9 extra weeks, but if Mr. Krislov needs that courtesy,
 10 I don't object.
 11 THE COURT: Then why even say it?
 12 You've wasted my time for nothing. Sorry. I'm on
 13 prednisone. It's the prednisone talking.
 14 But, I mean, if you're going to give
 15 it to him, then why -- what are you objecting for?
 16 And it's not based on his schedule, it's based on
 17 mine.
 18 You want to talk to my wife?
 19 MR. DONHAM: Oh, I'm not complaining
 20 about -- I wish you the best for your vacation.
 21 THE COURT: Thank you. It's not a
 22 vacation. But, of course, it's granted.
 23 MR. KRISLOV: Oh, Your Honor, anytime
 24 you get a week in Rome, it's a vacation.

1 THE COURT: I've never been.
 2 MR. KRISLOV: It's a great --
 3 THE COURT: She's a member of the
 4 board of trustees of Loyola, and it's the annual
 5 meeting this time, so things are changing with
 6 Loyola.
 7 So they're going to Rome, I guess
 8 maybe to speak to somebody.
 9 MR. KRISLOV: It's -- all roads lead
 10 there, and actually, it's a -- we were just there
 11 last summer.
 12 THE COURT: Did you enjoy it?
 13 MR. KRISLOV: Yes, and getting to -- I
 14 mean, I'll be glad to go ex parte and limit our
 15 discussion to Rome.
 16 THE COURT: No, I can't do that.
 17 But what does the week of
 18 June 13th look like for us?
 19 THE CLERK: It's good.
 20 THE COURT: All right. I would like
 21 to take a look at what everyone has to say.
 22 Do we have a clerk status date on
 23 these already set?
 24 MR. KRISLOV: It was today.

1 THE COURT: It was today, but it's not
 2 going to happen because --
 3 MR. KRISLOV: Right. Well, we can do
 4 it for everything but the surreple, or we can just --
 5 THE COURT: Nah -- that's right. We
 6 put it on today's date to accommodate Richard.
 7 That's fine. Let's have another clerk
 8 status date set. 5-23 is when you want your surreple
 9 done. That's a Monday. Our clerk status dates are
 10 on Mondays. Is the 31st available, the day after
 11 Memorial Day?
 12 THE CLERK: Yes.
 13 THE COURT: Let's set a clerk status
 14 date, the new clerk status date on this issue, this
 15 briefing, to 5-31 at 9:00 a.m. If someone can't make
 16 it because they're out of town with their family,
 17 it's understandable. Someone else can cover for you,
 18 or give it to your honorable opponent, and he or she
 19 can do that for you.
 20 And Deborah will give you a ruling
 21 date. But right now, we're talking about an oral
 22 argument date essentially, yes, Clint?
 23 MR. KRISLOV: Yes.
 24 THE COURT: And how about June 15th or

1 16th at -- what's the schedule look like on that day?
 2 Do I have any motions or hearings set?
 3 I heard that. We'll accommodate you.
 4 THE CLERK: June 15th is good.
 5 Deborah set it for ruling date not before
 6 June 22nd, but this is just --
 7 THE COURT: Well, that's fine, because
 8 we'll have oral argument anyway before that.
 9 So someone's on trial the 15th or
 10 16th, is that what I heard?
 11 MR. PRENDERGAST: We're starting a
 12 trial, but we have a break, so we're available those
 13 days.
 14 THE COURT: I'm suggesting 1:30 or so.
 15 It will take all -- hopefully, it won't be four hours
 16 this time. But we'll talk. And I'm suggesting 1:30
 17 on, we'll say, June 15th? Is that a good date?
 18 MR. PRENDERGAST: That will be great.
 19 Can I speak to counsel's request?
 20 THE COURT: Give me one second. 6-15
 21 at 1:30 for oral argument, and I set the new clerk
 22 status date of 5-31, is that right, Richard?
 23 MR. PRENDERGAST: That's what I have.
 24 THE COURT: At 9:00 a.m.

1 Yes, what.

2 MR. PRENDERGAST: Your Honor, I'm not
3 objecting to the surreply, but I would like some
4 limitations. Number one, I'd like to see a five-page
5 limitation on it, the surreply.

6 And number two, I would like to limit
7 it to reply to what we have to say about Matthews,
8 because it's a reply.

9 THE COURT: Well, let me talk to you
10 about it so I can understand it and make a decision.

11 Matthews just came down, and it, of
12 course, may or may not have any impact on this, and I
13 want to hear what the parties have to say.

14 But who raised it first in which
15 brief?

16 MR. PRENDERGAST: We raised it in our
17 reply, because it came down between their response
18 and their reply.

19 THE COURT: Sure.

20 MR. PRENDERGAST: Which is the
21 reason --

22 THE COURT: And how much -- how long
23 was your reply brief? I think I extended page
24 limitations anyway.

1 MR. PRENDERGAST: Our reply -- we
2 didn't -- our reply was 20 -- I think 19 or 20 pages.

3 THE COURT: My feeling is the
4 following: Your request with regard to page
5 limitations is denied. That's a limitation I put on
6 as a matter of convenience to the Court in order to
7 have the parties use a rifle, not a shotgun, and
8 merely reply to that which has been raised.

9 Now, Matthews came down. We have a
10 body of law that is now being before this Court, and
11 the parties want me to consider one way or another,
12 and I will. You have the right to make a record on
13 that, both sides, and I will.

14 And you spent 20 pages in your reply.
15 I extended the page limitation for that, and I said,
16 using the rule of reason, so that no party, in this
17 case you, would be prevented from saying whatever it
18 is you need to say in order to effectively represent
19 your counsel -- your client -- but more importantly,
20 put before me, this Court and future courts, the
21 issues you think you need to raise and the points you
22 need to raise.

23 I'm not going to restrict Mr. Krislov
24 from the same rights that I gave you. I have no idea

1 how long it's going to take for him to reply to the
2 issues that you raise with regard to Matthews. But I
3 want the record to be clear that I'm giving him every
4 opportunity to do so in the way he chooses, not you.

5 He's the master of his fate, and
6 you're the master of yours, and I'm the master of all
7 of yours. And I'm giving him every right and every
8 opportunity to fully discuss it.

9 That being said, Clint, you are to
10 restrict yourself to the Matthews issue and nothing
11 more.

12 Of course, you can explain how it
13 impacts all the other issues that you raised before,
14 but without rearguing those.

15 MR. KRISLOV: Oh, no.

16 THE COURT: And I'll just trust you to
17 do that. And if you stray, I won't consider it.

18 MR. KRISLOV: I think the Laborers and
19 the Municipal and Fire also mention Matthews, so, you
20 know, we'll deal with it succinctly. I don't think
21 that the length --

22 THE COURT: Sure. So again, using the
23 ruling of reason, you are to restrict yourself to
24 that rule.

1 MR. KRISLOV: Will do.

2 THE COURT: Restrict yourself to
3 Matthews, what issues it raises, how it impacts on
4 your case, and that's that, in responding to the
5 City.

6 That's all I can do, Richard. I have
7 to be fair.

8 MR. PRENDERGAST: Your Honor, you're
9 always very fair. The last time, you were very fair,
10 because the last time we were here, you said the rule
11 of reason. Okay, they filed a 56-page brief.

12 Now, when I see that, I don't want to
13 see another 56-page brief. I don't think you do. We
14 took 19 pages to respond to 56.

15 My concern is -- you've answered it.
16 You've answered it. He's restricting it to Matthews.

17 THE COURT: Just to Matthews.

18 If you need to spend more than that
19 which the City has spent, you may not do so without
20 leave of Court.

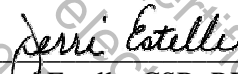
21 So in a sense, you have a 20-page
22 limitation.

23 MR. KRISLOV: I don't think that's a
24 problem.

1 THE COURT: And I don't think it will
 2 be either. So let's just agree that anything beyond
 3 that defies the rule of reason.
 4 MR. KRISLOV: The only --
 5 THE COURT: We're not including
 6 exhibits.
 7 MR. KRISLOV: If I added up all the
 8 pages that they all -- the City and the funds dealt
 9 with, I'm sure we would get to more than that. But I
 10 don't think that's the problem.
 11 THE COURT: Maybe so, but my guess is,
 12 and I haven't read it, and I don't know, that most
 13 likely no new issues or points were made by the other
 14 parties that were not enunciated by the City.
 15 So if you find it's a problem, please
 16 ask me first. You all know how to reach me. You may
 17 do so through a phone call, as long as everyone's on
 18 the line, or at least Richard and you are on the
 19 line. Richard can speak for everyone else if that's
 20 what you all agree to.
 21 But you have a limitation of 20 pages
 22 unless for some reason you think that 20 pages is not
 23 enough for you to enunciate your position.
 24 MR. KRISLOV: Shouldn't be a problem.

1 THE COURT: I don't think it would be.
 2 So that's that. Anything else?
 3 MR. PRENDERGAST: That's all.
 4 THE COURT: Anything from anybody
 5 else?
 6 MR. PRENDERGAST: Nothing, Your Honor.
 7 MR. KRISLOV: Since we can't go off
 8 the record on stuff --
 9 THE COURT: There are other people
 10 waiting, Clint.
 11 MR. KRISLOV: Okay.
 12 THE COURT: You know, I'll rely on the
 13 universe to teach me about Rome, and I'm sure it
 14 will.
 15 MR. KRISLOV: You can do the -- it's a
 16 small town. You can walk around, and the subway
 17 system is understandable. And I found that doing
 18 that immeasurably adds to the enjoyment anyway.
 19 THE COURT: Thank you very much.
 20 MR. KRISLOV: Bon voyage.
 21 (Proceedings adjourned at 9:48 a.m.,
 22 May 12, 2016.)
 23
 24

REPORTER'S CERTIFICATE

1
 2
 3 I, JERRI ESTELLE, CSR, RPR, doing
 4 business in the City of Chicago, State of Illinois,
 5 do hereby certify that I reported in computerized
 6 shorthand the foregoing proceedings as appears from
 7 my stenographic notes.
 8 I further certify that the foregoing
 9 is a true and accurate transcription of my shorthand
 10 notes and contains all the testimony had at said
 11 proceedings.
 12 IN WITNESS WHEREOF, I hereunto set my
 13 hand as Certified Shorthand Reporter in and for the
 14 State of Illinois on May 20, 2016.
 15
 16 
 17 Jerri Estelle, CSR, RPR
 18 License Number: 084-003284
 19
 20
 21
 22
 23
 24

5 (Pages 14 to 16)

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

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

Record of proceedings had at the
hearing of the above-entitled cause, before the
Honorable NEIL H. COHEN, one of the Judges of said
Court, on July 6, 2016, in Room 2308, Richard J.
Daley Center, Chicago, Illinois, commencing at
1:30 p.m.

1 APPEARANCES

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BY: Mr. David R. Kugler
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for the Trustees of the Policemen's
Annuity and Benefit Fund of Chicago;
Annuity and Benefit Fund of Chicago;

1 THE COURT: Once again, good
2 afternoon, everyone. Underwood versus City of
3 Chicago.

4 For Michael Underwood, et al.

5 MR. KRISLOV: Clint Krislov. With me
6 is Ken Goldstein, Your Honor, and many members of the
7 participant class to be are with us today as well.

8 THE COURT: Thank you. You're all
9 welcome to be here.

10 And for the City of Chicago and the
11 pension funds.

12 MR. PRENDERGAST: For the City of
13 Chicago, Corporation Counsel, Steve Patton and
14 Richard Prendergast.

15 THE COURT: Mr. Patton.

16 MR. PATTON: Good morning, Your Honor.

17 MS. BOECKMAN: For the Municipal
18 Employees' Annuity and Benefit Fund, and also the
19 Firemen's Annuity and Benefit Fund, Sarah Boeckman
20 and Ed Burke.

21 THE COURT: All right. Mr. Burke,
22 you're going to let her speak for you.

23 MR. BURKE: Yes.

24 THE COURT: It shows your wisdom, sir.

1 APPEARANCES (Continued)

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21 for the Trustees of the Laborers' &
22 Retirement Board Employees' Annuity and
23 Benefit Fund of Chicago.
24

1 MR. BURKE: Oh, yes. She's a lot
2 easier to look at, too.

3 MR. PRENDERGAST: You're on the
4 record.

5 MR. KUGLER: For the Policemen's
6 Annuity and Benefit Fund, David Kugler.

7 THE COURT: David.

8 MR. DONHAM: Good afternoon, Your
9 Honor. For the Laborers' and Retirement Board,
10 Employees' Annuity and Benefit Fund of Chicago, Cary
11 Donham.

12 THE COURT: Hi, Cary.

13 All right. We're here on oral
14 argument for previously filed motions to dismiss the
15 third amended complaint in this matter.

16 And the proponents of the motion will
17 be going first. And who is speaking for the
18 defendants?

19 MR. PRENDERGAST: I am, Your Honor.

20 THE COURT: Mr. Prendergast, is anyone
21 else speaking on behalf of the Pension Funds? You're
22 speaking on behalf of the City of Chicago.

23 MR. PRENDERGAST: Yes, the City of
24 Chicago.

1 THE COURT: What about the Pension
2 funds?

3 MS. BOECKMAN: Yes, I'll be speaking
4 on behalf of the Municipal Fund and also the
5 Fireman's Annuity and Benefit Fund.

6 THE COURT: Does anyone else wish to
7 be heard?

8 MR. KUGLER: Your Honor, the
9 Policemen's Annuity, we're going to rest on the
10 memorandums that we filed in the case, and if the
11 Court has any questions, we're happy to respond.

12 THE COURT: Very good.

13 MR. DONHAM: Your Honor, I'm going to
14 speak on behalf of the Laborers' Fund, briefly.

15 THE COURT: All right. And,
16 Mr. Krislov, you're speaking on behalf of the
17 plaintiffs in this case; is that correct?

18 MR. KRISLOV: Yes, Your Honor.

19 THE COURT: How much time do the
20 parties wish to discuss the matter with me?

21 MR. PRENDERGAST: Your Honor, I hope
22 to be finished within a half hour or less with
23 opening remarks.

24 THE COURT: Very good. We'll give you

1 Court's fully acquainted with the issues.

2 So I may prolong -- maybe the half an
3 hour is longer than I should take, but I'll try to
4 get it done in that amount of time.

5 THE COURT: The court reporter would
6 like all counsel to speak up loudly and clearly so
7 she can hear, make sure I can hear.

8 But, also, there are a number of
9 citizens here. It's important that they have every
10 opportunity to be heard, although you're not
11 addressing them specifically, you're addressing me.

12 But if you could keep your voice up,
13 everybody, it would be good for everybody.

14 MR. PRENDERGAST: Thank you, Your
15 Honor.

16 On December 3, 2015, Your Honor
17 entered a memorandum of opinion and order addressing
18 the plaintiffs' second amended complaint.

19 You dismissed Count 2 for failure to
20 state a claim for breach of a written contract, as
21 well as Count 3, the common-law equitable estoppel
22 claim.

23 Count 1 was dismissed as to both the
24 City and the Funds' obligations under the 1989, 1997

1 a half hour at most. We'll give Mr. Burke's better
2 half another 15 minutes if you need it. And, also,
3 Cary, you'll need five minutes or so; is that right?

4 MR. DONHAM: That's about right, Your
5 Honor.

6 THE COURT: All right. And,
7 Mr. Krislov, you'll have a combination of all that
8 put together, and then I'll give you a few minutes
9 for rebuttal if necessary, all right?

10 MR. KRISLOV: That's fine.

11 THE COURT: Mr. Prendergast, you have
12 the floor.

13 MR. PRENDERGAST: Thank you, Your
14 Honor. Good afternoon.

15 Your Honor, I'm going to try to hit on
16 some points a little more than others and some not at
17 all. And I don't want you to think that if I leave
18 out something I don't think it's important.

19 But if I had all the briefs that we
20 filed on these issues, both the federal court and
21 state court, on the various motions that have been
22 filed to dismiss and all the orders and memorandums
23 that have been written, there'd be a pretty sizeable
24 stack here. And I'm more than satisfied that the

1 and 2003 settlement amendments to the Pension Code.
2 The only part of the amended complaint that was not
3 dismissed at that time was the declaratory relief
4 claimed as to the City and the Funds' obligations
5 under the '83 and '85 statutes.

6 On March 3, in response to the City's
7 motion for clarification and reconsideration, this
8 Court issued a memorandum opinion and order that
9 addressed the City's and the Funds' obligations under
10 the '83 and '85 amendments.

11 You held on that occasion that -- and
12 I want to stress something. When I say "you held," I
13 don't mean that something wasn't pleaded
14 sufficiently. I mean you made rulings as a matter of
15 law, and after all these briefings and all these
16 arguments, I think that's an important thing to keep
17 in mind when that's the case.

18 You held on that occasion that the
19 City is correct that it does not have -- and I'm
20 quoting you -- have an obligation under the 1983 and
21 1985 amendments to subsidize or provide healthcare to
22 the Funds' annuitants. That obligation is placed on
23 the Funds.

24 In terms of the City's only

1 obligation, you held that the City does have an
2 obligation to contribute through the collection of
3 the special tax levy. The money is used by the Funds
4 to subsidize and provide healthcare to the Funds'
5 annuitants, close quote.

6 After your December 15, 2015, and
7 March 2016 decisions, the Illinois Supreme Court
8 issued a decision in Matthews. We've referred to it
9 in our reply briefs. Mr. Krislov was given leave to
10 file an additional brief on Matthews.

11 In Matthews, the Supreme Court
12 confirmed the correctness of your earlier decisions
13 in a number of key respects, which I'll touch on here
14 as we go along.

15 First, as to the time-limited benefits
16 provided under the 1989, 1997 and 2003 Pension Code
17 amendments, your Honor found that those statutes
18 could not be used to premise a claim to lifetime
19 healthcare benefits.

20 In that regard, Your Honor held that
21 the pension clause protects only benefits that have
22 actually been granted. It does not serve to
23 magically create, to use your words, a right to
24 receive benefits not specifically granted.

1 City.

2 Your Honor also found that apparent
3 authority is not a basis for equitable estoppel
4 against a public body.

5 Once again, the Supreme Court's
6 decision in Matthews absolutely confirms the
7 correctness of that decision. The Supreme Court
8 rejected the contention that apparent authority can
9 be used to sustain an estoppel claim against a public
10 body and reiterated that, and I quote, statements of
11 an unauthorized official where that official lacked
12 the power to bind the municipality cannot work in
13 estoppel.

14 The Supreme Court in Matthews likewise
15 rejected the argument that allegations that the
16 defendant acted consistent -- and this is a quote --
17 "acted consistent with the well-established
18 understanding that it had an obligation to provide
19 retiree healthcare benefits by paying those benefits
20 are insufficient as a matter of law to support an
21 estoppel claim."

22 In short, the Matthews court totally
23 vindicated Your Honor's decision on the estoppel
24 claim as well.

1 The Supreme Court in Matthews held the
2 same thing. At paragraphs 59 and 63 of the Matthews
3 decision, the Supreme Court held, as you did, that
4 the pension clause does not change the terms of the
5 contract or the essential nature of the rights
6 conferred. Rather, the Supreme Court found the
7 pension clause simply protects the actual contract
8 that governs the retirement system membership.

9 There is certainly no basis for
10 revisiting Your Honor's prior ruling on this point,
11 particularly after Matthews, and plaintiffs have
12 certainly offered you no basis to do so.

13 Second, Your Honor previously found
14 that plaintiffs had not stated a claim for estoppel
15 because plaintiffs failed to allege, first, an
16 affirmative act by a City official with express
17 authority to bind the City.

18 THE COURT: On the contract issue.

19 MR. PRENDERGAST: This is on the
20 equitable estoppel issue.

21 THE COURT: Oh, okay.

22 MR. PRENDERGAST: And that the
23 plaintiffs undertook no inquiry into the unidentified
24 official's supposed actual authority to bind the

1 And, in fact, in the Matthews case,
2 the court went further.

3 The court said that the premises for
4 the equitable estoppel claim, when you're dealing
5 with a public body, in that case the CTA, has to be
6 an action authorized by the legislative branch of
7 that public body; in that case the board, in this
8 case, the City Council.

9 There's no allegation or no proof at
10 all that the City Council ever passed any ordinance
11 or passed a resolution consistent with claims that
12 are set forth in this complaint.

13 At the end of the day, plaintiffs'
14 opposition brief simply rehashes arguments that this
15 Court squarely rejected.

16 For example, they once again argue
17 that Judge Green's prior ruling on motions to dismiss
18 in Korshak is binding on this Court here. That
19 argument was without merit the last time, and this
20 Court rejected that argument in its prior ruling.

21 Plaintiffs similarly suggest that the
22 Supreme Court's decision in Heaton prevents the
23 General Assembly from providing time-limited
24 benefits. But that simply ignores, as this Court

1 previously held, that Heaton did not address the
2 question of whether the general assembly can enact
3 pension statutes with time limits. Plaintiffs, of
4 course, offered no reason why any of those arguments
5 worked this time around any more than they worked
6 last time.

7 What plaintiffs do not do, frankly,
8 because they can't, is explain how any of the
9 allegations in the third amended complaint fixes the
10 defects that this Court previously found.

11 And aside from -- as we'll discuss,
12 hopefully briefly -- aside from the argument on
13 Heaton, on Matthews, Matthews clearly stands for the
14 proposition that the contract that underlies a
15 pension claim, whether it's a contract through the --
16 by virtue of the Pension Code or a written contract,
17 collective bargaining agreement, it clearly does make
18 clear that whatever is granted can be granted
19 conditionally. And conditionally could be a time
20 limit, as was the case in the various time-limited
21 statutes that Your Honor referenced in your previous
22 decision.

23 Now, I would like to address an issue
24 that I think pertains particularly to the '83 and '85

1 Pension Code amendments.

2 We've been in and out a little bit by
3 the statute of limitations argument. I'd like to
4 take this opportunity to address that in a thorough
5 way. I think we tried do that in our briefs, but it
6 is a significant issue here.

7 THE COURT: And I'm interested most
8 with regard to that, and I am keen on that issue as
9 well. It's interesting you should raise that and
10 decide to talk about it.

11 I'm interested in knowing what
12 allegations of fact I can rely upon to find any
13 statute of limitations to the -- to groups three and
14 four, for instance.

15 MR. PRENDERGAST: Okay.

16 THE COURT: As you discuss the matter.

17 MR. PRENDERGAST: I'll cover all four
18 classes eventually.

19 But, of course, one and two, even if
20 we didn't have a statute of limitations argument,
21 that's Korshak and Windows, we've already committed
22 to them.

23 THE COURT: That's right.

24 MR. PRENDERGAST: And that's no longer

1 a claim that they need a judgment on.

2 THE COURT: One second, please.

3 (Brief interruption.)

4 THE COURT: Go ahead, Richard.

5 MR. PRENDERGAST: This Court has found
6 that the City has no direct obligation to provide or
7 subsidize retiree healthcare under the '83 and '85
8 amendments, as I just mentioned.

9 Rather, this Court has found that the
10 City's only obligation is to impose a tax levy to
11 support the Funds' obligations under the '83 and '85
12 amendments. That's your ruling on that motion to
13 reconsider.

14 The plaintiffs' claims under the '83
15 and '85 amendments are barred by the ten-year statute
16 of limitations that applies to those claims.

17 Plaintiffs did not bring any claim
18 against the Funds until the present litigation, even
19 though those claims accrued almost 30 years ago, when
20 the Funds disclaimed an obligation to provide
21 healthcare coverage for retirees, nor did the
22 plaintiffs preserve those claims in connection with
23 the Korshak litigation.

24 In October of 1987, the City brought

1 the Korshak litigation seeking to, among other
2 things, obtain restitution of the amounts that the
3 City had previously paid for retiree healthcare. And
4 the Funds moved to dismiss, and they filed
5 counterclaims, and that litigation proceeded.

6 In the course of that litigation, the
7 Funds argued that they had no monetary obligation
8 whatsoever for annuitants' healthcare obligations.
9 They had no obligation to provide healthcare.

10 They drove a stake in the ground as to
11 what the Funds' position was with respect to their
12 obligations. And at the same time, a class action
13 was filed and intervened in the case. That's the
14 Korshak class action. Mr. Krislov represented the
15 intervenors there.

16 In that case, they never asserted
17 against the Funds any claim that the Funds were
18 liable for healthcare. They didn't make that claim
19 against the Funds. I think that in retrospect -- I
20 wasn't there, Mr. Krislov was, he can speak to it --
21 but I think that in all likelihood, what was going on
22 is that when they came in to intervene, they had to
23 pick one side or the other. They chose to go after
24 the City. They didn't go after the Funds.

1 The plaintiffs' complaint in this case
2 is the first time that the intervenors, the class
3 members, have ever raised a claim that the Funds were
4 liable under the 1983 and 1985 amendments. That's 26
5 years after. They were put on notice of the Funds'
6 position, as stated by the Funds, in 1987.

7 The Illinois ten-year statute of
8 limitations here bars the plaintiffs' claims. That's
9 Illinois Appellate Court. That's Seventh Circuit
10 law. It's not disputed by the plaintiffs that if
11 there's a limitation period, it's a ten-year
12 limitation period.

13 But plaintiffs' failure to bring a
14 claim against the Funds within that ten years, by
15 December of 1997, renders those claims time barred
16 under the applicable statute of limitations.

17 Now, in your December 3, 2015,
18 opinion, you used the City's May 2013 notice
19 regarding the three-year phaseout as sort of an
20 accrual date. And when you -- and I think that
21 determination was due as much to a lack of clear
22 briefing on our part than anything else.

23 THE COURT: You're about to tell me
24 I'm wrong.

1 Class 1 and 2, as I just indicated, is moot.

2 Class four, those are people who were
3 hired after 1989. And all of those plaintiffs took
4 or obtained their pension rights under the
5 time-limited statutes. The only statutes that apply
6 to class four are the time-limited statutes, and --
7 because they're all hired before '89, and so they're
8 finished as far as a claim under the pension clause,
9 because they're suing under a Pension Code that has
10 time limitations.

11 Unless you change your view, and I
12 would suggest you should not, particularly in light
13 of Matthews, class four is out. So when you're
14 looking at the accrual date, it's the date on which
15 they received notice of the position that the Funds
16 were taking and continue to take, that the Funds have
17 no obligation.

18 They should have sued the Funds then,
19 or within ten years of when they got notice, or their
20 case is barred. That's what the statute of
21 limitations claim is all about.

22 Now, the plaintiffs claim that they
23 preserved their claims by virtue of the Korshak
24 settlement agreement.

1 MR. PRENDERGAST: I'm about to tell
2 you that I disagree with you, Judge.

3 THE COURT: Okay.

4 MR. PRENDERGAST: But, you know, I'm
5 hoping to persuade you --

6 THE COURT: Sure. Go ahead.

7 MR. PRENDERGAST: -- that you didn't
8 have the facts that you indicated a few minutes ago
9 you want to have, and that is that the proper accrual
10 date for a claim is when you know you've got a claim.
11 That's basic.

12 And in 1987, everybody knew that the
13 Funds were asserting that they had no obligation.

14 THE COURT: How did they know
15 factually? What notice was given to, for instance,
16 class three, class four, who at that time were not
17 even in existence and did not even have an attorney,
18 let alone Mr. Krislov, who knew? Another question
19 about that later.

20 But how could people who were not yet
21 a class be given notice of anything?

22 MR. PRENDERGAST: Well, in 1987, class
23 three were people who were hired before 1987, or
24 retired after 1987, and so class three falls in.

1 The December 15, 1989, settlement
2 order in Korshak provides that the Funds' intervenors
3 and annuitants may contend that the City is obligated
4 to provide and pay for healthcare benefits of its
5 retired employees. Doesn't say anything about the
6 Funds. It does not --

7 THE COURT: So the part of the Korshak
8 agreement which talks about, and agrees, that the
9 parties would be restored to the same legal status
10 that existed on October 31st, 1997, only applies to
11 the City, not the Funds? Is that your position?

12 MR. PRENDERGAST: It's -- yes. The
13 carve-out language does not mention any claim against
14 the Funds, for a very good reason. It was basically
15 an agreement between the City and the Funds. The
16 intervenors went along with it. The intervenors had
17 already chosen to go after the City.

18 They haven't made a claim against the
19 Funds. The Funds, obviously, haven't made a claim
20 against the Funds. No annuitants have made a claim
21 against the Funds. So the only claims that were
22 preserved were those that were in existence at the
23 time of the first agreement. It doesn't change
24 anything with respect to the 2003 agreement -- or

1 settlement, either, to the extent of 2013.

2 The 2003 Korshak settlement likewise
3 did not preserve any claims against the Funds. That
4 agreement only preserved claims that anyone currently
5 had at the time of the settlement, because any claims
6 that had been timed barred since 1987 no longer
7 existed. There were no prior claims against the
8 Funds to preserve. So the preservation argument
9 fails.

10 Plaintiffs point to a November 27,
11 1989 stipulation between the City and the Funds, but
12 that document only serves to demonstrate that
13 plaintiffs never preserved the claims against the
14 Funds.

15 That stipulation, consistent with
16 Judge Green's statements in the December 1989
17 settlement agreement, expressly provides that
18 annuitants will be permitted to reargue the claims
19 which were asserted in the Funds' counterclaims,
20 that's only against the City, as well as the
21 intervenors' initial pleading, which is only against
22 the City. As I mentioned earlier in my argument, the
23 initial pleading of the intervenors was limited to
24 relief against the City.

1 Plaintiffs raise other issues and try
2 to deflect the statute of limitations claim. We
3 briefed those. I don't think there's anything
4 substantive that I need to respond to other than
5 perhaps in my reply, so I'll wait on that.

6 There's another statute of limitations
7 argument, though. The City's argument is if the
8 Funds aren't liable, then if the statute has run on
9 the Funds, the City's only liability, under your
10 ruling, is derivative. And, therefore, if the
11 derivative liability -- the primary liability doesn't
12 exist, there is no derivative liability. That's
13 precisely the reason we make this argument.

14 But there is another class action
15 argument -- I'm sorry. There's another statute of
16 limitations argument.

17 Even if the plaintiffs' claims under
18 the '83 and '85 amendments were not otherwise barred
19 by the statute of limitations, those claims would
20 still be time barred as to the only subclass that
21 could even potentially have a claim under the 1983
22 and 1985 amendments, which is subclass three,
23 individuals who began their participation in one the
24 four Funds before August 23, 1989, but did not retire

1 prior to that date, so that retired afterwards.

2 Subclass four has no claim under the
3 '83 and '85 amendments for the reasons I just
4 mentioned. That is, they were hired after the first
5 of the settlement amendments was enacted and each of
6 the settlement amendments thereafter were enacted.

7 That is their pension rights. Their
8 pension rights, if I came in as a class four
9 claimant, I'm coming in at a time when the Pension
10 Code says my rights are time limited. And that's the
11 Code -- that's what I -- it's very clear from
12 Matthews: You take the contract that exists at the
13 time you're hired. And Matthews couldn't be clearer
14 on that.

15 And I said classes one and two are
16 Windows and Korshak, and they're already taken care
17 of.

18 Plaintiffs' claims on behalf of
19 subclass three began to accrue at the latest against
20 the City in October 19, 1987, October 19, 1987, when
21 the City filed a complaint seeking a declaration that
22 it had no obligation to provide or subsidize retiree
23 healthcare. Thus, the ten-year statute of
24 limitations expired on October 19, 1997, for any

1 claims to be brought by subclass three. But no claim
2 was brought on behalf of subclass three until more
3 than ten years later, after the cause of action had
4 accrued.

5 Indeed, the Korshak litigation was
6 brought only on behalf of subclasses one and two. I
7 think Mr. Krislov even acknowledged that the City
8 could change the plan for future annuitants. It was
9 not until 1998, which is beyond the ten-year statute
10 of limitations, 1998 being more than ten years since
11 the City filed that '87 complaint, that Mr. Krislov
12 even began to allude to claims of subclass three, and
13 even then never raised any of the claims under the
14 1983 and 1985 statutes.

15 So plaintiffs simply ignore the second
16 argument that I've just made for why their claim
17 under the 1983 and 1985 amendments is time barred,
18 and for good reason. I think because they can't
19 dispute what these facts are.

20 Now, you asked in the beginning, what
21 are the facts? The facts are all date related, and
22 it's simply a matter of math. You just add ten years
23 to the triggering dates.

24 But if it accrues at the time you

1 learn, as it does, and you don't anything for ten
2 years, you can't come in 20 years later, 30 years
3 later and assert that claim. It's pretty basic
4 statute of limitations.

5 THE COURT: So, Richard, tell me again
6 when class three learned of it from your point of
7 view, and how they learned it.

8 MR. PRENDERGAST: Class three would
9 have known by the time they came into existence that
10 the -- on the first argument -- that the Funds had
11 taken the position that there was no liability on the
12 part of the Funds. They took that position back as far
13 as far as, I think, 1987.

14 They would have known in the second
15 argument, after -- when they filed -- when the
16 plaintiffs filed their complaint. They already know
17 what the City's position is. And they don't file
18 their claim on behalf of that class, subclass, until
19 years later. More than -- exactly 11 years later
20 and, therefore, they can't make that claim. '87
21 to '98 is 11 years.

22 THE COURT: Uhm-hmm. Okay.

23 MR. PRENDERGAST: Now, we've talked
24 about -- I'll depart from that, unless you have other

1 They do raise in this particular
2 complaint another claim called the impairment of
3 contract claim.

4 Their impairment of contract claim
5 fails for two pretty straightforward reasons. First,
6 it fails to identify what the contract is. They
7 didn't have a written contract here, and the contract
8 clause covers legislative action. It has to be a
9 legislative impairment, and so there's no impairment
10 of contract claim here.

11 Plaintiffs, frankly, have offered no
12 response to either defect in their impairment -- in
13 trying to defend their impairment of contract claim.

14 They raise an equal protection claim.
15 You know, as you're probably familiar, there are two
16 different standards for equal protection claims. If
17 you're dealing with a suspect class, then you have a
18 more significant burden to defend the classification.
19 But there is no suspect class here.

20 We're not talking race, gender,
21 nationality, etcetera, and they don't suggest
22 otherwise. So they're limited to the rational reason
23 test for the classification.

24 And there is a certain irony, because

1 questions.

2 THE COURT: No, thank you.

3 MR. KRISLOV: And I don't know how
4 much time I have left.

5 THE COURT: You know, I forgot to
6 look. But you take a reasonable amount of time if
7 you need to. But, understand, I've read the briefs.
8 I'm pretty conversant with the case.

9 MR. PRENDERGAST: I'll say, having
10 written about three opinions so far.

11 And not only that, Judge. What's left
12 here is largely material that we not only briefed but
13 argued before. And not only have we argued it before
14 but we've written on it.

15 I think one of the more important
16 considerations is that while they relied on the
17 argument, for example, of promissory estoppel, until
18 the Supreme Court ruled, they relied on the appellate
19 court's decision. Now that Supreme Court's ruled
20 they want to try to contort what the Supreme Court
21 said.

22 The Supreme Court was pretty clear on
23 the case about both the conditioning of a retirement
24 benefit and on promissory estoppel.

1 this class action is brought on behalf of four
2 subclasses. And, basically, what they're arguing is
3 that because the City has acceded to the wishes of
4 two of those subclasses in continuing to provide
5 healthcare to them, totally apart from what the Code
6 says, that that's some kind of discrimination to the
7 detriment of other subclasses.

8 You know, I'm not going to get into
9 the entirety of it. It's just that there's a better
10 argument against it. And that is that we offered --
11 first of all, it's not our burden to come up with a
12 rational reason for a classification. It's the
13 plaintiffs'. That's the law.

14 But we actually offered about a half a
15 dozen possible reasons why it would make sense.
16 Obviously, the City didn't do this on a whim. They
17 thought about it. They knew that these were the
18 people that were more likely not to be Social
19 Security eligible. They knew that these people were
20 the ones that had the lowest -- the shortest survival
21 rate, so that we've got the total fiscal impact on
22 the City. They could have made any number of
23 rational reasons.

24 They haven't even taken those on and

1 said they're not rational, and they haven't offered
2 an argument why this is an irrational classification.
3 And so given that, the equal protection claim has no
4 grounds. There's no grounds for that.

5 They also add a special legislation
6 claim, which fails, basically, for the same reason of
7 the equal protection claim. They're very similar
8 claims.

9 The third amended complaint does not
10 allege that the classification at issue in the '89,
11 '97 and 2003 amendments is arbitrary. They do not
12 allege that it excludes others who are similarly
13 situated. They don't identify anybody who's
14 similarly situated.

15 All of those things are requirements
16 for even getting the door open to the special
17 legislation claim, and there is no basis for
18 plaintiffs to contend that the amendments in question
19 are arbitrary.

20 As this Court previously found, the
21 amendments were enacted to codify settlement
22 agreements that apply only to participants in City
23 pension funds, so of course you're going to limit
24 them to city employees. They're a codification of a

1 handbook, or the agendas of the preretirement
2 seminars, or the City's appropriation ordinances,
3 which were argued last time and rejected last time,
4 or Dell versus Streeter, which is the only case they
5 rely on, which we've also briefed, and which doesn't
6 even mention the statute of frauds, it's hardly a
7 case that they can rely on, applicably.

8 Unless you have specific questions on
9 those, I'm not going to go through the five pages of
10 notes that I have, and I've covered the equitable
11 estoppel claim.

12 I wonder, Judge, if you have any
13 questions at this point. If not, I will be back and
14 answer any questions you may have.

15 THE COURT: Looking forward to it.

16 MR. PRENDERGAST: Thank you, Your
17 Honor.

18 THE COURT: Ma'am.

19 MS. BOECKMAN: Thank you, Your Honor.
20 Thank you for the opportunity to speak on behalf of
21 the Municipal Fund and also the Firemen's Annuity and
22 Benefit Fund.

23 I'll refer to them collectively
24 throughout my remarks as the Funds, but I do

1 settlement agreement. That's a perfectly rational
2 basis for them.

3 Your Honor, I'm going to spare you the
4 reiteration of the arguments that we've made so often
5 on other matters. Obviously, they haven't done
6 anything to improve their position with respect to
7 the contract claim itself.

8 We've briefed it. We've briefed it
9 before. You've dealt with it. And coming in with
10 handshake agreements with the Byrne administration,
11 or seminars, or pamphlets, even pamphlets that
12 have -- on a page, they don't cite a declaration that
13 they're only good until the City discontinues them,
14 which is a conditional grant, even if it was a
15 contract.

16 They don't satisfy the statute of
17 frauds, because they're not signed. They're not --
18 they don't contain the details that would be required
19 of a written contract.

20 And I don't have to reiterate the
21 promissory estoppel problem, because not only have
22 you ruled against them on that, but you have been
23 confirmed by the appellate court very recently.

24 So if you have questions on the PADF

1 represent both. And if I do mention any
2 specifically, I'll be sure to indicate so.

3 And I also just at this point, for the
4 record, want to note that all of our arguments set
5 out in our motion to dismiss and our reply are
6 incorporated here in our oral argument.

7 Mr. Prendergast stole a few of my
8 comments, so I will make sure to keep my comments --

9 THE COURT: He's like that. He does
10 do that.

11 MS. BOECKMAN: First, right off the
12 bat, Your Honor, I'd like to mention something that
13 you noted in one of your earlier orders, in the
14 December order.

15 You touched on the fact that the Funds
16 were instrumentalities of the City, and I just wanted
17 to note for the record that it's our position, which
18 we believe is confirmed by case law and also the
19 Pension Code, that both the Funds are not
20 instrumentalities of the City.

21 So specifically, if you look at
22 Article 22 --

23 THE COURT: Is this a motion to
24 reconsider my prior rulings?

1 MS. BOECKMAN: No, Your Honor.

2 THE COURT: Because I won't do that.

3 MS. BOECKMAN: No, Your Honor. And I
4 appreciate that. No, I'm not asking you to
5 reconsider your prior rulings. I'm just sort of
6 providing a backdrop, because I do believe it's
7 important to consider that the Funds are separate and
8 distinct entities from the City of Chicago, because I
9 think that --

10 THE COURT: I think the City agrees
11 with you, which is why it's their position that they
12 were merely levying funds that you had to collect --

13 MS. BOECKMAN: Right.

14 THE COURT: -- and give to the folks.

15 MS. BOECKMAN: Right. Exactly.

16 So on that note, we are not an
17 instrumentality of the City. We have the sole
18 authority, the Pension Funds do, to administer the
19 Pension Funds in accordance with Article 6 and
20 Article 8 respectively.

21 They have no powers or authorities
22 independent of those relevant legislative
23 authorizations and mandates.

24 And in this case, Your Honor, the

1 the amendment that says that it is time limited. The
2 legislature has put in language throughout many of
3 the articles and provisions in the Pension Code when
4 something is a lifetime benefit.

5 By way of example, in Article 8, when
6 the legislature describes --

7 THE COURT: So you mean your argument
8 is, now, by their failure to put in any time limits,
9 they're, by definition, time limited?

10 MS. BOECKMAN: No. Well, Your Honor,
11 what I'm saying is if the legislature intends -- if
12 the legislature --

13 THE COURT: Is that what you're
14 telling me? Because the other legislation had time
15 limits.

16 MS. BOECKMAN: Uhm-hmm.

17 THE COURT: We know --

18 MS. BOECKMAN: Uhm-hmm.

19 THE COURT: -- that when the
20 legislature wants to put in time limits, they put
21 them in. In '83 and '85, there were none. So they,
22 by definition, were not time limited.

23 Wouldn't you agree?

24 Because if they wanted to, they would

1 Funds are taking the position that they cannot be
2 sued for faithfully fulfilling and carrying out what
3 those statutory mandates were under the 1983
4 amendment, the '85 and all subsequent amendments.

5 Your Honor has previously ruled that
6 the '89, '97, and 2003 amendments were time limited.
7 So I'll focus my remarks on the '83 and '85
8 amendments.

9 It is our opinion that the '83 and '85
10 amendments are also time limited. We believe --

11 THE COURT: Where in the legislation,
12 in the ordinance, or anything from the legislature
13 does it say "time limits" --

14 MS. BOECKMAN: Right.

15 THE COURT: -- like it does in the '89
16 and the other statutes?

17 MS. BOECKMAN: Right.

18 THE COURT: Like it did in Matthews.

19 MS. BOECKMAN: Right.

20 THE COURT: Show me the language where
21 it's time limited.

22 MS. BOECKMAN: Understood, Your Honor.

23 Well, we think it's time limited for
24 three reasons: One, because there isn't language in

1 have; but they didn't, so they're not, right?

2 MS. BOECKMAN: I would agree in part
3 and disagree --

4 THE COURT: What's the part you
5 disagree with?

6 MS. BOECKMAN: Well, Your Honor, I
7 would say that if they intended the Funds to provide
8 a lifetime healthcare benefit, they would have
9 expressly put that in the '83 and '85 amendments, and
10 they did not do so.

11 So right off the bat, I think the fact
12 that they did not provide specific language saying
13 that it's a lifetime --

14 THE COURT: What's the old Latin
15 phrase when you want to do something, you say it
16 specifically, and your failure to say it means that
17 you're not limited?

18 That's an old rule of statutory
19 construction. You know the one I'm talking about?

20 MS. BOECKMAN: I believe I -- I don't
21 know the Latin phrase for it.

22 THE COURT: Me neither. I didn't go
23 to Ignatius.

24 But there's no time limitation

1 language at all. And so, somehow, you're now arguing
2 because there is no time limitation, because there's
3 no specific statement as for the life of the
4 annuitant, by definition, it's time limited.

5 Okay. Let's take your argument to its
6 natural logical extent.

7 MS. BOECKMAN: Okay.

8 THE COURT: How is it time limited?

9 In what fashion is it time limited? When does the
10 limit end? When does it start? Does it create
11 classes that are not mentioned but that's okay with
12 you because they don't have to? And when they don't
13 have to, by definition, everybody's time limited?

14 Isn't that just so ambiguous and
15 against the rules of construction that we never, ever
16 go there?

17 Because people have an opportunity to
18 know, especially when it's retirement, what they're
19 getting into, what they're bargaining for and what
20 they're not, like they did in the '89 statute, like
21 they did in the ones that followed.

22 I've ruled, and Matthews has been --
23 it's been argued, says that if they mean to put time
24 limits in, they do, and you give them the effect of

1 opinion that the '83 and '85 retirees --

2 THE COURT: Okay, so what I'd like you
3 to do is don't waste your time --

4 (Inaudible colloquy from the gallery.)

5 MS. BOECKMAN: Okay.

6 THE COURT: Your limited time -- stop
7 it everybody -- rearguing that which I've already
8 denied.

9 MS. BOECKMAN: Okay.

10 THE COURT: You have a new third
11 amended complaint. You have some time now to talk to
12 me about what you think is important besides
13 positions that I've ruled, in all intellectual
14 honesty, against you on. And let's not rehash old
15 stuff.

16 MS. BOECKMAN: Okay.

17 THE COURT: I know it's important to
18 you. I know it's important to the Funds, just as
19 it's important to the annuitants. But, you know, my
20 ruling is my ruling. I think it's backed up by
21 Matthews, and that's that.

22 So what's next?

23 MS. BOECKMAN: Fair enough, Your
24 Honor. And on that note, I would argue that you have

1 that contract, because it is a contract.

2 MS. BOECKMAN: Right.

3 THE COURT: Now, they didn't put it in
4 yours. Somehow, you're telling me it's limited.

5 MS. BOECKMAN: Well, I would state,
6 Your Honor, that they do include language that
7 indicates that they wanted the contract to be limited
8 to a two-year term with two one-year renewal terms.
9 So there was some limiting language regarding the
10 length of the contract, one.

11 And, two, like I said before, it's our
12 belief that if the legislature had intended the Funds
13 to provide a lifetime healthcare benefit, they would
14 have specifically included that.

15 THE COURT: Okay.

16 MS. BOECKMAN: Thank you.

17 THE COURT: I've ruled otherwise
18 already, correct?

19 MS. BOECKMAN: Correct, as to the
20 '83 --

21 THE COURT: So this is a motion to
22 reconsider that, right?

23 MS. BOECKMAN: No, Your Honor. I am
24 just am reaffirming for the record that it's our

1 ruled on many of the counts that plaintiffs have
2 presented in their third amended complaint.

3 In your December 3rd, 2015, order,
4 you specifically cited their failure to allege any
5 breach of contract against the Funds. I would say
6 that, once again --

7 THE COURT: Sufficiently to do so.

8 MS. BOECKMAN: Correct. The
9 plaintiffs, again, fail to allege sufficiently any of
10 the required elements of a breach of contract against
11 the Municipal Fund and the Firemen's Annuity and
12 Benefit Fund.

13 In addition, you noted in your
14 December 3rd, 2015, order that there was no
15 allegation that the Funds engaged in affirmative acts
16 that could have induced the plaintiffs to reasonably
17 believe or plaintiffs failed to provide any evidence
18 that they did so.

19 The third amended complaint continues
20 to the -- it contains the exact same pleading that
21 this Court held was insufficient against the Funds.

22 And then I would also add that the new
23 counts that plaintiffs present in their third amended
24 complaint fail to state any allegations as to the

1 Funds.

2 So I would reiterate what we've said
3 from day one, in both Korshak and this Underwood
4 litigation, that the Funds are not -- nowhere in the
5 Pension Code are the Funds mandated or authorized to
6 provide a lifetime benefit to their annuitants.

7 The Funds are governed by a board of
8 trustees. They have a fiduciary responsibility to
9 carry out the duties and obligations of the Pension
10 Code in the best interest of the participants. They
11 have always faithfully done so.

12 It's our opinion, and I know Mr.
13 Kugler has mentioned this in other arguments, we're
14 really just an interested party here. The Funds do
15 exactly what they're mandated to do by that Pension
16 Code. They always have.

17 And we believe that plaintiffs have
18 failed to allege sufficient facts otherwise.

19 THE COURT: Thank you very much.

20 MS. BOECKMAN: Thank you.

21 THE COURT: Appreciate it.

22 David, you're resting on your many
23 laurels.

24 MR. KUGLER: Yes, Your Honor. We'd

1 can't estop a fund based on its complying with a
2 statutory mandate, which is all it's done is provided
3 the subsidies that the statute has called for, going
4 back to 1985.

5 And there's also no allegation of any
6 breach of any contract to the extent that the
7 contract claim is brought against the Fund. It's not
8 clear that it is. There's no allegation of a breach,
9 that it failed to pay the subsidies. There's no
10 allegation that the Fund ever accepted the employee
11 handbook that they posit is the contract. There's no
12 discussion of what the terms of the contract are.

13 So even if that contract claim is
14 aimed at the Fund, it should be dismissed with
15 prejudice, as should the equitable estoppel or
16 promissory estoppel claim should be.

17 I do want to bring up one thing with
18 regard to the 1985 amendment.

19 Number one, counsel is a little sloppy
20 in how he describes it, because he says -- he links
21 the '83 and the '85 amendments together and says that
22 these amendments require the Funds to provide
23 healthcare coverage.

24 Well, they don't. The 1985 amendment

1 like to hold some time so we can respond to
2 Mr. Krislov.

3 THE COURT: You'll be given that
4 opportunity.

5 Please.

6 MR. DONHAM: May it please the Court.
7 Cary Donham on behalf of the Laborers' Fund.

8 First, we adopt the statute of
9 limitations argument that Mr. Prendergast laid out,
10 and rather than repeating it, we agree with
11 Mr. Prendergast's argument that the Matthews Supreme
12 Court decision effectively upheld Your Honor's ruling
13 in terms of the time limitations from the 1989, 1993,
14 1997, 2003 amendments.

15 We'd add that with regard to the
16 Laborers' Fund, there are no allegations whatsoever
17 as to any affirmative act by any official with
18 authority at the Laborers' Fund that could be the
19 basis for an estoppel claim.

20 Once, you know, whatever -- however
21 it's described, it seems like it's up in the air as
22 to whether it's promissory estoppel or equitable
23 estoppel. But either way, there's no allegation.

24 And second, as Matthews held, you

1 simply requires -- well, it allows the Fund to
2 approve a healthcare and surgical care plan. And if
3 it does, it requires it to provide a maximum of \$25 a
4 month subsidy.

5 Now, rather than going into -- I heard
6 Your Honor's discussion about the time limitation on
7 that. But what I do want to point out is that as far
8 as class three goes, which is those who were hired
9 before August 23, 1989, before the settlement
10 agreement, but who had not retired by that time.

11 Under Matthews, Matthews, the Supreme
12 Court held that -- it made the distinction between
13 vested and unvested benefits.

14 And if you recall, Mr. Matthews was
15 allowed to sustain his claim because he had retired
16 before the 2007 arbitration award and the subsequent
17 agreement that actually lowered healthcare benefits.

18 But for those who had not retired at
19 that time, they ruled that the amendment to the
20 collective bargaining agreement was valid even if it
21 did lower the benefit.

22 And we would suggest that if you make
23 the distinction between vested and unvested benefits
24 here, as of August 23, 1989, those who had not

1 retired did not have vested benefits in a lifetime
2 \$25 a month subsidy. Rather, at that point, they
3 were subject to the legislature amendment, which is
4 essentially the amendment to the contract that
5 provides the benefit that is protected by the Pension
6 Code.

7 THE COURT: What year was that
8 amendment?

9 MR. DONHAM: The first amendment was
10 pretty much coextensive with the Korshak settlement
11 agreement, 1989.

12 THE COURT: After they were hired?

13 MR. DONHAM: After they were hired.

14 THE COURT: So isn't it fair to assume
15 that under Matthews, if they were hired during the
16 term of the '85 amendment, as you talked about, but
17 before it was itself amended, they are subject to the
18 terms of that amendment, and it's not limited?

19 MR. DONHAM: I don't think that's -- I
20 believe -- the distinction I'm trying to make, and
21 perhaps not artfully Your Honor, is between a vested
22 benefit, which would have vested at the time someone
23 hired prior to 1989 had retired and the class three
24 who had not retired --

1 After the termination of the
2 settlement period, class members retain any right
3 they currently have to assert any claims with
4 regard to the provision of annuitant healthcare
5 benefits other than claims arising under the prior
6 settlement of this action or under the 1989, 1997
7 or 2002 amendments to the Pension Code.]

8 What I would suggest is that given
9 that -- I believe the parties are in privity. You
10 have a final judgment on the merits. That regardless
11 of, you know, while I agree with Your Honor's ruling
12 and encourage you to uphold it, I think that the
13 settlement agreement is res judicata as to any claims
14 the plaintiffs might make in this lawsuit regarding
15 the 1989, 1997, or 2003 amendments.

16 And, again, I'm not raising this here
17 for the first time. It was in the 2-619 portion of
18 our memorandum, and plaintiffs did not respond to it.

19 Unless you have any questions, I'm
20 done, Your Honor.

21 THE COURT: I don't. Thanks, Cary.
22 Any other of the other defendants wish
23 to be heard from at this point?
24 (No response.)

1 THE COURT: When is it vested? Upon
2 retirement?

3 MR. DONHAM: According to the Matthews
4 court, those retirement benefits vested when they
5 applied for them and -- basically upon retirement.
6 That's how I read Matthews, Your Honor.

7 THE COURT: Not at the time they're
8 hired.

9 MR. DONHAM: Not at the time you're
10 hired. That was -- to me, the key point of Matthews
11 is that there could be a modification, and that was
12 the importance of its distinction between vested and
13 unvested benefits.

14 Now, I just have one other point I'd
15 like to make, which we did raise in our briefs and
16 plaintiffs did not respond to, and this has to do
17 with the 2003 settlement agreement, Your Honor, which
18 was entered as a final judgment, and it was also
19 signed by counsel for the plaintiffs in this case.

20 THE COURT: Sure.

21 MR. DONHAM: And if you look at
22 subparagraph (j), and I believe this was maybe
23 Exhibit 13 to the plaintiffs' complaint, it says:

24 [AS READ:

1 THE COURT: Mr. Krislov.

2 MR. KRISLOV: Thank you, Your Honor.
3 Let me make a couple of points first.

4 THE COURT: Sure. Of course.

5 MR. KRISLOV: Most of what Mr. Donham,
6 while he accused me of being sloppy, he's just wrong.

7 The argument that pension rights under
8 the Illinois Constitution, under Illinois law, vest
9 only at retirement is so wrong. I would ignore
10 Kanerva, Heaton, Buddell, you name it.

11 They vest when you begin your
12 participation based on date of hire and any
13 improvements thereafter.

14 He's as wrong in the rest of his
15 stuff, but we'll get to that.

16 With regard to the Fire and Municipal
17 Fund, I think that the term you're looking for is
18 *expressio unius est exclusio alterius*, which means if
19 you express one, you're not -- you're leaving out the
20 other.

21 The idea that you have to say lifetime
22 ignores Kanerva. Kanerva says if you create a
23 benefit that flows from, is limited to, and
24 conditioned on your being an annuitant, that is

1 protected by the Constitution against being
2 diminished or impaired. Can't reduce it.

3 And so you don't have to say the word
4 lifetime. It may be --

5 THE COURT: But the obverse is also
6 true, which is to say if it is limited by the
7 legislation, it's limited. It can't be expanded,
8 which is one of your arguments.

9 So how could you distinguish between
10 -- I'm with you on the first one, as I've said. What
11 about the second one?

12 MR. KRISLOV: Here's where we are on
13 the second one. Our view of the 1989, '97 and 2003
14 statutes is, we're not basing a claim on those
15 statutes.

16 Yes, we don't think you can reduce
17 things below what you agree to provide. But the
18 fundamental base of our claim, certainly for the
19 people who began their participation before August 23
20 of 1989, is that the statutes in effect and the
21 benefits that were in effect then are enforced.

22 The City -- and this is where it
23 becomes important to have the two aspects of our
24 claim under contract. And the reason you dismissed

1 City, under Kanerva, and Kanerva is the case we think
2 controls, under Kanerva, the City adopted the City of
3 Chicago Annuitant Medical Benefit Plan. It was
4 conditioned on being explicit, conditioned on being
5 an annuitant, and, hence, it achieved the protection
6 of Article 13, Section 5.

7 Now, that one we disagreed on --

8 THE COURT: You and I you mean.

9 MR. KRISLOV: You and I. Because your
10 view was that the Pension Code controls, and it's
11 just the Pension Code.

12 And the answer to that is that Kanerva
13 makes it clear it's not just the Pension Code.
14 Because there, the state had provided a benefit to
15 former employees, and it wasn't under the Pension
16 Code.

17 It was under the Employment act, the
18 state employees act, whatever it's called. It wasn't
19 Pension Code. And the Supreme Court said it doesn't
20 matter as long as it is conditioned on, flows
21 directly from, limited to, it's protected.

22 The other part of that is under
23 contract. And this is where the Funds come in. And
24 Mr. Kugler, bless his heart, comes the closest to our

1 another contract the first time was because we
2 submitted all of these attachments in response to
3 their motion to dismiss rather than as part of the
4 complaint.

5 And if you walk through -- the two
6 claims that we make under contract are that, number
7 one, the City obligated itself as the provider of a
8 benefit to people who were conditioned on, flows
9 directly from, limited to being annuitants. The
10 City, having created the City of Chicago Annuitant
11 Medical Benefits Plan, created a benefit plan which
12 is enforced by the Constitution. It didn't need to
13 say lifetime.

14 It also didn't really reserve a right
15 to terminate or amend. It said, in the next page, if
16 the plan is terminated, your plan will terminate too.

17 But it doesn't say under what basis
18 the City has the right to terminate it. And, indeed,
19 at that time, there was -- it was thought that, you
20 know, everybody comes back again that what was called
21 Hillary Care in those days was likely to be the
22 national plan which would supplant everything, and it
23 didn't.

24 But the fact of the matter is that the

1 argument on that, because if we accept your
2 limitation and say, well, the Pension Code provisions
3 govern, the Pension Code statutes require the Funds
4 to administer or approve a health plan for their
5 retirees. It was not a permissive, as the Municipal
6 and Firemen's Fund attorneys says it was an
7 obligation. Mr. Burke said it was permissive in the
8 past, and you rejected it then.

9 The fact is, if the City is not
10 obligated do anything other than to send them a few
11 bucks, the Funds are obligated to provide a
12 healthcare plan for their retirees, certainly for the
13 ones prior to August -- the ones who became -- who
14 were hired by August 23 of 1989.

15 So the Funds are, for better or for
16 worse, stuck in this one way or another. But we
17 say -- and Mr. Kugler really agrees with this in his
18 brief -- the Funds fulfilled that by hiring the City,
19 by adopting the City plan.

20 And even Judge Green said that
21 that's -- that the City healthcare plan was what the
22 Funds provided for the annuitants.

23 We intervened in Korshak because the
24 City sued the Funds. In fact, Exhibit 1 shows how

1 this all started, which was in the Ryan case, we had
2 discovered that the City was using pension fund
3 moneys to earn interest for itself, and we forced the
4 City to repay about \$35 million to the pension funds,
5 which even in those days were severely underfunded.

6 The City, then under the new
7 Washington administration, concocted an offset plan
8 where they came up with this argument that maybe
9 we've been paying for healthcare -- we've been paying
10 for healthcare coverage illegally. We know we're
11 going to owe you this \$35 million, but we came up
12 with this argument that we've been paying for
13 healthcare illegally, and so we have to get that
14 back.

15 But if you forget about the 35 million
16 we're going to owe you in the Ryan case, we'll forget
17 about suing you on healthcare.

18 And the trustees, in those days
19 adverse to the City somewhat, said no. If we did
20 that, we'd be breaching our fiduciary duty. And so
21 the City launched the Korshak complaint, saying that
22 it didn't have an obligation but that the Funds did.
23 The Funds sued back, saying the City had this
24 obligation to continue healthcare coverage and

1 judgment. That's for that ten years, which Judge
2 Green chided me and said, you're not losing anything
3 by this, because you'll be restored back to where you
4 were when this case started.

5 And that is, indeed, what the
6 settlement agreement says, that the parties are
7 restored to the situation they were in on
8 October 19th, 1985. And that is the day that the
9 City filed the complaint.

10 And on that day, our claims against
11 the City, the Funds, whoever, were viable, and they
12 were continued both in that settlement and in all the
13 subsequent settlements. So the assertion of a
14 statute of limitations that we should have sued them
15 at some time during the settlement ignores also that
16 the settlement agreement said we couldn't sue anybody
17 during the settlement period. It's all being carried
18 until the end. And if we don't get to a resolution
19 before the end, you'll be back to -- you can assert
20 any claims that you have then.

21 And so the whole business -- I
22 understand some of the argument, but the statute of
23 limitations claim you rejected the first time. You
24 rejected it correctly. It's baseless.

1 couldn't terminate it.

2 And though they did not assert the
3 constitutional protection, they did assert everything
4 else on behalf of the retirees, that the retirees had
5 been promised this as a term of employment.

6 And the fact is, all these people in
7 the courtroom and the 22,000 rest of them out there
8 spent their whole careers working for the City in the
9 reasonable expectation that they would have retiree
10 healthcare for life.

11 I'll get to that part in a second.

12 But the reason, when we intervened, we
13 intervened because all we knew was that between the
14 City and the Funds, they both owed the retirees this
15 fixed rate, subsidized plan that they'd been
16 promised, and we expected them both to fulfill that,
17 and we frankly didn't care who.

18 When they settled around -- when we
19 went to trial, and then before Judge Green could
20 decide the merits of the case, the City and the
21 trustees cut a deal that all of the participants
22 objected to but was, you know, we -- while we may not
23 like it, it was -- it's res judicata, and it was
24 forced down our throats, and it was in the final

1 Matthews is a unique situation,
2 because Matthews deals with where there is a
3 collective bargaining agreement. And that is a
4 different --

5 THE COURT: Doesn't Matthews just say
6 a deal's a deal, and you can't change the deal, when
7 the contract you contracted for has terms, and terms
8 in that case and in this case are term limitations.

9 I didn't write the contract. I don't
10 necessarily like it, but the law is the law, and a
11 deal's a deal. Isn't that what Matthews holds? And
12 isn't that what's here?

13 MR. KRISLOV: It's not what's here.

14 THE COURT: Why is it not here?

15 MR. KRISLOV: Because Matthews was a
16 collective bargaining agreement. And the collective
17 bargaining agreement, that agreement, when that
18 agreement is entered into, that controls, and it
19 controls over, including the authorized --
20 Mr. Donham's argument about the way that the two
21 collective bargaining agreements operated there.

22 The fact was that four active
23 employees, they are represented by their authorized
24 union agent, and Matthews holds for the class two

1 there that if your authorized agent or you, if you
2 agree to it, agree to change your contract rights,
3 you can do that. And your authorized agent has the
4 power to do that.

5 The reason that the class one people
6 had standing to enforce their agreement was that they
7 retired during the course of that agreement, and they
8 were no long- -- and once you retire, you're no
9 longer represented by the union. You are outside the
10 bargaining unit. And so the union cannot agree to
11 amend your rights thereafter without your consent.

12 And so for the class one people who
13 retired during a certain state of facts, during a
14 certain collective bargaining agreement, they -- the
15 court then said, well, does this agreement provide
16 for -- is it permanent to age 65, or can it be
17 amended by the subsequent agreement? They said it
18 can't.

19 But that has nothing to do with what's
20 happening here.

21 THE COURT: Someone who got hired
22 after legislation went into effect that the
23 annuitants' benefits were time limited, isn't that
24 the deal? Isn't that what they signed on for? Isn't

1 but Matthews does not say that. Matthews says that
2 either I or my authorized bargaining agent can agree
3 to almost anything --

4 THE COURT: Sure.

5 MR. KRISLOV: -- and that would be
6 binding.

7 What we're talking about on this
8 group, what we're talking about now, I think, are
9 people who were hired after August 23 of '89.

10 Okay. Here's where we are now. And
11 they're a little different, because -- and they're
12 squarely under this issue about are those statutes
13 legal. Because if those status are illegal or
14 invalid --

15 THE COURT: Tell me when that was
16 raised at the time that they were passed. Tell me
17 when that's been raised at all, the legality vel non
18 of those statutes. How's never?

19 MR. KRISLOV: It hasn't been raised
20 before.

21 THE COURT: Okay. So that's it.
22 That's the law.

23 MR. KRISLOV: Well, no. But it
24 doesn't mean that the law -- what you're saying is

1 that what they had knowledge of, at least
2 constructive what the law is? You want to go against
3 the law? Change the law in the future.

4 But that's what Matthews holds, that
5 when there's a contract, or a law, that you're
6 subject to the law. And that's that.

7 MR. KRISLOV: Well, Matthews holds
8 where there's a contract. Matthews doesn't hold
9 where there's a law. Matthews has nothing to do --

10 THE COURT: If it's true for a
11 contract, why isn't it true for the law?

12 Should we forget the power of the
13 legislature because of this case?

14 MR. KRISLOV: No.

15 THE COURT: To limit?

16 MR. KRISLOV: No. But here's where --

17 THE COURT: And Matthews says they can
18 limit.

19 MR. KRISLOV: Matthews doesn't --

20 THE COURT: And I said it.

21 MR. KRISLOV: -- doesn't say the
22 legislature can't --

23 THE COURT: I said it.

24 MR. KRISLOV: You may have said it,

1 that the law that was in effect on the day that you
2 were hired is what governs. And the answer to that
3 is, well, that's just --

4 THE COURT: Yes. And you said it too
5 when you said it's not the law that's in effect at
6 the time they retired. He was wrong. It's the law
7 that's in effect at the time they're hired.

8 MR. KRISLOV: Except where the law is
9 invalid because it is either special legislation --

10 THE COURT: Yes, your equal protection
11 argument and your special legislation.

12 MR. KRISLOV: It's not the equal
13 protection argument. The equal protection argument
14 deals with the City saying it will leave alone those
15 people who retired --

16 THE COURT: So if I reject your
17 special legislation argument, would you agree that
18 that's the way it is, that those post-'89 annuitants
19 are stuck with the law as it is, and it's time
20 limited. Would you agree?

21 MR. KRISLOV: Well, the law probably
22 doesn't -- as I've always said, for the post 8-23-89
23 hires --

24 THE COURT: Yes.

1 MR. KRISLOV: They have a tougher road
2 on this, and they must depend on the law being
3 invalid in order to get around it.

4 THE COURT: Which is why you raised
5 the special legislation argument.

6 MR. KRISLOV: True.

7 THE COURT: Okay.

8 MR. KRISLOV: And, you know, we said
9 it's invalid for -- because of the purporting not to
10 be a protected benefit because it's special
11 legislation, and the third reason -- oh, is
12 permanence versus time limited.

13 You know, if you say that those laws
14 are legal and apply to those people who were hired
15 after that date, then the question is can the City
16 reduce it below that or just take it down to nothing.

17 We're sort of in limbo at that point,
18 whether the City for those post 8-23-89 hires,
19 whether the City has any obligation.

20 What you're saying is that --

21 THE COURT: Or the Funds.

22 MR. KRISLOV: Or the Funds.

23 The Funds do have -- they still have
24 an obligation to provide -- well, it gets -- this

1 part's messy, because -- well, it is, because the
2 statutes are not -- are not well crafted for what
3 happens after.

4 They were explicitly intended just to
5 cover the period of those settlements. And that's
6 really all those statutes were ever intended to do.
7 To apply them outside that, I think, is looking for a
8 challenge to the statute.

9 But let's go back to our core people,
10 most of them are here -- or not most of the people
11 who are here.

12 THE COURT: What do you mean, "the
13 core people"? Which group? Your '83 and '85 folks.

14 MR. KRISLOV: People who began working
15 for the City before August 23, 1989.

16 And they are additionally -- and this
17 is also where we get to the equitable -- and God
18 bless the Court, because it resolved that it's not
19 equitable estoppel that we're asserting.

20 THE COURT: It's promissory.

21 MR. KRISLOV: It's promissory except
22 -- if there's one thing that Matthews did do that's
23 applicable here, I think they fixed the label.

24 The label of what we're asserting is

1 promissory estoppel. The label of what we're saying,
2 that the City and the Funds can't assert would be
3 equitable estoppel.

4 On the other hand, when you get
5 through Matthews, you sort of come to the conclusion
6 that it's a label, but the standard is probably the
7 same, which gets us to one of the most important
8 aspects of people who began working for the City
9 before August 23 of '89. The overwhelming number of
10 them began working for the City before April 1 of
11 1986.

12 People who began working for the City
13 prior to April 1 of 1986 do not accrue, did not
14 accrue, cannot accrue from their City employment
15 qualifying orders for the Medicare program. They are
16 out of luck. They are on their own. They are
17 totally at risk.

18 And the City doesn't appreciate that,
19 and if there's a damage in the world, that's one of
20 them. And those people went to -- they have a
21 handbook issued by the City. It's an action by the
22 City. The City doesn't need -- if I understand --

23 THE COURT: Where in the handbook, in
24 the police handbook, or in any other handbook?

1 MR. KRISLOV: No, no. The handbook,
2 the City of Chicago -- Exhibit 6 is the City of
3 Chicago Annuitant Medical Benefits Plan handbook
4 issued by the City.

5 THE COURT: I see. Where in the City
6 handbook is there a promise for lifetime subsidized
7 premiums?

8 MR. KRISLOV: Doesn't have to be. But
9 that isn't --

10 THE COURT: Please answer my question.
11 Your argument is that it doesn't have
12 to be. But where is it in it? It's not, right?

13 MR. KRISLOV: It is not --

14 THE COURT: It's a contract that you
15 want me to find without a specific term that you want
16 me -- that you want to rely on.

17 MR. KRISLOV: Once the City made the
18 qualification for that plan, limited to, flows
19 directly from being an annuitant, eligibility
20 required to be an annuitant. They could say if
21 you're a former employee. They used the term
22 "annuitant." You've got to be an annuitant of one of
23 the City's four plans. Once the City did that, it
24 didn't need to call it lifetime. Article 13, Section

1 5 steps in.

2 But back to the contract. The
3 contract terms can be made up of lots of things. You
4 don't need to have one document signed by Mr.
5 Emanuel, Mr. Washington, Mr. Daley, Ms. Byrne. You
6 don't need the contract signed by that person any
7 more than you need everybody to sign off on the city
8 Council.

9 What we're saying is, there is
10 sufficient City action to show that there was a
11 contract. That's all you need. And the elements
12 that we show it by are the handbook, the
13 preretirement seminars, and we -- it's not an
14 unidentified person speaking, Kordek and McDonough,
15 who are the exhibits in our -- I believe they're 18
16 and 19. Those are the guys who said it.

17 They told people it was lifetime, and
18 they told -- and it occurred often enough. There
19 were at least 50 preretirement seminars authorized
20 and conducted by the City. And even Judge Green said
21 that it is inconceivable that all this was done
22 without anybody knowing about it, that it just fell
23 through the cracks.

24 All you need to show -- and that's for

1 see it before I go out there."

2 The fact is, the City was sufficiently
3 involved in this that it was entirely reasonable and
4 enforceable as a contract, and it was also
5 enforceable under promissory estoppel.

6 I think, unless -- can I have one
7 second, Your Honor?

8 THE COURT: Of course.

9 MR. KRISLOV: As far as the post-'89
10 people, I think you had asked me how I got them --
11 the post-'89 hires, how I get them in.

12 They have -- if those statutes are not
13 valid or -- if they're not valid, it's uncertain what
14 the effect is then.

15 If they are valid, our argument, I
16 think, would be that those provide a floor from which
17 things can be improved. But the statutes are a
18 problem if only because they were only intended to
19 cover the settlement period.

20 If those statutes are invalid, then
21 the pre-'89 statutes go into effect because they
22 reinstate the old statutes, which were not time
23 limited. And so everybody would be packed in. It's
24 not a neat process by any means. I agree.

1 the contract. You need to show City action. You
2 don't know need to show the stamp in the sealing wax.
3 You need to show that the City was so involved in it
4 that it regarded it as an enforceable contract.

5 And that's what they did. They've got
6 a whole benefits department that is not there because
7 they just happened to stop by on their way to some
8 other job.

9 And the appropriations explicitly
10 referred to annuitant help. And the people who were
11 speaking at the preretirement seminars, you know,
12 don't believe them. You can say that Matthews was
13 very nonspecific. Matthews said, well, there were
14 some statements made, and they were definitive, but
15 there was no identification.

16 We have more than 50 preretirement
17 seminars authorized and conducted by the City and the
18 people who actually spoke, and they thought that they
19 were authorized.

20 Otherwise, every cop, when the radio
21 says "Go to 421 North Hudson," is supposed to say
22 "From what authority do you speak?" and "How long
23 have you been working?" And "What does Mayor
24 Emanuel -- does he have a stamp on you?" and "Let me

1 But for the core people, especially
2 the core people -- not just the 8-23-89 hires, but
3 the people who began working for the City before
4 April 1 of '86, which are most of those, they have an
5 enforceable contract. They have an enforceable
6 constitutional right.

7 I guess, in sum, our belief is that
8 the City having provided the benefit limited to,
9 flows from, exclusively to annuitants, it's protected
10 by the Constitution. That under contract, whether
11 the City agreed to provide it as a term of
12 employment, as the Funds said back when they were
13 opposing the City, and said, you know, don't believe
14 us, but take their word for it, they were -- that the
15 City provided that by contract, either as a contract
16 provider or because that was how the Funds fulfilled
17 their obligation, by hiring in the City. That's what
18 all four of them said in 1987, which all but
19 Mr. Kugler are backtracking now, and on estoppel,
20 which I guess is promissory rather than equitable.

21 People were led to believe that they
22 would have lifetime healthcare coverage in their
23 retirement. They reasonably relied on it. The
24 statements were affirmative statements made with the

1 involvement of the City sufficient to enforce it, and
2 that they suffer great detriment if the City is
3 allowed to dump them, as it's done, and as it's
4 doing, because they have nowhere else to go.

5 With that, Your Honor, I would ask
6 that you uphold the complaint, and we'll ask you --
7 we'll restate our request to reinstate the
8 preliminary -- or to primarily enjoin the City from
9 the 2013 and post changes, until the matter gets
10 finally resolved by or Supreme Court, which I think
11 is where it will eventually wind up.

12 THE COURT: Absolutely. It will end
13 up there.

14 Thank you, Mr. Krislov.

15 MR. KRISLOV: Thank you, Your Honor.

16 THE COURT: Rebuttal.

17 MR. PRENDERGAST: Mr. Krislov says
18 that Matthews has nothing to do with the Pension
19 Code. It's really all about collective bargaining
20 agreements.

21 Paragraph 59 -- paragraph 60 of the
22 Matthews opinion reads: With regard to the issue of
23 vesting, Delegate Kinney, who sponsored the
24 provision, stated that if a public employee begins

1 doubt about that.

2 I didn't take detailed notes of
3 everything counsel said about the promissory estoppel
4 issue. But the sense of it was that people went to
5 seminars. The City must have known what was in the
6 materials that were handed out, what was said, and,
7 therefore, there's a contract.

8 And as he put it, it's both the
9 contract and it's promissory estoppel, or equitable
10 estoppel. There's really no distinction between the
11 two in terms of elements.

12 First of all, one of the things that
13 Matthews says is you can't have both. You have a
14 contract claim or you have a contracted debt claim, a
15 so-called contracted debt, it is promissory estoppel.
16 But you can't have both. They're mutually exclusive.

17 THE COURT: What about the reliance
18 factor that Mr. Krislov raised, Mr. Prendergast, in
19 Section 90 of the restated second? It talks about
20 reliance, and the right to reliance, and reliance to
21 the detriment and damage therefrom? And didn't all
22 those folks have a right to rely upon someone from
23 the City coming out and saying, this is the story,
24 these are the terms, this is what you're going to be

1 employment under a pension statute that permits the
2 lowering of benefits in the future, that contingency
3 would be constitutionally permissible because it was
4 a condition of the contract that the employee
5 accepted.

6 Citation 2, the Sixth Illinois
7 Constitutional Convention, page 2934.

8 The court went on to say in paragraph
9 61:

10 [AS READ:

11 This court approved and adopted that
12 analysis more than 30 years ago, citing Kerner.

13 In Kerner, we held that where a public
14 employee becomes a member of a retirement system
15 under a statute that includes a provision which may
16 operate to deny him benefits in the future, that
17 provision does not become an unconstitutional
18 impairment of his retirement benefits because he
19 has agreed to it as a condition of membership.

20 Citing Kerner and citing Krause versus
21 Board of Trustees.]

22 Clearly, the Supreme Court in Matthews
23 addressed that issue in terms of the statute, and I
24 don't think there is any room in this case for any

1 given? Or not?

2 MR. PRENDERGAST: Well, I'm going to
3 answer that question, and then I'm going to answer
4 the beginning of that question, the part that's
5 missing from it, which is perfectly okay when you
6 break it up. But there are different elements to
7 promissory estoppel.

8 THE COURT: Of course.

9 MR. PRENDERGAST: But take paragraph
10 97 of the Matthews opinion. In support of the
11 promissory estoppel claim, Williams does not point to
12 any specific statement, either written or verbal, in
13 which the CTA promised to continue to provide
14 healthcare benefits to retirees.

15 Rather, the factual support for
16 Williams' claim is premised on the assertion that the
17 CTA began providing full paid retirement healthcare
18 benefits in 1980 and continued to provide those
19 benefits until 2009, precisely the argument we just
20 heard, which is that the City was a provider of
21 healthcare benefits.

22 The court says Williams also alleged
23 that from 1980 to July 2009, the CTA acted consistent
24 with the well-established understanding that it had

1 an obligation under the collective bargaining
2 agreement to pay for and provide retiree healthcare
3 benefits.

4 The court's holding: These
5 allegations are insufficient as a matter of law to
6 support a claim of promissory estoppel against the
7 CTA, the fact that the City did it or the CTA did it,
8 and people were operating under it and relying upon
9 it. So that -- it doesn't make any difference.

10 As a matter of law --

11 THE COURT: Why?

12 MR. PRENDERGAST: Because the court
13 says the allegations are insufficient as a matter of
14 law to support a claim for promissory estoppel.
15 That's the Supreme Court of Illinois. That's why.
16 Because that's the law, once they say it.

17 Now, I know there are people here who
18 disagree with that and think that that's inequitable
19 and unfair, but we're confined to the law, as you
20 know. And that's what the -- that's a portion of
21 this opinion, one of several portions of this opinion
22 that counsel just ignores, just ignores.

23 Now, I said the first part. The first
24 part of a promissory estoppel or equitable estoppel

1 have Social Security, and a variety of others.

2 When he talks about the people who
3 are -- most of the them are 1986 or before, he's
4 actually talking about people who are similar to the
5 Korshak people and Windows people. They have needs.
6 The City has tried to address that.

7 So it isn't -- I know this is a court
8 of equity, but this is a case -- this is a
9 constitutional case based upon the Constitution, the
10 statutes involved, and most importantly, the
11 controlling Supreme Court cases.

12 And the ones that Mr. Krislov doesn't
13 like, he doesn't cite, he doesn't go into. And
14 that's the real failing of that argument.

15 And I think that in your previous
16 decision, you thoroughly took that apart, except you
17 didn't go as far as the Supreme Court went in
18 Matthews by going to the legislative requirement.

19 But even as far as you went, and I
20 know when you rendered your decision, and I was here
21 for it, I remember when you read rendered your
22 decision, you looked out in the courtroom, and you
23 said, I am not unsympathetic to the plight of the
24 people who are here and other people and the impact

1 claim is that the person making the representation
2 has to have the authority to do so. You have to
3 allege who that person is, where they got their
4 authority, what their authority is, and you have to
5 have followed up to determine whether they have that
6 authority.

7 That was briefed the last time around.
8 We briefed it again this time.

9 Actually, Matthews goes further.
10 Matthews says not only that, but the legislature, the
11 board of the CTA, or the City Council of the City of
12 Chicago has to have enacted a referendum -- I mean a
13 resolution or an ordinance that sets forth the
14 commitment to lifetime healthcare.

15 They don't have that, and they so
16 desperately don't have it that they go to
17 appropriations ordinances, which, of course, have
18 nothing to do with it because they say nothing about
19 lifetime benefits.

20 So what's missing here, Judge, is not
21 that the plaintiffs are, you know, not sympathetic,
22 that their needs are not sympathetic. I mean, if the
23 City felt that, they would not have picked up the tab
24 for the Korshak and Windows people who probably don't

1 that this may or may not have on them. But you put
2 sympathies aside, and you apply the law.

3 And Mr. Krislov makes eloquent
4 arguments on behalf of the people that he represents,
5 but they don't carry the day as a matter of law, and
6 they have to. Otherwise, we can just ignore all the
7 Supreme Court cases, forget about Kerner, forget
8 about Matthews. And then we can just forget about
9 the constitutional provisions that are applicable
10 here and when they are triggered. And we can just
11 work off of what makes us feel good.

12 We can't do that. We all know we
13 can't do that.

14 With respect to the handbook, we have
15 been through this before, but I want to touch on it.
16 Judge Green. When they talk about Judge Green, they
17 made this argument with Judge Green. Judge Green
18 said the handbook has a page. Turn the page. On the
19 next page, the handbook says -- number one, it says
20 nothing, as you pointed out, nothing about lifetime
21 benefits.

22 But beyond that, you turn the page, it
23 states that it's only good until the City decides to
24 do otherwise. They were on notice that this was a

1 conditioned right, not unlike the time limited
2 statutes.

3 And even if you were to look at that
4 as a contract, which you can't because it doesn't
5 satisfy the statute of frauds, it's not signed,
6 doesn't have all the terms that a contract has to
7 have. Just because you have a document -- they
8 really know that's not a contract. They're still
9 back on promissory estoppel. But they fall off the
10 edge on authority on promissory estoppel.

11 Your Honor, we have addressed -- I
12 should reiterate one thing. Counsel says that they
13 were -- they preserved all rights that they had,
14 again going back to 1985 when they entered into
15 settlements.

16 I read you, and I'm not going to do it
17 again, the very language from those agreements. They
18 preserved rights against the City, not against the
19 Funds. They preserved only those rights that they
20 asserted. They didn't assert these rights. You
21 can't say, I'm going to enter into a ten-year
22 agreement, and if I come up with another theory or
23 another claim, I'll plug that in too.

24 You can if it's allowed in the

1 Your Honor, that's what the statute
2 says. It may be a floor, but it's also a ceiling.
3 If they go back to what's in place at the time the
4 lawsuit was filed, all that was in place at that time
5 for Laborers' Fund retirees is a \$25 a month subsidy,
6 period. So I want to make that point.

7 And I also want to point out that by
8 focusing on the City plan that they attach, the
9 plaintiffs, in a sense, have contradicted the idea
10 that those 1985 amendments provided for lifetime
11 coverage.

12 I agree. There's no language in the
13 statute that says "lifetime coverage." No question
14 about that. What they say is you had to approve a
15 plan. And plaintiffs allege in the complaint that
16 the City approved -- I mean, that the Fund approved
17 the City plan.

18 And, as Your Honor pointed out, that
19 City plan is not lifetime. It says right in it that
20 the City has the right to terminate the plan.

21 So if the City had the right to
22 terminate that plan, and that's the plan the
23 Laborers' Fund approved pursuant to the 1985
24 amendment, I think that totally undercuts the idea

1 agreement. But it isn't in the agreement, and it
2 wasn't allowed, and that's the conundrum that they
3 are faced with.

4 Your Honor, we have argued this a
5 number of times. You have been exceedingly patient
6 and thorough with us. Unless you have a question, I
7 have nothing further.

8 THE COURT: I have none.

9 Do any of the other parties wish to be
10 heard?

11 MR. DONHAM: I have a very brief
12 comment, Your Honor.

13 THE COURT: Sure.

14 Thank you, Mr. Prendergast.

15 MR. PRENDERGAST: Thank you, Your
16 Honor.

17 MR. DONHAM: Your Honor, if it please
18 the Court, I'd like to address a point that
19 Mr. Krislov made when he was commenting that under
20 the 1985 amendment as to the -- and I'm only going to
21 talk about the Laborers' Fund, which required the
22 Fund to approve a \$25 a month subsidy, that if the
23 pre-1989 hires have the continuing right after 1989,
24 that that's floor, the \$25 a month is floor.

1 that there were lifetime benefits there.

2 Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. KRISLOV: I promise no more than
5 two minutes.

6 THE COURT: What are you going to give
7 me when you break your promise?

8 Go ahead, Mr. Krislov.

9 MR. KRISLOV: Number one,
10 Mr. Prendergast's argument, the fact of providing in
11 Matthews, the reason that it could change in Matthews
12 was because a collective bargaining agreement is the
13 act of the authorized representative who can agree to
14 the change. That's why, although they provided it,
15 they provided it before, the fact that their
16 collective bargaining agent agreed to the change
17 which was in the first collective bargaining
18 agreement meant that the rights that they had
19 beforehand could be compromised. That's what
20 Matthews is about. That's why it's not here.

21 Judge Green's citation in the
22 handbook, I don't think he cited to it, but the
23 statement that Mr. Prendergast refers to of Judge
24 Green in his 1998 -- sorry. I know I said two

1 minutes, but I will make it quick.

2 THE COURT: You're done.

3 MR. KRISLOV: Last one.

4 THE COURT: How much time for this
5 one, Clint?

6 MR. KRISLOV: Judge Green -- the
7 decision that Mr. Prendergast refers to is the one
8 that the appellate court reversed.

9 THE COURT: Okay.

10 MR. KRISLOV: Number three, Mr. Donham
11 says, if that's the plan, then it's terminable.

12 Well, if that's the -- if the City
13 could get out of that, then it's the Funds who have
14 to come up with a new plan to replace that plan,
15 because they have the continuing obligation to
16 provide a plan for their retirees.

17 THE COURT: I understand your
18 argument. Thank you. Thanks to everybody. Thanks
19 to the annuitants who are here. I will be giving a
20 written ruling, once again, in this case forthwith.
21 It will be within two weeks or so, and you'll see
22 what I have to say about it. I wish you all well,
23 and good-bye.

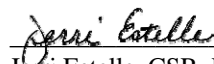
24 (Proceedings adjourned at 3:05 p.m,
July 7, 2016.)
July 7, 2016.)

1 REPORTER'S CERTIFICATE

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

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

12 IN WITNESS WHEREOF, I hereunto set my
13 hand as Certified Shorthand Reporter in and for the
14 State of Illinois on July 20, 2016.

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



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

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

Record of proceedings had at the
hearing of the above-entitled cause, before the
Honorable NEIL H. COHEN, one of the Judges of said
Court, on August 9, 2016, in Room 2308, Richard J.
Daley Center, Chicago, Illinois, commencing at
10:30 a.m.

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 17
 18
 19
 20
 21
 22
 23
 24

1 THE COURT: Underwood versus City of
 2 Chicago.
 3 On behalf of Underwood.
 4 MR. KRISLOV: Good morning, Your
 5 Honor. Clint Krislov and with me, Ken Goldstein, on
 6 behalf of the plaintiffs.
 7 THE COURT: Hi, welcome. On behalf of
 8 the City of Chicago and the four funds.
 9 MR. KENNEDY: Good morning, Your
 10 Honor. John Kennedy with Cary Donham on behalf of
 11 the Laborers' Fund.
 12 THE COURT: Hi.
 13 MR. KUGLER: David Kugler, Your Honor,
 14 on behalf of the Policemen's Annuity and Benefit
 15 Fund.
 16 THE COURT: Welcome.
 17 MS. BOECKMAN: Good morning, Your
 18 Honor. Sarah Boeckman on behalf of the Municipal
 19 Fund and the Firemen's Fund.
 20 THE COURT: Welcome.
 21 MR. DONHAM: Cary Donham on behalf of
 22 the Laborers' Fund.
 23 THE COURT: Very good.
 24 MR. PRENDERGAST: Good morning, Your

1 Honor. Richard Prendergast and Michael Layden on
 2 behalf of the City.
 3 THE COURT: Hi. Welcome. So I have
 4 before me today for consideration, which I've already
 5 considered, but I'll listen to what folks have to
 6 say: Underwood's emergency motion, for one, a
 7 reconsideration/correction/clarification of my July
 8 21st order; a request for 304(a) findings so that Mr.
 9 Krislov can appeal; and, three, a renewed motion for
 10 the issuance of a preliminary injunction with regard
 11 to the pre-1989 claims and to enjoin the City and the
 12 Funds from implementing a reduction or a change -- of
 13 the change of terms -- or a change of terms as of
 14 June 30th, 2013.
 15 I've received nothing from the Funds.
 16 I've received nothing from the City in response.
 17 Did you file something that I just
 18 never got?
 19 MR. PRENDERGAST: No, Your Honor, we
 20 haven't filed it yet when we received it for a
 21 presentment.
 22 THE COURT: All right. And what is it
 23 you wish to do, Richard, on behalf of the City?
 24 MR. PRENDERGAST: Your Honor, it's a

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1 little more complicated because the motion is really
2 three motions, and they involve different rulings by
3 the Court.
4 So, for example, on the motion for
5 injunctive relief, we believe that -- we would be
6 happy to brief it if the Court wants us to brief it,
7 but --
8 THE COURT: Well, I'll tell you, I'm
9 ready to rule on that today, but you do what you want
10 to do. I'm going to rule on that one way or the
11 other.
12 And however I rule, I will expect --
13 you know, we'll see what happens.
14 Go ahead. How about the motion for
15 reconsideration/correction/clarification of my June
16 21st order?
17 MR. PRENDERGAST: I'm prepared to
18 argue that today.
19 THE COURT: All right. So you don't
20 wish to submit anything on that in writing?
21 MR. PRENDERGAST: I don't think we
22 have to. It's just a fairly narrow --
23 THE COURT: And what is your position
24 about the request for the 304(a) findings so that Mr.

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1 Krislov can appeal?
2 MR. PRENDERGAST: Our position is that
3 the Court should deny the motion.
4 THE COURT: And the reason?
5 MR. PRENDERGAST: Your Honor, I think
6 it's not an appropriate 304 finding because it
7 certainly --
8 THE COURT: Because it's a motion to
9 dismiss?
10 MR. PRENDERGAST: In part because it's
11 a motion to dismiss and in part because there's a
12 great deal of overlap between the disposition of that
13 motion and the matter that remained before the Court.
14 It's not a clear, distinct issue that
15 should go up on appeal. In fact --
16 THE COURT: Because it doesn't wish to
17 appeal all of the claims that are --
18 MR. PRENDERGAST: Well, no. It's not
19 -- a 304(a) finding anticipates that all of the
20 claims are not going to be appealed, but there has to
21 be a clear distinction between the claims that are
22 appealed under 304(a) and everything else in the
23 case.
24 And these --

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1 THE COURT: But it's your feeling that
2 they're so inextricably intertwined that you can't
3 rule on one without the other?
4 MR. PRENDERGAST: That's right. That
5 is our view.
6 And it is also our view that based
7 upon the language of appellate court cases that deal
8 with 304(a), one of the things that the Court is
9 admonished to avoid is piecemeal litigation.
10 So we're staying down here on some
11 subclasses, going up on another subclass, but not all
12 the issues on that subclass, Your Honor. That is the
13 height of piecemeal litigation.
14 THE COURT: Well, the Court's July
15 21st order ruled specifically and narrowly, but I
16 think clearly, regardless of Clint's position
17 otherwise, with regard to the merits, with regard to
18 the 1983 and 1985 changes and who's entitled or not
19 to receive the benefit of those; did it not?
20 MR. PRENDERGAST: It did. But it's
21 not clear to me at all that his 304(a) motion is
22 designed to address that issue.
23 THE COURT: Okay.
24 MR. PRENDERGAST: The 304(a) motion,

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1 it seems to me, is designed to address that issue
2 regarding the post -- the subclass four that deals
3 with those who were --
4 THE COURT: I ruled clearly on that
5 one as well, did I not?
6 MR. PRENDERGAST: You did. You did
7 rule clearly on that one.
8 But Mr. Krislov has brought this case
9 on behalf of four subclasses, all involving the same
10 clause of the constitution, all involving the same
11 history.
12 And the appellate court, in dealing
13 with those kind of issues, has spoken to that kind of
14 piecemeal litigation.
15 I can just give you a quote here.
16 THE COURT: Well, let me talk to you
17 about piecemeal litigation, and I'll listen to what
18 you have to say, Mr. Krislov, but, of course -- and
19 the funds, of course.
20 But in a very -- this is a class
21 action. And in a very true sense, there are four
22 distinct groups of folks whose healthcare benefits or
23 not, are being -- are in play here. But they're four
24 distinct classes, as everyone has agreed.

1 If I've already ruled with regard to
2 three of them, as I have, Korshak, Windows and
3 subclass four, there's nothing left, really. I
4 think, as Mr. Krislov suggested, even though he
5 disagrees with my ruling in some cases, there's
6 really nothing left to do with regard to those, and
7 there's nothing piecemeal about an appeal of those
8 four -- three out of four distinct groups.

9 And it seems to me, Richard, that it's
10 important for the -- we're talking about people. And
11 it's important for those people to know where they
12 stand so that they can make accommodations if
13 necessary.

14 Not so much with regard to the Korshak
15 and Windows class, because the City has agreed to
16 cover them, and I'm sure they've agreed to accept
17 that. But certainly with regard to subclass four,
18 which the City says it has no obligation to cover in
19 terms of healthcare benefits. And I've agreed with
20 you.

21 But in the meantime, it's nice that
22 I've agreed -- from Mr. Krislov's point of view, it's
23 nice that I've made that decision, even though he
24 disagrees with me, but it doesn't help those folks.

1 And as soon as it gets reviewed with a
2 final review, the better it is from those human
3 beings' point of view so that they can make those
4 accommodations or not. That's not piecemeal.

5 And maybe even if you were to think of
6 it as piecemeal, this Court's position -- at least
7 I'm waiting to hear from you again with regard to
8 what I say, it's only fair -- is that even though it
9 may be piecemeal as to those, they're a little
10 universe unto themselves, or a big universe unto
11 themselves. They have a right to know. You've won
12 on that, but they have a right to know whether I'm
13 right or not.

14 And extending the timeline during
15 which they're in limbo, so to speak, since I'm only
16 one guy, and I'm at the trial court level, it's
17 harmful and doesn't do what I want to be done and I
18 think what the law requires, which is to have some
19 finality over an important group of people who
20 deserve to know whether I'm right or I'm wrong.

21 I do believe I'm right. I think
22 Matthew says I'm right, and I said that before.
23 Clint thinks I'm wrong, and he's entitled to his
24 belief, and he's entitled to appeal my ruling.

1 So I don't see why there's any reason
2 to prevent them from going on and issuing 304(a)
3 language as to that group.

4 Tell me why I'm wrong about that, from
5 the City's point of view.

6 MR. PRENDERGAST: I'm looking at this
7 in terms of --

8 THE COURT: And, by the way, let me --
9 I'm sorry to interrupt you, hopefully, for the last
10 time, but I wouldn't bet on it.

11 It's important for the City to know
12 this too and to get final resolution just for that
13 subclass four so they know whether to raise my
14 property taxes some more or not. This is important
15 for everybody to know as soon as possible.

16 We're not talking about piecemeal
17 litigation in an amorphous way. We're talking about
18 dollars and cents and people's lives so they know
19 what they've got to do.

20 And so the City knows what it has to
21 do, even though I'm sure it loathes to raise any more
22 taxes here or there. Who wants to? But they're
23 going to have to if I'm wrong.

24 Wouldn't the City want to know that

1 sooner rather than later?

2 MR. PRENDERGAST: Your Honor, I think
3 that we're past the motions to dismiss in this case.
4 There's not a whole lot of discovery to be done in
5 this case. We're going to have -- if we can get this
6 case moving throughout this year.

7 When we talk about piecemeal
8 litigation in the context of this case, we're talking
9 about an appeal that is currently pending on the
10 injunction -- the denial for a preliminary injunction
11 for injunctive relief. Now, we're going to have
12 another appeal that pertains to one piece of this
13 litigation, pertaining to one portion of the
14 plaintiffs.

15 And what the appellate court has said
16 under those circumstances is that permitting separate
17 appeals in such a case would require the appellate
18 court to relearn, inefficiently, the same set of
19 facts when the case returns for a second appeal
20 following the final judgment on all of the claims.

21 That's a quote from Walters versus
22 Morton. I'd be happy to brief this issue, and I
23 understand your point.

24 THE COURT: It's factually intensive.

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1 I don't need the law. I know the law and you know
2 the law. And piecemeal litigation is not something I
3 haven't heard before.
4 MR. PRENDERGAST: Sure.
5 THE COURT: And you haven't uttered
6 before. So I'm aware of that.
7 But I -- it's factually intensive, and
8 that's the important thing here. And I don't want to
9 cut you off, so you may continue.
10 MR. PRENDERGAST: But you didn't cut
11 me off, Your Honor.
12 This is obviously an issue that falls
13 within the discretion of the Court. I respect the
14 Court's discretion. I think all the lawyers here do.
15 But I do believe that litigation that
16 constantly resurrects itself in an appeal on an
17 interlocutory basis, we have an interlocutory appeal
18 there now, and --
19 THE COURT: I want to talk to you
20 about that in a second, but go ahead.
21 MR. PRENDERGAST: We have an
22 interlocutory appeal there now. We're going to have
23 another one. We've had multiple motions for
24 injunctive relief in this case from the beginning,

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1 both in federal court and state court.
2 Every time Mr. Krislov experiences an
3 adverse ruling, we have an amended complaint or
4 appeal.
5 The piecemeal nature of this case has
6 really, I think, gotten out of hand. I think this is
7 the classic case in which the Court says, I'm going
8 forward with this case. We're going to proceed with
9 it, and the motions to dismiss are behind us. Let's
10 go.
11 THE COURT: Okay.
12 MR. PRENDERGAST: And that's my view.
13 THE COURT: What about the Funds?
14 Would the Funds like to chip in on this? I assume
15 you all endorsed Mr. Prendergast's point of view, and
16 if not, I would love to hear from you.
17 David, would you please state your
18 name, please.
19 MR. KUGLER: David Kugler for the
20 Policemen's Annuity Fund.
21 Your Honor, the Fund would abide by
22 Your Honor's ruling. On the 304 we don't see any --
23 we have no objection to it going forward on the 304
24 language.

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1 MS. BOECKMAN: Sarah Boeckman for the
2 Municipal and the Firemen's Fund.
3 We adopt Mr. Prendergast and the
4 City's position on both the 304, the motion to
5 reconsider, and the motion -- the injunction motion
6 -- the motion for injunctive relief.
7 THE COURT: Okay.
8 MR. KENNEDY: Good morning, Your
9 Honor. John Kennedy on behalf of the Laborer's Fund.
10 The Laborer's Fund also endorses Mr.
11 Prendergast's comments with respect to all three
12 motions.
13 THE COURT: Okay. Well, interesting.
14 Curious.
15 I'm going to hold my ruling on that in
16 abeyance, pending our discussion of other matters
17 today, and I'll give you my final ruling on that.
18 And, Clint, I would love to hear what
19 you have to say, but when I was a young prosecutor,
20 and when I was a defense counsel thereafter, both
21 civil and criminal, I learned one rule, which is when
22 you're winning, say nothing.
23 Are you with me on that?
24 MR. KRISLOV: I'm with you, Your

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1 Honor.
2 THE COURT: Is there anything you'd
3 like to say with regard to 304(a) only with regard
4 right now to subclass four?
5 MR. KRISLOV: Well, 304(a) is with
6 regard to everybody because your ruling is definitive
7 on the law with respect to everybody and subclass --
8 THE COURT: But it's not with regard
9 to subclass three, wouldn't you agree?
10 MR. KRISLOV: Oh, no. It is
11 definitive with respect to --
12 THE COURT: Well, then you do need a
13 clarification. It's not.
14 MR. KRISLOV: Okay.
15 THE COURT: Tell me how is it
16 definitive with regard to subclass three.
17 MR. KRISLOV: If your March --
18 THE COURT: It is not with regard to
19 the statute of limitations aspect.
20 MR. KRISLOV: Well, that's -- I
21 understand that part.
22 THE COURT: All right. Just so we
23 understand.
24 MR. KRISLOV: Yes. But with respect

5 (Pages 14 to 17)

1 for their entitlement, which you ruled in your -- I
2 believe it's the March clarification, you ruled that
3 the subclass three is entitled to just what the
4 statute provides. No more, no less. And that's a
5 matter of law, and that they're not entitled under
6 contract --

7 THE COURT: That's before Matthews
8 came down, and then when I said that it's time
9 limited. Yes?

10 MR. KRISLOV: Well, in that you said
11 that -- well, that was -- I guess that was before
12 Matthews came down.

13 But if your clarification in March was
14 that what they're entitled to is just what the
15 statute provides --

16 THE COURT: Yes.

17 MR. KRISLOV: -- that's a clear ruling
18 on the law, which, obviously, we disagree with.

19 THE COURT: Sure.

20 MR. KRISLOV: Your rulings on the law
21 were very clear. And while I disagree with you, I --
22 you know, I appreciate clear and definitive rulings.

23 And on the law, your rulings I think
24 are -- leave no -- there's no fuzzy area. I think

1 the statute of limitations issue will -- we think
2 will blow away clearly, but whatever.

3 THE COURT: Why?

4 MR. KRISLOV: Oh, because the clear
5 intent of the preservation of the reservation of
6 rights, which was in all the settlements, including
7 the one that expired in 2013, was everybody's rights
8 get reserved to revive the case if at the conclusion
9 of the settlement there has been no permanent
10 resolution.

11 That was in the '87 and codified in
12 the '89 agreement. That was in the '97 agreement,
13 which we were not parties to. That was in the 2003
14 agreement.

15 I think your first ruling rejecting
16 the statute of limitations, you know, I think that
17 will hold. But that sort of -- call that a side
18 issue, but on everything else, and even on that, I
19 think we will -- we will prevail in the appellate
20 court.

21 And it's time to get a second opinion,
22 if you will, on all these issues.

23 And the core group of class --
24 subclass three -- I mean, one of the difficult things

1 of this since you have refused at this point to
2 certify the case as a class action, but the case
3 definitively, and everybody agrees, should be -- is
4 treated for each class differently.

5 I think it's -- we would think it's
6 time to certify the class, but whatever.

7 The 304(a) findings are really to get
8 your clear decision to the appellate court. I'll
9 make Mr. Prendergast a deal, and I'll let the thing
10 take as long as it wants to get resolved at the trial
11 level as long as we reinstate the 2013 status quo,
12 because then the participants --

13 THE COURT: Well, you make any deal
14 you want outside the auspices of this Court. That's
15 not before me. We're not at marketplace here. So do
16 it on your own time, not mine.

17 MR. KRISLOV: I'm just saying,
18 procedurally, I would be willing to forego 304(a) and
19 let the whole thing play out, as long as the City was
20 willing to reinstate the 2013 status quo so that the
21 retirees can have their benefits continue while the
22 matter is being litigated.

23 THE COURT: Okay.

24 MR. PRENDERGAST: Your Honor.

1 THE COURT: Yes, please.

2 MR. PRENDERGAST: I beg your pardon.
3 First of all, I'm not making any deals
4 today.

5 Secondly, I think it's going to be
6 very interesting to see what this 304 language looks
7 like.

8 THE COURT: Yes, and I don't have --

9 MR. PRENDERGAST: Based upon what --
10 and he hasn't submitted anything.

11 THE COURT: I would need the 304
12 language that you suggest. Although, I do have the
13 normal language; is that what you meant?

14 MR. KRISLOV: That's all you want.
15 That's all we're asking for is that there's no just
16 cause to delay enforcement or appeal of the
17 decisions.

18 MR. PRENDERGAST: Decisions. You see,
19 the plural pops up.

20 Counsel forgets that the motion to
21 reconsider being ruled on had to do with your
22 interpretation of the '83 and '85 amendments.

23 THE COURT: Yeah.

24 MR. PRENDERGAST: That's what that has

1 to do.

2 THE COURT: Yeah.

3 MR. PRENDERGAST: What his motion for
4 a 304(a) is predicated on this. There is -- as you
5 have just addressed in your remarks, is addressed in
6 one group of people, particularly, the fourth
7 subclass, because they, as you put it, they don't
8 know what the future bodes for them.

9 What counsel really wants to do here
10 is off of a motion to dismiss, he wants to take a
11 full appeal of every issue in this case. That's what
12 he wants.

13 THE COURT: Yes.

14 MR. PRENDERGAST: And he's going to
15 call it a 304(a).

16 Your Honor, that's not what 304 is
17 there for. 304(a) is, for example, if there's one
18 party that has a complete adjudication of that
19 party's rights but the other -- but not an
20 adjudication of the other party's rights, then that
21 one party comes in and asks for a 304(a) finding so
22 they can get out of the litigation.

23 What we're trying to do here -- this
24 reminds me of the effort to go back a sentence or

1 two, is that Judge Green commented at one time or
2 another in the litigation. It always pops up in the
3 briefs. He wants to take an appeal of the entire
4 matter.

5 That's not appropriate in this case.
6 There are issues, as you pointed out, with respect to
7 subclass three that have yet to be adjudicated.

8 And subclass one and two, you're
9 right, the City has indicated that it's going to meet
10 its obligations and has met its obligations. It's
11 going to gratuitously extend the rights to them.

12 But he's going to be up there arguing
13 every one of the issues that we've spent all this
14 time arguing on the motion to dismiss. He wants to
15 take the shortcut, and that's not what 304(a) is for.
16 That's there for a very specific --

17 THE COURT: I understand. So let me
18 ask you this: I would like each party's point of
19 view on this, if I were to -- I feel as though I've
20 already denied the -- the motion to dismiss with
21 regard to the Korshak and Windows class is really
22 moot, is it not, Clint, because the City is doing
23 exactly what you want?

24 MR. KRISLOV: No, not exactly.

1 THE COURT: Tell me what you're
2 missing, what they're not doing that you want.
3 They're giving all the benefits they
4 would have otherwise gotten.

5 MR. KRISLOV: No, no. What they are
6 doing is instead of at least 50 percent, they are
7 saying they will do up to 50 percent. That's what
8 they said they would do.

9 They have made minor changes in the
10 amounts. It less impacts them than the group three
11 and four, but those people are not moot.

12 MR. PRENDERGAST: You see, that's the
13 whole point, Judge.

14 THE COURT: Well, if that's the case,
15 then isn't that something that I have to deal with on
16 summary judgment or trial? It's never going to get
17 to summary judgment -- I mean, to trial on that.

18 But summary judgment -- I just dealt
19 with a motion to dismiss, and I just ruled that
20 because they -- because they have offered to do that
21 which they are obligated to do -- obligated to do --

22 MR. KRISLOV: No. I disagree with you
23 on that.

24 THE COURT: Well, let me finish the

1 sentence before you disagree with me --

2 MR. KRISLOV: Sorry.

3 THE COURT: Just because it's
4 courteous.

5 MR. KRISLOV: I apologize. I
6 apologize.

7 THE COURT: That it's all mooted out.
8 If you feel it's not, then maybe 304(a) language is
9 not appropriate because there's other issues to be
10 resolved.

11 I thought it was. I thought they
12 acknowledged everything that they should be doing and
13 that they're doing it for the benefit of those folks.

14 And you think not, okay.

15 Then there's some factual issues to be
16 decided within those two subgroups that make 304(a)
17 language inappropriate because they're not done. I
18 thought they were.

19 And I would have given you 304(a),
20 just so the record is clear, because I thought they
21 were down. You say they're not. I'm surprised to
22 hear that. Okay. You got it. It's denied as to one
23 and two.

24 Would you agree -- I'm not done.

1 Would you agree with regard to subclass four where I
2 said that it is time -- well, it's time -- it was
3 time limited by its own terms, and I denied and I
4 granted the motion to dismiss? Would you agree that
5 that is done and subject to appeal, even though
6 Richard has said it would be a piecemeal appeal?

7 MR. KRISLOV: You've dismissed their
8 claim, the class four claim -- subclass four claim
9 entirely, yes.

10 THE COURT: Okay. I will grant 304(a)
11 language as to subclass four so those folks can know
12 one way or the other and have resolved as an
13 independent group of folk, although, under the
14 umbrella of the purported class, they can know what
15 they're supposed to do one way or another as soon as
16 possible in terms of modifying where they're going to
17 allocate their income or whatever funds they already
18 have.

19 So they should know, and the City
20 should know as well. Everybody should know.

21 I'll grant you 304(a) language as to
22 subclass four pursuant to Illinois Supreme Court Rule
23 304(a), I feel, as to that subclass. There's no just
24 reason to delay enforcement or appeal of my order

1 with regard to them.

2 Okay. What's your position with
3 regard to subclass three?

4 MR. KRISLOV: Your ruling was as a
5 matter of law, the governing law of the case. That
6 ruling governs how it plays out for everybody.

7 THE COURT: You're wrong, because you
8 misinterpreted my ruling. I didn't make any ruling
9 with regard to subclass three if you'll read my 721.

10 MR. KRISLOV: You ruled --

11 THE COURT: I'm not done, Clint.

12 MR. KRISLOV: I'm trying to answer
13 your --

14 THE COURT: I didn't ask you -- I'm
15 not asking you a question. I'm telling you what I
16 ruled, since you have misquoted me.

17 I ruled there is no way I can know
18 whether subclass three is covered or not, because I
19 don't know whether the statute of limitations applies
20 or not.

21 I don't know what they knew at the
22 time that -- they're participants. They're not
23 retirees. I don't know what they knew as of 1989 or
24 not. Certainly, they couldn't be part of the Korshak

1 litigation because they weren't even in existence
2 then.

3 So the only issue with regard to --
4 it's a separate and discrete group. And I can't say
5 whether the statute of limitations applies or not.
6 That's good for you.

7 If it couldn't have, then they're in.
8 If it does, if they did know what they could have
9 done in order to assert their claims, they're out.
10 But I don't know -- I don't have any facts that would
11 -- let me finish speaking, Clint.

12 MR. KRISLOV: I haven't said anything
13 yet.

14 THE COURT: I have received no facts
15 upon which I can make a judgment as to whether this
16 statute of limitations applies or not. So that was
17 my ruling with regard -- with regard to them.

18 Now, I also ruled about the time
19 limitation aspect that is time limited in the
20 amendment. It's true that I did make a ruling with
21 regard to that per Matthews, but there's another part
22 to that, and that's the statute of limitations.

23 And so subclass three is in a position
24 where it may be time limited, but there's no way they

1 ever could have asserted a claim, and I don't want to
2 kick them out of court. I don't want to limit their
3 ability to assert their claim if the statute of
4 limitations hasn't run.

5 I don't know. We'll see. But that's
6 not final yet. I just can't know.

7 MR. KRISLOV: But --

8 THE COURT: Go ahead.

9 MR. KRISLOV: Your ruling was that
10 subclass three were entitled to just their rights
11 under the -- to what was given to them under the
12 Pension Code statute.

13 THE COURT: True.

14 MR. KRISLOV: And you dismissed their
15 claims with respect to contract, estoppel, equal
16 protection, the whole schmear, everything except the
17 constitutional claim, which you defined in your
18 previous clarification as being limited to just what
19 the statute provides.

20 THE COURT: So you're arguing that the
21 statute of limitations -- that you're taking
22 Richard's point of view, that the statute of
23 limitations is irrelevant because it's either time
24 limited or it's not. Yes?

1 MR. KRISLOV: No. They're not time
2 limited. You held they're not time limited, but I
3 don't agree that they are entitled to no more, no
4 less than what just the Pension Code provides.

5 That's an issue of law. The whole
6 thing is an issue of law, and that's an issue which
7 the appellate court can and should rule on.

8 THE COURT: Okay.

9 MR. KRISLOV: And which the core --
10 the core people in category three, subclass three,
11 those are people who are, for the most part, not
12 covered.

13 Their city employment doesn't qualify
14 them for Medicare coverage no matter how old they
15 get. They are, for the most part, retired, although
16 there are some people who still haven't retired
17 because they started working before August 23 of
18 1989. They are in a very precarious situation.

19 THE COURT: I hear you. That's
20 another subject.

21 MR. KRISLOV: Well, but no, because
22 that's why granting the 304(a) language, just the
23 plain 304(a) language, to be able to take your
24 rulings on the law up and get it decided in a timely

1 fashion so these people can make their decisions
2 knowing what their rights actually are.

3 And it can't go to December 31st
4 because the sign-up date for Obamacare, they're going
5 to have see if they can buy Medicare. They have all
6 sorts of things.

7 The City loves this delay. They have
8 asked for and they have gotten the -- they love the
9 piecemeal. We're trying to get this all wrapped up
10 in a package.

11 And if it gets up -- and if you'll
12 give us the 304(a) findings, we will get it up
13 immediately to the appellate court, and we will get
14 the appellate court to deal with these questions of
15 law because if I'm right --

16 THE COURT: Well, before you get to
17 you being right, tell me, because I'm -- I may have
18 missed something. And I would like to hear what both
19 of you have to say about subclass three and where the
20 statute of limitations argument fits in.

21 And I'd like to start with you,
22 Richard.

23 We'll get back to you.

24 MR. PRENDERGAST: Your Honor --

1 THE COURT: What's your position about
2 that?

3 MR. PRENDERGAST: Your Honor, you
4 denied the motion to dismiss without prejudice on the
5 statute of limitations because you found that it was
6 a factual issue that needed to be developed here.

7 THE COURT: Yeah.

8 MR. PRENDERGAST: You denied the
9 motion to dismiss as to subclass three. How can
10 counsel talk about taking an appeal from the denial
11 of our motion to dismiss?

12 What he wants to do is to take every
13 issue in this case that is of interest to him and get
14 a whole fresh look from the appellate court on that.

15 But that's not what 304(a) is. 304(a)
16 deals with dispositive rulings because you cannot
17 have a 304(a) finding unless you have a final
18 judgment -- a final judgment within the case.

19 That's why a motion to dismiss with
20 prejudice, as you did with respect to class four, is
21 a final judgment, which meets one of the two prongs
22 for a 304(a) finding. And then we go on to the
23 discretionary issues of whether it is in the best
24 interest to allow appeal.

1 They're not past prong one because
2 they're -- what he wants to do is send up to the
3 appellate court a lot of interesting issues.

4 What he really ought to do, I suppose,
5 is file a 308 motion and ask you to certify 15
6 questions, because that's the only way you can get up
7 the appellate court on the specific issues where you
8 do not have a final judgment.

9 You didn't dismiss count three -- I
10 mean class three, so you can't make a three -- you
11 can't make a finding on 304(a) as to that.

12 THE COURT: Okay. And you get last
13 ups on that, Clint.

14 MR. KRISLOV: This is exactly what
15 304(a) is for. You have made rulings on controlling
16 issues of law that govern the rights of all four
17 classes. And that is, do I want a fresh look at the
18 appellate court? Absolutely. That is what 304(a) is
19 for.

20 And it is not -- it is not where you
21 get -- if you want to dismiss the whole case at this
22 point so we can get an appeal so we can get a fresh
23 look, I mean, I don't think you want to do it.

24 THE COURT: I understand why you want

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1 a fresh look. And, by the way, I'm not against that,
2 but I have to follow procedure and the right
3 procedure.
4 MR. KRISLOV: And this qualifies --
5 I'm sorry. I didn't mean it. I'm not trying to
6 interrupt.
7 THE COURT: It's okay.
8 MR. KRISLOV: This is what 304(a) is
9 there for.
10 And the cases -- the AT&T case, I
11 guess, is the governing -- the issue, is there
12 controlling law? The answer is, there is, your
13 determinations of law.
14 In fact, the statute of limitations is
15 not a factual issue, if you think about it.
16 THE COURT: Tell me.
17 MR. KRISLOV: Because we know exactly
18 what the situation was.
19 These people were participants by
20 definition on August 23 of 1989. And so the
21 reservation of rights protects them as well as people
22 who were retirees. They were participants --
23 THE COURT: The reservation of rights
24 in the settlement?

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1 MR. KRISLOV: No. The reservation of
2 the rights in the entitled, yes.
3 THE COURT: They weren't parties to
4 the settlement. There's no way they could have been
5 covered by that settlement. They were not a party to
6 it.
7 The reservation of rights, therefore,
8 as a matter of fact and law does not protect them.
9 It doesn't cover them. It can't. They -- no one
10 negotiated on their behalf. You didn't. They didn't
11 exist at the time.
12 So there's no way that their rights
13 are reserved by an agreement to which they were no
14 party. That's just, you know, logic.
15 Yes, the man in the striped tie.
16 MR. KRISLOV: They were -- they
17 existed then. The restoration --
18 THE COURT: Some of them did; some of
19 them didn't.
20 MR. KRISLOV: No. All of them
21 existed.
22 THE COURT: What was the date of the
23 agreement of the settlement?
24 MR. KRISLOV: The settlement agreement

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1 was not finalized, and it was eventually --
2 THE COURT: What's the date of the
3 settlement agreement?
4 MR. KRISLOV: The settlement agreement
5 started in 1987.
6 THE COURT: I know.
7 MR. KRISLOV: Sorry. In eighty --
8 THE COURT: Ken, do you know the date?
9 MR. GOLDSTEIN: I don't know the date.
10 MR. KRISLOV: It would have been,
11 like, fall of '88.
12 THE COURT: Okay. So some people were
13 in existence. Remember, we're talking -- that's the
14 problem with subclass three. It's really two
15 separate subclasses within it. There are some who
16 were in existence before the settlement agreement was
17 finalized, and there were some, i.e., participants,
18 people who were hired after the settlement agreement
19 was finalized, but before August 23rd, 1989, who were
20 not.
21 That's the problem with knowledge that
22 I talked about in the statute of limitations.
23 So there you go.
24 MR. KRISLOV: My turn?

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1 THE COURT: Please.
2 MR. KRISLOV: Those people existed at
3 that time.
4 THE COURT: Not all of them.
5 MR. KRISLOV: Oh, no. They existed.
6 THE COURT: Okay. We have a
7 disagreement --
8 MR. KRISLOV: Whatever.
9 THE COURT: -- that I just outlined.
10 MR. KRISLOV: Fine.
11 THE COURT: How about someone who came
12 to work for the City as a cop or as a fireman or
13 whomever after this final settlement was reached, but
14 before August 23rd, 1989? They didn't exist.
15 MR. KRISLOV: They get the benefit of
16 the settlement. Yes, they do, Your Honor.
17 And the reason why is because the
18 settlement restores -- gives the participants the
19 right to restore the litigation to --
20 THE COURT: Gives the party to the
21 agreement.
22 MR. KRISLOV: No.
23 THE COURT: Not people who no
24 longer --

10 (Pages 34 to 37)

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1 MR. KRISLOV: Yes, it does.
2 THE COURT: Excuse me. Not people who
3 don't exist yet. It's impossible.
4 MR. KRISLOV: It's not. I disagree,
5 Your Honor. And it's a matter of law.
6 THE COURT: What a surprise.
7 MR. KRISLOV: Rule against me --
8 rule --
9 THE COURT: I did.
10 MR. KRISLOV: -- against me on that.
11 THE COURT: I did.
12 MR. KRISLOV: And we'll take -- that
13 is one of the issues we'll include.
14 THE COURT: No.
15 MR. KRISLOV: But it's a matter of law
16 as to whether they're --
17 THE COURT: No. There's a question of
18 fact as to the statute of limitations issue.
19 MR. KRISLOV: What is it that we could
20 possibly show you that would -- they were on notice
21 that the settlement existed?
22 THE COURT: I don't know that. I
23 don't know that. I don't even know that they knew
24 anything before -- how would they know something

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1 before they existed?
2 And if they did know something, what
3 did you do? Did you send them letters? That's
4 interesting, Clint. Why don't you give us the
5 evidence. Give it to them so we know.
6 MR. KRISLOV: The City sent the
7 notices.
8 THE COURT: Okay.
9 MR. KRISLOV: But the -- they get the
10 benefit of restoring the litigation to what it was on
11 October 19th, 1987.
12 Yes, they do, Your Honor. And there
13 isn't a fact that you need to decide that they
14 were --
15 THE COURT: Someone who doesn't exist
16 gets the benefit of an agreement to which they were
17 not a party. That's an interesting concept.
18 I disagree with you, but we're not yet
19 there because there's other factual issues to decide
20 with regard to subclass three.
21 MR. KRISLOV: Then, Your Honor, I want
22 an immediate briefing schedule on the statute of
23 limitations issues --
24 THE COURT: You had it. You lost.

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1 MR. KRISLOV: Well, then --
2 THE COURT: Move on.
3 MR. KRISLOV: Make them bound. Then
4 give me --
5 THE COURT: Clint, this is not take
6 your ball and go home. You lost on that one.
7 There's a factual issue. You didn't really lose
8 yet --
9 MR. KRISLOV: I didn't lose.
10 THE COURT: You didn't really lose.
11 It's a factual issue to be fleshed out.
12 MR. PRENDERGAST: Which is exactly,
13 Your Honor --
14 THE COURT: So that's why you're not
15 going to get 304(a) language with regard to subclass
16 three.
17 MR. KRISLOV: Your Honor, 304(a)
18 language is not issue limited. 308 language is.
19 THE COURT: You and I disagree about
20 that as well.
21 Your motion for 304(a) language with
22 regard to subclass three is denied.
23 MR. KRISLOV: Your Honor, then may we
24 proceed to the preliminary injunction --

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1 THE COURT: We will. Sure.
2 Absolutely.
3 But I just want to make sure your
4 position with regard to the Korshak class and the
5 Windows class is that there is a disagreement of
6 facts with regard to those two classes and that which
7 you believe they're -- the benefits they're entitled
8 to.
9 MR. KRISLOV: No. There is a
10 disagreement of law.
11 What they're entitled to -- Police,
12 for one, were entitled to a premium and an amount and
13 the police fund paying it. Firemen, same thing.
14 THE COURT: Sure.
15 MR. KRISLOV: Municipal and Laborers,
16 different.
17 THE COURT: The City has agreed to
18 cover them, have they not?
19 MR. KRISLOV: No, not in that fashion.
20 THE COURT: Richard, tell me how it
21 differs, just so everything is fair. I don't want to
22 feel like I'm setting up anybody.
23 MR. PRENDERGAST: I don't want to set
24 up anybody.

11 (Pages 38 to 41)

1 THE COURT: This is for me to
2 determine whether I should give 304(a) language with
3 regard to the Korshak and Windows class. And I've
4 dismissed those classes.

5 MR. PRENDERGAST: You dismissed those
6 claims.

7 THE COURT: Those claims. But Clint
8 now says he didn't get -- you told me you were -- the
9 reason I did is not because of the statute of
10 limitations. I felt I didn't have to do that because
11 you -- I didn't even have to deal with it because you
12 told me the City was going to cover them.

13 I accepted that as to completely cover
14 them pursuant to the settlement agreement. Am I
15 wrong?

16 MR. PRENDERGAST: No, you're not
17 wrong, Your Honor.

18 THE COURT: Clint says I am.

19 MR. PRENDERGAST: I know Clint says
20 you are. And I can guarantee you whenever an issue
21 arises between the -- regarding the eighty --
22 regarding the Korshak or Windows classes with respect
23 to what they're getting, Clint will be back here to
24 tell you that we're not doing what he thinks we're

1 supposed to do.

2 But this is not the place to deal with
3 that negotiation. This is the place to deal with the
4 fact that you've dismissed that claim because we've
5 told you we're going to take care of the '83 and '85
6 classes.

7 THE COURT: Is there any reason to not
8 give 304(a) language as to that, if Clint wants to
9 disagree with you?

10 MR. PRENDERGAST: Well, that -- those
11 claims were dismissed on that basis. I don't see any
12 reason that -- I don't know what issues he thinks
13 he's going to raise on '83 and '85.

14 Does he think he's going to get for
15 '83 and '85 the rates that would apply to nineteen --
16 to 2016?

17 THE COURT: I don't know.

18 MR. PRENDERGAST: Because he wants to
19 go back to settlements? I mean, I don't know what
20 Mr. Krislov thinks that -- what he thinks he should
21 be entitled to.

22 We will work through with him. If
23 that's not the case, he'll be back in court on it. I
24 mean, we haven't agreed on anything in four or five

1 years, so...

2 THE COURT: Well, here's what I would
3 like to do. I will reserve my ruling on 304(a)
4 language with regard to Korshak and Windows class for
5 you all to discuss the matter and see whether you
6 have an agreement as to what the issue is on it or
7 not.

8 I have -- as I've told you, Clint, I
9 believe, the City has agreed to cover them entirely
10 pursuant to the agreement -- pursuant to the
11 settlement agreement. And you tell me that that's
12 not the case.

13 I'm going to ask you, please, to have
14 a conversation. Call it a 201(k) conversation, as
15 you wish, to see if they're -- to see what your
16 positions are.

17 If you're asking for something more
18 than that which was settled, what the agreement was,
19 you're not going to get that. If your position is
20 that regardless of the settlement, anything that was
21 given thereafter should enure to their benefit, which
22 may be your position, as I understand it now, then
23 you should -- we should know that and Richard should
24 know that, because, actually, I thought I granted you

1 everything you wanted with regard to Korshak and
2 Windows.

3 Now I'm not so sure because of what
4 you said, and I'd like you to make it clear to me.
5 So I will hold the 304(a) issue open with regard to
6 class -- I call them class one and class two in my
7 mind, but it's the Korshak and Windows class pending
8 your discussion. Fair?

9 MR. PRENDERGAST: Fair.

10 THE COURT: Fair?

11 MR. KRISLOV: Fair.

12 THE COURT: All right. Let me -- hold
13 on a second. You can't --

14 Yes, Clint, go ahead.

15 MR. PRENDERGAST: When I -- did you
16 want to go?

17 MR. KRISLOV: Yes, please. Your
18 ruling that -- I mean, this is when we get to the
19 equal protection.

20 This is the class three. The class
21 three has the same rights that class one and --

22 THE COURT: Yes. I disagreed with
23 you. I ruled against you. That was your motion to
24 reconsider.

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1 I think you're totally wrong. I think
2 class three is in a distinctive group where from
3 class one and class two.
4 Further, I think there's a rationale
5 basis for the City based upon its economic straits,
6 et cetera, to have distinguished between class one
7 and two on the one hand, class three on the other,
8 class four on the other. All you need is a rationale
9 basis when it comes to this. There is one.
10 You can't for the sake of -- you've
11 lumped them together for the purposes of a class
12 action, and I understand that. You're allowed to and
13 you should. I think they're in a distinctive
14 position, separate from that of class one and class
15 two and separate from that of class four as a matter
16 of fact and as a matter of law.
17 And I think the equal protection
18 argument fails. You disagree. I disagree with you,
19 and that's the way it is. But it's not yet ripe for
20 304(a) language.
21 MR. KRISLOV: Let me know if I
22 understand you.
23 Our argument for the equal protection
24 is not that class four is being discriminated against

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1 vis-a-vis class three. Our argument is that you're
2 holding that people who were participants on August
3 23 of 1989 have permanent protected rights under the
4 constitution.
5 That applies identically to class one,
6 two and three, because they all were participants
7 prior to on or before August 23 or 1989.
8 THE COURT: Yes.
9 MR. KRISLOV: And so treating them
10 differently --
11 THE COURT: Who is "them"?
12 MR. KRISLOV: Them, treating the
13 people who retired --
14 THE COURT: Who is them? Class three
15 or --
16 MR. KRISLOV: Class one and class two.
17 THE COURT: Differently from class
18 three.
19 MR. KRISLOV: Differently from class
20 three.
21 THE COURT: Yes.
22 MR. KRISLOV: Is a denial of equal
23 protection, because they all have the permanent
24 protection of the Constitution, per your ruling, and

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1 for the City to make a distinction between them in
2 which it will grant permanent healthcare protection
3 is a denial of equal protection --
4 THE COURT: Yes.
5 MR. KRISLOV: -- of the people who
6 have the same benefit.
7 THE COURT: I understand.
8 MR. KRISLOV: The same rights.
9 THE COURT: I disagree.
10 MR. KRISLOV: Okay.
11 THE COURT: And I've said that.
12 MR. KRISLOV: Given that and
13 everything else that --
14 THE COURT: I'm not done. We're not
15 there yet.
16 MR. KRISLOV: Okay.
17 THE COURT: I know where you're going,
18 so --
19 MR. KRISLOV: Okay.
20 THE COURT: And we'll get there.
21 MR. PRENDERGAST: Your Honor.
22 THE COURT: What? Yes.
23 MR. PRENDERGAST: In re Starke is a
24 classic case for purposes of this motion.

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1 THE COURT: Which motion?
2 MR. PRENDERGAST: The --
3 THE COURT: Equal protection?
4 MR. PRENDERGAST: The 304(a) part. It
5 is one of the lead cases, Starke and Geier versus
6 Hamer. And the requirement of those cases is
7 twofold.
8 For a 304(a) finding there must be a
9 final judgment. And then there must be a -- there
10 must be no just reason for delaying the appeal.
11 As to count three, you denied our
12 motion. That's the end of the discussion. And you
13 granted the motion as to count -- as to class four,
14 and you granted it with prejudice.
15 Now, you have a final judgment there
16 for purposes of --
17 THE COURT: When you said count three
18 just a moment ago, you meant class three?
19 MR. PRENDERGAST: I meant class three.
20 Thank you.
21 And so there is a distinction between
22 four and three that is not grounded in fact. It is
23 not grounded in hardship. It's grounded in the law
24 the specific requirements for a 304(a) finding.

1 I believe that if you made a 304(a)
2 finding on three, we would have that dismissed in the
3 appellate court.

4 THE COURT: I agree.

5 MR. PRENDERGAST: And so I agree with
6 your exercising your judgment -- your discretion with
7 respect to count four. I don't agree with it, but
8 I'm not going to argue with you on it. It's your
9 ruling.

10 But class three, no 304(a) finding.
11 Class one and two, no 304(a) finding. The City has
12 laid out in writing what they're going to do for the
13 Korshak and Windows classes. He's got everything
14 that's --

15 THE COURT: Well, Clint came up today
16 with a disagreement about class one and class two and
17 how the City's -- what he thinks -- what benefits he
18 thinks they're entitled to that he doesn't think the
19 City is going to give.

20 You'll have a conversation. You'll
21 see whether you agree or not, and you'll put it
22 before me, and we'll discuss it.

23 MR. PRENDERGAST: All right.

24 THE COURT: And that's the best I can

1 do with regard to that. I don't want to foreclose
2 access to the Court for Clint on that issue. If he
3 thinks that they're entitled to a benefit that's not
4 going to be given pursuant to the settlement
5 agreement, I want to hear about it.

6 So that's that. I'm holding that in
7 abeyance.

8 Subclass three, I agree with you, and
9 it hasn't been dismissed, and that's by definition,
10 from my understanding and my ruling today is that
11 304(a) does not apply to that. And, you know, a
12 ruling is a ruling.

13 MR. KRISLOV: But --

14 THE COURT: No, not a but. That's it.

15 MR. KRISLOV: No, I would like --

16 THE COURT: Stop.

17 MR. KRISLOV: I would like to make a
18 record. He cited Starke, and I can explain why that
19 is wrong.

20 THE COURT: My ruling was the same
21 before he cited Starke as it would be after. You may
22 argue about that later in another forum if you want
23 to, but not in front of me.

24 I'm not relying on Starke. I'm

1 relying upon what I relied upon earlier and what I
2 told you.

3 MR. KRISLOV: Could I just take a
4 minute of --

5 THE COURT: Yes, you can, of course.

6 MR. KRISLOV: 304 does not require a
7 final dismissal of all claims. That's 301. Mr.
8 Prendergast in the pension reform case -- and I
9 learned something from that. At least one count must
10 be dismissed with finality in the case wholly, and
11 you have done that. It only has to be --

12 THE COURT: Which count is that that I
13 dismissed?

14 MR. KRISLOV: You dismissed the claims
15 four -- class four entirely.

16 THE COURT: Which is a separate
17 universe from class three. You and I disagree about
18 that --

19 MR. KRISLOV: This is a -- sorry.

20 THE COURT: You and I disagree about
21 that. You can't say I've rendered a final decision
22 as to one subclass, therefore, it overlaps as to all
23 of them. That's not right. It's wrong. Otherwise
24 there wouldn't be subclasses.

1 Everything I ruled with regard to
2 subclass four has absolutely no bearing on my rulings
3 with regard to subclass three, subclass one, subclass
4 two.

5 MR. KRISLOV: Then certify the case
6 now because --

7 THE COURT: No.

8 MR. KRISLOV: Well, you can't pull --

9 THE COURT: I did because I disagree
10 with you. I think you're absolutely miserably,
11 utterly wrong on that. And what else can I tell you?
12 So that's that. You made your record.

13 Let's go to the issues raised by Clint
14 with regard to the issuance of a preliminary
15 injunction.

16 What is the nature of the
17 interlocutory appeal pending? I -- I don't know what
18 that is. Is it on my failure to grant an injunction
19 in the past?

20 MR. KRISLOV: It's on your failure to
21 grant the preliminary injunction based on the second
22 amended complaint, yes.

23 THE COURT: And is it -- let me ask a
24 question.

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1 Since the second amended complaint is
2 no longer viable, why is that appeal viable? It's
3 been superseded by a third amended complaint. Why
4 would that be even a viable appeal at this point?
5 Can you tell me?
6 MR. KRISLOV: Yes, because the claims
7 that were made in that, the assertions that were made
8 would support having a preliminary injunction.
9 THE COURT: But that complaint is
10 dead.
11 MR. KRISLOV: That's your ruling, Your
12 Honor.
13 THE COURT: Well, it is dead. It was
14 superseded. You filed an amended complaint to that.
15 MR. KRISLOV: Your Honor, we did. And
16 that's why we have not pushed that one for a time,
17 because the City has maintained that all that could
18 be done on that appeal was with respect to what was
19 in the second amended complaint.
20 THE COURT: I agree.
21 MR. KRISLOV: So we played out the
22 third amended complaint with all of the submissions
23 that --
24 THE COURT: So let me ask you a

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1 question.
2 MR. KRISLOV: Yes.
3 THE COURT: What is the nature of the
4 subject matter of the interlocutory appeal about my
5 refusal to grant an injunction with regard to which
6 classes? All of them?
7 MR. KRISLOV: All of them.
8 THE COURT: All right. Okay. So
9 thank you.
10 Now, we're left with your renewed
11 motion for a preliminary injunction for pre-1989
12 claims to enjoin the City and the Funds from
13 implementing a reduction of the change of terms as of
14 June 2013.
15 My feeling is -- and I will hold in
16 abeyance relative to your discussion, but prior to
17 hearing what you had to say that somehow there's
18 another benefit you should be getting for the Korshak
19 and Windows class that the City hasn't agreed to pay.
20 I don't know that to be the case. You two are going
21 to have to flesh that out to me so I understand it.
22 But before I heard you say that, I
23 would have -- I would have said there's nothing to
24 enjoin. It's moot. And I've said that in my opinion

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1 because the City is giving Korshak and Window class
2 everything they're entitled to, every benefit they're
3 entitled to in healthcare. That was my feeling.
4 So with regard to that, I would not
5 have granted a preliminary injunction, and I'll wait
6 to see. I still may not. We'll hold that in
7 abeyance pending your discussion with regard to what
8 benefits you think they're entitled to as a matter of
9 law, whether there's an agreement upon that.
10 I'll push that to the side for another
11 day.
12 With regard to the injunction with
13 regard to subclass four, injunctions are given when
14 you have at the least a fair question as to your
15 right to receive those benefits in this case.
16 Clearly, there's no adequate remedy at law. That's
17 why we're here. You're arguing there's irreparable
18 harm.
19 I understand your argument about that,
20 but I am as convinced as I can be, as I was before
21 Matthews and certainly since Matthews, that there is
22 no likelihood a fair question as to your success on
23 the merits with regard to subclass four.
24 So your request for an injunction with

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1 regard to them is denied.
2 I feel much differently, as you've
3 enunciated, Clint, and as I have enunciated, with
4 regard to subclass three. I think there are factual
5 issues that have to be fleshed out -- and fleshed
6 out, as I say.
7 So I'm concerned about them. I'm
8 concerned about them having to, as I said before, be
9 in limbo and not know whether they have to pay for
10 this -- these healthcare benefits or not. I didn't
11 dismiss the count. It's viable.
12 And so I would like to hear from you,
13 Richard, why I should not give a preliminary
14 injunction with regard to the pre-1989 claims as to
15 subclass three alone, which is, as I have suggested,
16 my predisposition.
17 MR. PRENDERGAST: Well, first of all,
18 Your Honor, there was a denial on the preliminary
19 injunction motion. It really does not have anything
20 to do with whether or not it was the first amended or
21 second amended or third amended complaint.
22 THE COURT: I know. But I'm
23 considering it again. I have now understood in
24 greater detail the facts of the case and the effect

1 it could have and the likelihood or fair question as
2 to subclass three's success on the merits. I can't
3 say, as I said in my July 21st, 2016, opinion what
4 you're going to be able to show about their ability
5 to have discovered or known or make a claim when they
6 could have.

7 This all evolves around the statute of
8 limitations issue as well. So I'm concerned about
9 that.

10 So tell me why is it I shouldn't give
11 an injunction and require the City to cover those
12 folks?

13 How many people are in this subclass,
14 do you know?

15 MR. PRENDERGAST: I do not.

16 THE COURT: Anybody? Mr. Goldstein,
17 do you know?

18 MR. GOLDSTEIN: I --

19 THE COURT: Clint?

20 MR. KRISLOV: It's probably about
21 10,000. It could be more. It could be fifteen. It
22 could be less. But it is the largest number, I
23 think, of people.

24 THE COURT: It is?

1 MR. KRISLOV: Yes.

2 THE COURT: The folks who are
3 participants -- not retirees, but participants in the
4 healthcare program as of August 23 --

5 MR. KRISLOV: No.

6 THE COURT: -- 1989.

7 MR. KRISLOV: The participants in the
8 Funds, in one of the four funds.

9 THE COURT: Yes.

10 MR. KRISLOV: Right.

11 THE COURT: For healthcare benefits?

12 MR. KRISLOV: No. Well, that they're
13 -- they -- for the people that you need an injunction
14 for, they must have retired now, because for the
15 people who are working now, they're still covered by
16 the City's employee plan.

17 While you're talking about people --

18 THE COURT: Okay.

19 MR. PRENDERGAST: Your Honor --

20 THE COURT: So tell me, Richard, why I
21 shouldn't grant an injunction.

22 MR. PRENDERGAST: I'm going to tell
23 you my view on that.

24 THE COURT: Please.

1 MR. PRENDERGAST: But I'm going to ask
2 the Court because of what's been said here to allow
3 us to brief that subject. We won't take a lot of
4 time.

5 THE COURT: Sure.

6 MR. PRENDERGAST: But I think you have
7 to start with this.

8 First of all, Your Honor, this was
9 your finding previously when you're talking about the
10 four elements. One of the elements had to do with
11 the adequacy of a remedy law.

12 THE COURT: Yes.

13 MR. PRENDERGAST: And you said the
14 case law as cited in the party's submissions to me,
15 especially the City's. And I have read it, and it's
16 actually true in Knott versus Illinois Racing Board,
17 the Court said the loss of income for a brief period
18 does not constitute irreparable harm.

19 We cited the Kurle case versus
20 Evangelical. And the bottom line is you found that
21 there was no -- there was inadequate remedy at law.

22 THE COURT: Okay.

23 MR. PRENDERGAST: And they had not met
24 that criteria.

1 THE COURT: Okay. So let me talk to
2 you about that. I'm aware I said that, but -- and
3 here's what I would like you to talk to me about in
4 your brief and your response in reply, which we will
5 do in short order because folks have to know.

6 It's not just a matter of money. If
7 it were just a matter of money, how much you owe, it
8 would be one thing. That's a one-dimensional view.

9 In this case we're talking about more
10 than just money. We're talking about everything that
11 is implied by the need to have the money to spend on
12 healthcare.

13 I note, for instance, that Land of
14 Lincoln just went under. I note that under the ACA,
15 affordable costs may not be that affordable, I'm
16 sorry to say, because everybody knows how I feel
17 about the ACA. I think it's a wonderful thing, but
18 they may be going up 45 percent.

19 Folks need to know how much they need
20 to put aside. It's not just a matter of money. It's
21 a matter of how they're going to live, and standard
22 of living, and where they're going to find their
23 insurance for health.

24 And healthcare is not just a matter of

1 money. It's a matter of everything, because as the
2 old expression goes, if you don't have your health,
3 you got nothing.

4 I don't mean to make light of it, but
5 it's true. And we all know this from our own family
6 experience. There isn't a person who hasn't been
7 touched by death or misery or illness. And it has an
8 impact on everything. So it's not just a matter of
9 money.

10 And that's why I said just a few
11 moments ago that I felt that money damages are not
12 adequate.

13 I'm going let you tell me why I'm
14 wrong, but I have reconsidered that because that's
15 what I'm supposed to do. And I've considered it in
16 terms of -- much broader terms than just the money.
17 But everything that that -- the need for money to be
18 spent implies.

19 So if you want to keep talking to me,
20 that's fine. I'd love to hear what you have to say,
21 but I also will, of course, give you an opportunity
22 to write.

23 MR. PRENDERGAST: Well, I'll give you
24 one point that I think needs to be considered here.

1 THE COURT: Yes.

2 MR. PRENDERGAST: The plaintiffs filed
3 a notice of appeal from your prior ruling.

4 THE COURT: Yes.

5 MR. PRENDERGAST: They briefed it.

6 THE COURT: Yes.

7 MR. PRENDERGAST: We briefed it. It's
8 fully briefed. It's pending in the appellate court.

9 The appellate court is going to
10 consider the very issue you just addressed. The
11 appellate court is going to address the likelihood of
12 success on the merits because that was another reason
13 why you determined that injunctive relief is not
14 appropriate.

15 THE COURT: Has the Court set it down
16 -- has anyone requested oral argument?

17 MR. KRISLOV: We have not. We
18 requested -- yes, we requested --

19 THE COURT: Has it been granted?

20 MR. KRISLOV: Not yet.

21 THE COURT: Has it been set for
22 decision, or do you know where it is?

23 MR. KRISLOV: No. It's fully briefed,
24 but they haven't done anything on it yet. And part

1 of the reason that we haven't pushed it was because
2 of the second complaint versus third complaint issue
3 and whether there was -- the submissions were part of
4 -- as you said, if they're not part of the complaint,
5 you're not going to rule anyway. That's why we went
6 through the third amended complaint.

7 THE COURT: Right. So let me ask you
8 another question before I let Richard go on. Forget
9 my discussion about the third amended complaint
10 versus second, since you have an appeal pending.

11 Doesn't that rob me of jurisdiction to
12 decide the issue?

13 MR. KRISLOV: No.

14 MR. PRENDERGAST: The answer is yes.

15 THE COURT: I think it does. If
16 you've appealed my refusal to grant injunctive
17 relief, I think I'm robbed of jurisdiction because
18 you've chosen to say, as is your want, Neil, you're
19 wrong. I'm right. And I'm going to take it to a
20 higher court, which is great. But you've done that.

21 So I'm wondering why I'm not robbed of
22 jurisdiction on that matter.

23 MR. KRISLOV: Because what was
24 appealed was that order based on that complaint.

1 THE COURT: Then why didn't you
2 withdraw the appeal if you don't want it to go?

3 MR. KRISLOV: That's not -- that's not
4 before you, Your Honor. That's not one of your
5 issues.

6 THE COURT: That may be so, but I'm
7 asking you --

8 MR. KRISLOV: Because we think that
9 based on what we show --

10 THE COURT: If you think it's a good
11 appeal, then I'm going to let them decide it. If you
12 think it's bad because that complaint has been
13 superseded, then I'll consider it.

14 Your call. What is it? Make a
15 decision.

16 MR. KRISLOV: We'll do it on this
17 complaint.

18 THE COURT: You're going to withdraw
19 that appeal?

20 MR. KRISLOV: Your Honor, you do not
21 have the right to require us to withdraw that pending
22 appeal --

23 THE COURT: True, I don't. I don't.
24 I'm going to hold consideration of injunction in

1 abeyance pending the resolution of that appeal
2 therefore.
3 What's the next date you want to come
4 in for?
5 MR. KRISLOV: Your Honor, why don't
6 they brief it, and we can address that issue? I
7 don't think you're being fair with us on this one.
8 THE COURT: I know.
9 MR. PRENDERGAST: Your Honor, I think
10 you're being abundantly fair.
11 THE COURT: I know.
12 MR. PRENDERGAST: We've already had
13 six preliminary --
14 THE COURT: I know. It's on appeal
15 and my -- if you think that it's a viable appeal,
16 great. I'll go along with your judgment on that and
17 say that if you've appealed my refusal to grant an
18 injunction, it robs me of jurisdiction on that issue.
19 Therefore, your motion for -- your
20 renewed motion is wrong.
21 MR. KRISLOV: I'll offer this, Your
22 Honor.
23 THE COURT: No offer. We're not in
24 the marketplace.

1 MR. KRISLOV: Your Honor, you are
2 requiring a marketplace thing where --
3 THE COURT: I know, but I'm not.
4 MR. KRISLOV: You are.
5 THE COURT: Okay. Again, we disagree.
6 MR. KRISLOV: You're saying we'll
7 withdraw our other appeal if you -- if we do -- if we
8 wish you to go forward, if we wish -- if you'll grant
9 the motions --
10 THE COURT: If you think that you have
11 a good appeal on the issue that you've just renewed,
12 then I'm robbed of jurisdiction on that.
13 MR. KRISLOV: We'll brief that.
14 THE COURT: No, we won't brief it.
15 That's my ruling.
16 MR. KRISLOV: Okay. Fine.
17 THE COURT: The next thing for you to
18 do is to have a discussion about 304(a) language, vel
19 non, with regard to the Korshak and Windows class
20 based upon the benefits you think you're entitled to
21 that you think the City is not going to give, or to
22 find out that they are.
23 How much time do you need to discuss
24 that?

1 MR. PRENDERGAST: I'll have to check
2 with the Corporation Counsel's office.
3 THE COURT: Well, give me a date.
4 MR. PRENDERGAST: That's going to be a
5 meeting.
6 THE COURT: Sure.
7 MR. PRENDERGAST: I'll try to set
8 something up.
9 THE COURT: Sure. Okay. How much
10 time do you want?
11 MR. PRENDERGAST: I will set it up
12 within the next two weeks.
13 MR. KRISLOV: No, Your Honor. We
14 object to more than a week. The people need --
15 THE COURT: Your objection is
16 overruled. He wants to set up a meeting. In about
17 two or three weeks it's Labor Day.
18 When do you want to come back on that
19 issue to tell me that you've agreed or you haven't
20 agreed and tell me what benefits that you think you
21 are entitled to under the settlement that the City is
22 not going to give? That's all I want to know.
23 MR. KRISLOV: They're entitled to at
24 least --

1 THE COURT: Not me. Talk to them
2 first, and tell me after your discussion.
3 MR. KRISLOV: Your Honor --
4 THE COURT: When do you want to come
5 back?
6 MR. KRISLOV: I want to come back
7 tomorrow.
8 THE COURT: That's not going to
9 happen, Clint.
10 MR. KRISLOV: Your Honor, they know
11 exactly what they're doing. They know exactly what
12 my position is. This doesn't take two or three weeks
13 to negotiate. This is a what they're willing to do
14 is up to 50 percent.
15 THE COURT: Sir --
16 MR. KRISLOV: Yes.
17 THE COURT: -- this is a 2013 case.
18 Whether they come back in three weeks or not is not
19 going to make or break this issue or your client's
20 interest.
21 MR. KRISLOV: It does, Your Honor.
22 THE COURT: No, it doesn't.
23 MR. KRISLOV: It does. They need to
24 have a decision in time to make their decisions

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1 regarding --
2 THE COURT: Yes, I know. And three
3 weeks is not going to make or break that.
4 MR. KRISLOV: Your Honor, we've been
5 down this road -- it's their doing. They removed it.
6 They got it piecemeal. They love to have it
7 piecemeal, and our client is --
8 MR. PRENDERGAST: I'm getting tired of
9 being called names.
10 THE COURT: It's okay. Please let Mr.
11 Krislov speak.
12 You're not going to get it tomorrow.
13 That's just the way it is. And I'm going to give
14 them three weeks.
15 So I'll make the decision if you guys
16 can't agree. You'll come back in approximately three
17 weeks. Let me take a look and see what date that is.
18 That's right before Labor Day. Today
19 is -- that's about the 30th.
20 MR. PRENDERGAST: 31st.
21 THE COURT: All right. 31st is good.
22 Is that good for you, Mr. Krislov?
23 MR. KRISLOV: What day?
24 THE COURT: Wednesday, August 31st.

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1 MR. KRISLOV: Yeah, I think so.
2 THE COURT: Okay. Let's do it at
3 10:30.
4 MR. KRISLOV: Okay.
5 THE COURT: Although I have 10:00
6 o'clock open if you like.
7 MR. KRISLOV: 10:30 is fine.
8 THE COURT: 10:30. Done. And I would
9 like some sort of understanding before then through
10 an agreed letter submitted by one or both parties
11 that you have an agreement as to what those benefits
12 are or not.
13 Fair? We can at least agree --
14 MR. KRISLOV: Understood.
15 THE COURT: -- that you'll tell me
16 whether there's an agreement or not?
17 MR. KRISLOV: Right.
18 THE COURT: Okay.
19 MR. KRISLOV: Do we have 304(a)
20 language with respect to the class four?
21 THE COURT: Yes, I gave it to you.
22 It's on the record.
23 MR. KRISLOV: Okay.
24 THE COURT: And if you'd give me a

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1 submission, which I'd like to have, and I think the
2 appellate court would like to have.
3 The City disagrees with my -- with my
4 ruling that on -- that they're -- that you're
5 entitled to that, but they understand it based upon
6 my ruling, and so it's over objection of the City,
7 your 304(a) language is granted.
8 MR. KRISLOV: With respect to four --
9 THE COURT: Subclass four.
10 MR. KRISLOV: Three is held in --
11 three is denied or held in abeyance?
12 MR. PRENDERGAST: How did that get
13 held in abeyance?
14 THE COURT: 304(a) language as to
15 three is denied.
16 MR. KRISLOV: Okay.
17 THE COURT: 304(a) language as to one
18 and two is held in abeyance.
19 MR. KRISLOV: Gotcha. I just want to
20 make sure we're drawing up the order that matches
21 what you did.
22 THE COURT: Sure.
23 MR. KRISLOV: Okay.
24 MR. PRENDERGAST: Your Honor, I

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1 understand --
2 THE COURT: What else?
3 MR. PRENDERGAST: -- that the
4 preliminary injunction motion has been denied?
5 THE COURT: It's denied.
6 MR. KRISLOV: Your Honor, can they
7 answer the complaint?
8 THE COURT: Without prejudice. But
9 that's because of the pending appeal.
10 MR. PRENDERGAST: Well --
11 MR. KRISLOV: That's the preliminary
12 injunction?
13 THE COURT: Yes.
14 MR. KRISLOV: So if I say we'll
15 withdraw the --
16 THE COURT: No, I can't do that,
17 because I'm putting you in an untenable position. I
18 don't want to do that.
19 MR. PRENDERGAST: May I make a
20 suggestion?
21 THE COURT: No marketplace.
22 MR. PRENDERGAST: May I make a
23 suggestion that if we're going to wait for the
24 appeal, and I think we should, certainly --

1 THE COURT: On subclass four? That's
2 not going to hold up this case moving forward as to
3 the other --
4 MR. PRENDERGAST: I didn't mean on the
5 interlocutory appeal.
6 THE COURT: What do you mean?
7 MR. PRENDERGAST: On the denial of the
8 preliminary injunction request.
9 THE COURT: Yes.
10 MR. PRENDERGAST: One alternative
11 would be for you to enter and continue their motion
12 until the appellate court rules. That gives them --
13 that keeps their motion alive.
14 He's got his motion on file, and we'll
15 find out what happens with the appellate court.
16 THE COURT: I'm sure Mr. Krislov
17 appreciates you taking his point of view.
18 I will be happy to keep it alive until
19 the appeal is decided, if that's what you'd like.
20 MR. KRISLOV: No. We want it denied
21 then, Your Honor.
22 THE COURT: Done.
23 MR. KRISLOV: Finally, since we're at
24 the point the City should answer -- the City and the

1 Funds should answer the complaint, the complaint has
2 been upheld for at least one count. They can respond
3 to it.
4 THE COURT: Any objection?
5 MR. PRENDERGAST: No objection to
6 answering what has not been dismissed. We'll do that
7 within 30 days.
8 MR. DONHAM: Yes, Your Honor. I mean,
9 obviously, we don't have to answer counts two through
10 whatever because those were dismissed. So we just
11 are answering count one, I assume?
12 THE COURT: Count one is the dec
13 action.
14 MR. DONHAM: Right. That's the one
15 you upheld the 1983 and the 1985.
16 THE COURT: Would you remind me what
17 count four was.
18 MR. PRENDERGAST: Count four, those
19 who were hired after August 23, 1989, and retired
20 after August --
21 MR. KRISLOV: No, that's --
22 THE COURT: That's class four. Count
23 four of the complaint.
24 MR. PRENDERGAST: Count four.

1 THE COURT: Count one is the dec
2 action. Count two is the breach of contract that's
3 been dismissed. Count three is the equitable.
4 MR. KRISLOV: Count four they don't
5 have to respond. That's the federal --
6 THE COURT: Yes.
7 MR. KRISLOV: -- 1983 action.
8 THE COURT: Just to go through them
9 again.
10 Count one is the dec action. Count
11 two is the breach of contract that's been dismissed.
12 Count three is the equitable estoppel turned into a
13 promissory estoppel in oral argument, which has been
14 denied -- dismissed. Count five is the impairment of
15 contract count, which has been dismissed. Count six
16 is the equal protection count, which has been
17 dismissed. Count seven is the special legislation
18 count, which has been dismissed.
19 The only viable count now is the dec
20 action count, count one. And all the defendants are
21 to answer that count in 28 days, by September 8th.
22 MR. KRISLOV: Okay. We'll try to --
23 oh, can we have at least everybody's agreement that
24 we can certify the case as a class case since we're

1 doing this by classes, and we're dealing --
2 THE COURT: You know, you can talk to
3 them without bouncing it off me. Just have a
4 conversation.
5 MR. KRISLOV: We've filed the motion.
6 If they want to oppose it, they should file --
7 THE COURT: All right. Well, then all
8 the defendants are to answer the motion for class
9 certification.
10 You're going to do that also by
11 September -- well, let's do it by August 31st so that
12 I can take it up on September -- that's wrong. Hold
13 on a second.
14 8-31 for the parties to come back with
15 regard to the benefits in question for the Korshak
16 and Windows class. That's first.
17 The parties are to answer count one by
18 9-8. The parties are to file an answer with regard
19 to the motion for class certification that's pending
20 by 9-8. And I'll give you another -- is everyone
21 going to be here on 8-31? All the Funds?
22 MR. KENNEDY: Yes, Judge.
23 THE COURT: All right. Let's just do
24 it that way, and I will give you another date on 8-31

1 for me to deal with the answers for the class
2 certification motion and to make sure that everyone
3 has answered the complaint.

4 MR. KRISLOV: Could I ask that they
5 file their answers by the 31st, because --

6 THE COURT: You can, but it's denied.

7 MR. KRISLOV: We'd be in a position to
8 the handle things, and they've only had 30 years
9 to --

10 THE COURT: Yes. It's denied. Okay.

11 Give me an order reflecting today's orders.


12 (Proceedings adjourned at 11:55 a.m.,
13 August 9, 2016.)
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1 REPORTER'S CERTIFICATE.

2 I, GAY DALL, CSR and RPR, doing
3 Business in the City of Chicago, County of Cook and
4 State of Illinois, do hereby certify that I reported
5 in computerized shorthand the foregoing proceedings
6 as appears from my stenographic notes.

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

11 IN WITNESS WHEREOF, I hereunto set my
12 hand as Certified Shorthand Reporter in and for the
13 State of Illinois on August 17, 2016.

14 
15 Gay Dall, CSR RPR
16 License Number: 084-001169
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24

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

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

Record of proceedings had at the
hearing of the above-entitled cause, before the
Honorable NEIL H. COHEN, one of the Judges of said
Court, on August 31, 2016, in Room 2308, Richard J.
Daley Center, Chicago, Illinois, commencing at
10:30 a.m.

A P P E A R A N C E S

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THE COURT: Underwood versus the City
of Chicago. For Michael Underwood.

MR. KRISLOV: Clint Krislov and, with
me, Ken Goldstein for the Plaintiffs.

THE COURT: For the City of Chicago.

MR. PRENDERGAST: Richard Prendergast,
Your Honor.

THE COURT: For the Funds of the City
of Chicago, Police and Firemen and Municipal
Employees.

MR. BURKE: Ed Burke for the Fireman's
Fund and Municipal Fund, and Dave Kugler for the
Policeman's Annuity and Benefit Fund.

THE COURT: Good morning.

MR. KENNEDY: Good morning. John
Kennedy with Cary Donham for the Laborer's Fund.
If I may be excused, I have a 10:30
matter. I don't think it's been called yet.

THE COURT: You may do anything you
want, Mr. Kennedy.

All right. Well, on the last date
there was an issue as to Mr. Krislov asked for 304(a)
language as to, I believe, everything.

I was at a quandary because I thought

that Mr. Krislov's clients with regard to the first
two classes, the Korshak and Windows retirees, had
already been given everything he wanted, and
Mr. Krislov told me that's not true.

And I asked the parties to talk and
figure this out, and they can report back to me, and
they did at least as to subclass one and two.

And you also asked for 304(a) language
with regard to subclass four, correct?

MR. KRISLOV: Yes.

THE COURT: And there's that still
pending.

MR. KRISLOV: Actually, I think you
ruled on that one.

THE COURT: Did I give it to you?

MR. PRENDERGAST: It was denied as to
subclass three.

THE COURT: It was denied as to
subclass three because there were some issues of
fact, as I said, that I couldn't discern. I just
didn't have enough evidence, while I've received a
status report and I've received a letter from
Mr. Prendergast on behalf of the City and the Funds,
and that should be made part of the record as well.

1 And I think I understand that there's
2 a distinction in points of view, both practically and
3 legally, from both sides.
4 What is it you want me to do today?
5 MR. KRISLOV: Grant us 304(a) language
6 with respect to the claims of class one and two.
7 THE COURT: Based on what?
8 MR. KRISLOV: Based on your having
9 already held that they have a -- that all three --
10 August 23, 1989, hires, which would include all of
11 the classes: One, Korshak; two, Windows; and, three,
12 the rest of the pre-8-23-89 hires have a state
13 constitutional protection of benefits that you have
14 outlined in your -- you have described in your
15 previous decision.
16 THE COURT: Well, I didn't rule -- I
17 didn't rule specifically as to what rights as to
18 subclass three. Everything is still up in the air.
19 MR. KRISLOV: Well, as I understand
20 your rulings, the way that you ruled was -- and in
21 your clarification ruling in March, your position is
22 that what they are protected in is just what the
23 statute required, what the pension amendment in
24 effect on their -- during their participation

1 requires. No more, no less.
2 We obviously disagree on that point,
3 but that is a decision of law, which it is an
4 appropriate time for the appellate court to weigh in,
5 or, as I say at my checkup, I'd sort of like to get a
6 second opinion. And I think I --
7 THE COURT: Yeah, I know. I know you
8 do.
9 MR. KRISLOV: And I think it's an
10 appropriate time --
11 THE COURT: But with regard to
12 subclass three, there are issues of fact yet to be
13 determined.
14 MR. KRISLOV: Maybe so, but --
15 THE COURT: So it's not ripe for
16 review.
17 MR. KRISLOV: It is ripe for review
18 because, number one, 304(a) requires that there be a
19 claim that has been dismissed completely, with
20 prejudice. You have done that, certainly --
21 THE COURT: Not with regard to
22 subclass three.
23 MR. KRISLOV: It is the judgment that
24 is being appealed, it is not each ruling.

1 THE COURT: You're not going to get it
2 as to subclass three.
3 MR. KRISLOV: You may not grant it. I
4 think that your granting it with respect to a part of
5 your order may make it effective if the order is
6 ever --
7 THE COURT: You can argue anything you
8 want before the appellate court --
9 MR. KRISLOV: I will.
10 THE COURT: -- I can't stop you from
11 doing that, nor do I want to. You're entitled to.
12 But it's this Court's ruling you're
13 not entitled to 304 language with regard to subclass
14 three because I don't know whether the statute of
15 limitations applies to subclass three or not.
16 I don't have enough facts before me.
17 There's no way I can make an opinion about that, or a
18 ruling about that as a matter of law because I don't
19 know what the facts are yet. I do not know what they knew
20 or what they didn't know with regard to their
21 abilities to -- with regard to their rights -- their
22 ability to assert their rights, whether they knew
23 they should have or not.
24 I think I made that clear in my

1 opinion, and there's just nothing I can say about
2 that. If that's not resolved, then it's been my
3 understanding of 304(a) that you're not entitled to
4 appeal something that's not been decided by me.
5 But you do what you want to do. You
6 will anyway, and that's what you wanted. You're not
7 getting 304 language with regard to subclass three.
8 I gave it to you with regard to subclass four.
9 Now let's deal with subclass one and
10 two.
11 MR. KRISLOV: Okay.
12 THE COURT: I dismissed them.
13 MR. KRISLOV: You dismissed them as
14 moot because you said that had City was giving them
15 all the relief that they had wanted.
16 It is clear, if you take what
17 Mr. Prendergast told you the last time, they're not.
18 What Mr. Prendergast told you the last time --
19 THE COURT: They're giving them 55
20 percent increase, right?
21 MR. KRISLOV: No.
22 MR. PRENDERGAST: Contribution.
23 THE COURT: Contribution.
24 MR. KRISLOV: What they are giving is

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1 a plan of some sort with the City obligating
2 itself -- no, sorry -- gratuitously giving up to 55
3 percent of projected expenses -- sorry -- of
4 projected costs.
5 What he told you the last time was
6 that they're getting the 2003 to '13 settlement.
7 That is not what they are getting.
8 MR. PRENDERGAST: That's not what I
9 told him.
10 MR. KRISLOV: Yes. I have quotes in
11 the filings.
12 THE COURT: I read what you said.
13 MR. KRISLOV: The difference between
14 the 2003 settlement and what they are getting are the
15 following: Number one, the premiums to retirees were
16 calculated based on projections and reconciled so
17 that -- because the projections have always, in every
18 single year, turned out to be millions of dollars
19 above what the actual costs were.
20 THE COURT: Let me ask you a question,
21 Mr. Krislov.
22 MR. KRISLOV: Yes.
23 THE COURT: My opinion of July 1st,
24 2015, which Mr. Prendergast attached to his letter,

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1 indicates and holds that you missed the boat in terms
2 of trying to enforce the settlement agreement and --
3 or at least that I wasn't going to do that, so --
4 especially with regard to the audit that you're
5 talking about now.
6 So what is -- Mr. Prendergast is
7 arguing that you're not entitled to that audit
8 because the time for you to have requested that was
9 before the case was dismissed with prejudice in 2003,
10 and the settlement agreement terminated on June 30th,
11 2013, right?
12 MR. KRISLOV: We did request that. We
13 were denied that, and that is on appeal. That's not
14 what we're talking about.
15 What we're talking about is what the
16 City is presently committed to providing. And
17 Mr. Prendergast said at our last hearing -- because
18 you said, "Because the City has agreed to cover them,
19 I accepted that as to completely cover them pursuant
20 to the settlement agreement. Am I wrong?
21 "Mr. Prendergast: No, you're not
22 wrong, Your Honor.
23 "As I told you later on --" and this
24 is at page 44.

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1 THE COURT: One second. Let me get
2 there, because I was reading.
3 MR. KRISLOV: Page three of our file.
4 THE COURT: Yes, page three.
5 MR. KRISLOV: You said, "Clint, as I
6 told you, Clint, I believe --"
7 THE COURT: Which line number, please?
8 MR. KRISLOV: It is on page 44, line
9 nine -- line eight.
10 THE COURT: Got it.
11 MR. KRISLOV: "I believe the City has
12 agreed to cover them entirely pursuant to the
13 agreement, pursuant to the settlement agreement. And
14 you tell me that's not the case."
15 The difference between the settlement
16 agreement terms and what they're providing is about
17 \$5 million dollars a year in overcharges to
18 participants. And that's because Segal makes his
19 projections. He's always projected them high, and so
20 they run the calculation, and they charge the
21 annuitants 45 percent of what the overall costs are.
22 That 45 -- and that's what we're
23 really looking at. And so if the City's -- if the
24 overall projections are high, the 45 percent of the

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1 overall projections will be high as well, as they
2 have been in every single one of the ten years of the
3 settlement.
4 The audit and reconciliation are
5 critical to making sure that if retirees have a
6 package of -- have a plan with cost sharing, which
7 they're saying, that they get an accurate count.
8 And it's not just our speculation. It
9 is in every single year. And it is not just in the
10 beginning. In the last year and a half, it totaled
11 \$8.5 million in overcharges which had to be refunded.
12 THE COURT: Okay. So you're bringing
13 to the Court's attention and making of record that
14 what the City is offering now is not to completely
15 cover them pursuant to the settlement agreement.
16 MR. KRISLOV: Right.
17 THE COURT: All right. Even though
18 Mr. Prendergast said it. When I said, as you
19 excerpted in your position, that Mr. Prendergast told
20 me the City was going to cover them, and I accepted
21 that as to completely cover them pursuant to the
22 settlement agreement. And I asked Mr. Prendergast,
23 am I wrong? And Mr. Prendergast said, no you're not
24 wrong.

4 (Pages 10 to 13)

1 So you're just holding Mr. Prendergast
2 to what he said. Is that it?
3 MR. KRISLOV: I am in that respect,
4 yes.
5 THE COURT: So let me ask you another
6 question.
7 MR. KRISLOV: There's more reason, but
8 I'm glad to answer your question.
9 THE COURT: Oh, thank you.
10 One of the things I did not deal with
11 with regard to the motion to dismiss based on the
12 statute of limitations argument is class one and
13 class two, the Korshak and Windows class. I haven't
14 even dealt with that.
15 And the reason I didn't do that is
16 because it was moot, I felt.
17 You're now telling me it's not moot
18 because your clients in those two classes are not
19 getting that which they feel they're entitled to
20 under the settlement agreement, correct?
21 MR. KRISLOV: Yes.
22 THE COURT: So what I'm telling you,
23 Clint, is that before you get 304(a) language on
24 that, don't you think I should -- or I think I should

1 deal with the statute of limitations argument.
2 MR. KRISLOV: No. And I'll tell you
3 why.
4 THE COURT: Well, sure. Tell me why I
5 shouldn't deal with a defense to the City paying your
6 clients anything because the statute of limitations
7 has run. And I didn't deal with it pending because
8 of what I considered to be the City's position that
9 they're going to give your client a 55 percent
10 increase.
11 Okay. If that's the case, I feel, and
12 I feel strongly, I should deal with the statute of
13 limitations argument.
14 And it may very well be, and you may
15 very well disagree with me, or the City might, that I
16 come down one way or the other. I'll have to deal
17 with that.
18 But it seems to me before you get the
19 304(a) language, it seems to me I should deal with
20 the statute of limitations defense raised by the City
21 as to whether your clients should get anything. I
22 haven't written on that.
23 So there's an issue that's still
24 viable, which is another reason that 304(a), it seems

1 to me, doesn't apply at this point.
2 Tell me why I'm wrong.
3 MR. KRISLOV: Three reasons.
4 First is with respect to the pre-19 --
5 the pre-August 23, 1989, hires, their statute did not
6 have a time limit.
7 THE COURT: Well, that's to be argued.
8 I understand that. I'm not arguing the substance of
9 the case right now.
10 MR. KRISLOV: Fair enough.
11 THE COURT: I'm saying I haven't dealt
12 with it, and I haven't written on it because I
13 thought there was an agreement, or at least I thought
14 the City was, you know, saying, okay, we're covering
15 class one and class two, despite their statute of
16 limitations argument.
17 But what you're getting to is the
18 substance of whether the statute of limitations
19 applies or not, which is fine. And I want you to get
20 to it, but it's premature. I still have to write
21 about it and maybe even invite another briefing only
22 on that one issue.
23 Go ahead. What's the other issue?
24 What's the other argument?

1 MR. KRISLOV: With respect to class
2 one and class two, I don't believe they're making --
3 Mr. Prendergast may correct me, but I don't think
4 they're making a statute of limitations argument with
5 respect to the Korshak and Windows classes.
6 THE COURT: That may be, but I'll get
7 to that in the --
8 MR. KRISLOV: Well, it isn't -- your
9 entertaining it, your inviting it isn't appropriate.
10 No offense.
11 THE COURT: No offense taken. None at
12 all.
13 But I actually didn't look to see
14 whether he did or not. I just remember the statute
15 of limitations argument, and I don't recall whether
16 he did or not.
17 You may very well be right, but it may
18 be that he didn't because he thought that he was
19 giving you everything that they're entitled to
20 anyway. I don't know.
21 I'll entertain all positions and make
22 a decision about that.
23 What's your third one?
24 MR. KRISLOV: Number two is that it is

1 a question of law, not a question of fact. I think
 2 you have ruled that your view is that this is a
 3 question of fact to be determined, right?
 4 THE COURT: What are you talking
 5 about?
 6 MR. KRISLOV: I believe it is a
 7 question of law that has been addressed, and you
 8 have -- you rejected it the first time around. They
 9 tried to reraise it not as a reconsideration, but
 10 whatever. You had, in your last decision in July --
 11 I think it was July 9th --
 12 THE COURT: Yes.
 13 MR. KRISLOV: July 21st.
 14 THE COURT: The July decision.
 15 MR. KRISLOV: In the July decision you
 16 indicate that it's a question of fact as to intent,
 17 what the parties intended, and that you view it as a
 18 fact question rather than a law question.
 19 And I --
 20 THE COURT: No. I talked about
 21 whether there was a contract or not.
 22 MR. KRISLOV: No, I think you talked
 23 about -- I think what you said is that --
 24 THE COURT: Let's assume -- go on with

1 your argument. Go ahead.
 2 MR. KRISLOV: Number three is if it is
 3 a fact question, I believe you must recuse yourself
 4 then.
 5 THE COURT: Why?
 6 MR. KRISLOV: Because the City's
 7 intent in that agreement at the time it was entered,
 8 that's the time during which the Court's spouse was
 9 either the Corporation Counsel or the assistant
 10 Corporation Counsel and made public statements to the
 11 press --
 12 THE COURT: Did she?
 13 MR. KRISLOV: Yes.
 14 THE COURT: Well, I have no idea. I
 15 wasn't married to the woman at the time.
 16 MR. KRISLOV: It doesn't matter.
 17 THE COURT: Well, it does matter. You
 18 can make your argument. You can make your motion in
 19 writing.
 20 But you may recall, because I
 21 certainly do, that at the beginning of this case when
 22 it first came before me, I apprised on the record
 23 that I was married to a woman, currently, who was
 24 then, but I wasn't married to her then, the

1 Corporation Counsel.
 2 And I asked you if you wanted me to
 3 recuse myself, and you said that's not necessary, I
 4 believe. And I believe the record shows that.
 5 And believe me -- so that's what I
 6 first heard, and I believe you've waived that for
 7 that reason.
 8 And, secondly, I can tell you, it will
 9 not be the first time that I disagree with my now
 10 wife as to her position back then. And it's largely
 11 irrelevant.
 12 But if you think I'm prejudiced
 13 because of that, then you can file the right motion,
 14 and I invite you to do so. I don't take it
 15 personally, however personally it's meant. And you
 16 got do what you got to do. That's fine.
 17 But with regard to your belief that I
 18 have to recuse myself, for the reasons enunciated,
 19 it's denied, subject to you filing a written motion,
 20 and I'll reconsider it.
 21 MR. KRISLOV: I will. I will.
 22 Can I make one correction to what I
 23 believe you stated is my position?
 24 THE COURT: Sure.

1 MR. KRISLOV: My position is not
 2 because just because she was then -- and I frankly
 3 don't know whether she was married to you then or
 4 not.
 5 THE COURT: She wasn't.
 6 MR. KRISLOV: The issue is there may
 7 be -- there may have to be testimony as to what the
 8 parties' intention was at the time of the first
 9 Korshak settlement.
 10 That would involve me, possibly
 11 Mr. Ford, who's represented the Police Fund, Judson
 12 Miner.
 13 THE COURT: Susan didn't work for
 14 Judson Miner.
 15 MR. KRISLOV: Well, Susan was there at
 16 the time --
 17 THE COURT: She wasn't there while
 18 Judson Miner was there --
 19 MR. KRISLOV: She made statements
 20 regarding the settlement --
 21 THE COURT: You can file your motion,
 22 but I'll tell you this --
 23 (Simultaneous colloquy.)
 24 THE COURT: Excuse me. With regard to

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1 your supposition and speculation that Susan might be
2 a witness in this case, which I don't see, to be
3 quite honest, but assuming that your speculation is
4 worrisome to you, the case law, as I understand it,
5 is that I do not have to recuse myself based on
6 speculation.
7 When the time comes, and if the time
8 comes that there's got to be a hearing and I think I
9 need to recuse myself based on that rather than
10 ruling on the credibility of my wife, I will. But I
11 think it's premature, so it's denied for those
12 reasons.
13 But subject to -- again, without
14 prejudice, subject to you raising it should the
15 time -- the moment arise for the need to do so, and
16 I'll certainly reconsider it.
17 MR. KRISLOV: So I understand that you
18 are denying -- are you denying 304(a) language with
19 respect to count one for classes one and two?
20 THE COURT: I'm denying it -- you've
21 got it as to subclass four. It's denied as to
22 subclass three because there's issues of fact to be
23 determined, like who are these people and whether
24 they received notice or not, or whether they should

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1 affirm something or not to assert their rights, and
2 about that I haven't opined on it.
3 And with regard to class one and two,
4 the Korshak and Windows class, I will wait to hear
5 from Mr. Prendergast. I think that's only fair.
6 I've read what he has to say. And
7 what he had to say that I keyed on, just so you know,
8 is that I've already ruled that the -- they're
9 dismissed because the portions of -- in my
10 July 1st, 2015, order, I already ruled that the
11 necessity of an audit has gone by and that the terms
12 of the settlement agreement have -- are no longer
13 subject to litigation.
14 But I'll listen to what
15 Mr. Prendergast has to say and what you have to say
16 in response.
17 MR. PRENDERGAST: Your Honor, I don't
18 want to reiterate on that. We've spent a lot of
19 extensive time --
20 THE COURT: You may do so.
21 MR. PRENDERGAST: -- just for the
22 record.
23 (Simultaneous colloquy.)
24 MR. PRENDERGAST: And I'm not going to

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1 -- I have criticisms of the so-called status report.
2 I'm not going to get into this back-and-forth stuff.
3 But I do want to comment on the
4 suggestion that when you asked "Was I wrong about the
5 Korshak and Windows classes?" I said, "No, you're
6 right." So let me address that.
7 THE COURT: Yes.
8 MR. PRENDERGAST: Frankly, I believe
9 that's somewhat -- although he's going beyond the
10 ability to shock me with this motion to recuse, but
11 I'll stick with this one, because I see it directly
12 as being a motion, not anything else.
13 When I said no, I said -- I wasn't
14 saying that the 2003 agreement continued on as their
15 settlement. I don't think that the Court ever
16 interpreted that.
17 The question was are they getting --
18 THE COURT: The benefits.
19 MR. PRENDERGAST: The benefits, right.
20 And the benefits, by the way, are not procedural.
21 They're 55 percent --
22 THE COURT: Well, Mr. Krislov says no.
23 He says that the benefits of the settlement agreement
24 include a reconciliation, and he took you to say that

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1 you were agreeing to give them all the benefits of
2 the settlement agreement. That's what he said.
3 MR. PRENDERGAST: But what I'm saying
4 is that -- what I was referring to was what is
5 protecting the pension clause, which is the benefit
6 of pension moneys, meaning the contribution from the
7 City. And I want to be clear on that.
8 THE COURT: So let me ask you your
9 position. And you are clear on that. If you -- if I
10 agree with you that that's what you have given, and
11 if I again reaffirm my order of July 1st, 2015,
12 that the ability of subclass one, subclass two, to
13 argue the terms of the agreement or its extension has
14 passed, then don't you agree that they're entitled to
15 304(a) language? Because it's no longer, from your
16 point of view, viable, right?
17 MR. PRENDERGAST: That's correct.
18 THE COURT: So why aren't they
19 entitled to appeal it?
20 MR. PRENDERGAST: Actually, Your
21 Honor, I think you make a very good point, because --
22 if only for this reason. We've resisted 304(a)
23 language because of all the piecemeal arguments and
24 everything else. But you've granted the 304(a)

7 (Pages 22 to 25)

1 language for --
 2 THE COURT: Subclass four.
 3 MR. PRENDERGAST: -- subclass four.
 4 So he's going to go up.
 5 THE COURT: Yeah, and he's going to go
 6 up anyway, and he's entitled to do that. And so why
 7 not have subclass one, subclass two up there as well?
 8 MR. PRENDERGAST: And I'll tell you
 9 why. And I certainly haven't conferred with the
 10 client, but I think our position on that is clear.
 11 Since it's going up anyway, and since
 12 I know from past dealings that regardless of whether
 13 you give 304(a) language on one and two, he's going
 14 to argue one and two anyway, and we're going to have
 15 to respond.
 16 THE COURT: That's respect, I think.
 17 MR. KRISLOV: It may be backhanded,
 18 but I'll take it as a compliment.
 19 MR. PRENDERGAST: I really mean that
 20 based upon what we -- the history and history of
 21 protocol, we know what is going to happen.
 22 So the Court has dismissed the claims
 23 with respect to Count 1 and 2, and properly so. And
 24 I would like to address why it's properly so,

1 briefly.
 2 But putting in 304 language on a
 3 dismissal is not going to change the composition of
 4 the appeal we take. And so it's simply a procedural
 5 matter.
 6 THE COURT: Right. And also it gets
 7 it before the court much sooner than it would
 8 otherwise.
 9 MR. PRENDERGAST: And that's
 10 precisely --
 11 THE COURT: And these folks have,
 12 seems to me, a right to know what is going to happen
 13 in terms of what they have to save for and what
 14 choices they have to make with regard to ACA options
 15 or not, and I'd like them to know that as soon as
 16 possible.
 17 MR. PRENDERGAST: And your point, that
 18 while the statute of limitations argument -- I really
 19 haven't thought through that. I had no idea that was
 20 coming up today.
 21 THE COURT: Well, it's what I've been
 22 thinking about. It's not -- I don't know whether you
 23 raised it or not. I didn't look back to see. But
 24 Mr. Krislov is right. If you didn't raise it, then

1 you didn't raise it. But we'll see, and we'll let
 2 things lie.
 3 So did you want to say anything else
 4 for the record, Richard?
 5 MR. PRENDERGAST: No, Your Honor. I
 6 don't think I have anything that has to be added. I
 7 did have some prepared remarks, but I think the Court
 8 is very close to granting 304 language on one and
 9 two --
 10 THE COURT: And four.
 11 MR. PRENDERGAST: -- and four, and the
 12 dismissal stands, and we'll proceed with the case on
 13 subclass three.
 14 THE COURT: That's going to be my
 15 order. And that's just what you asked for. And you
 16 can -- that gives you leave to do all sorts of things
 17 that you want to do before the appellate court with
 18 regard to subclass one, two, and four.
 19 What do you want to do with regard to
 20 subclass three, Clint?
 21 MR. KRISLOV: I would like 304(a)
 22 language with regard to subclass three as well,
 23 because bringing this is up as a whole package is the
 24 best way to deal it in a timely fashion.

1 Subclass three is at the -- they are
 2 the most precarious group, I guess, at the moment
 3 than subclass four, obviously.
 4 But subclass three, the City has made
 5 it clear, they're not doing anything for them after
 6 the end of the year. They're not getting a subsidy.
 7 And as a matter of law, if they are -- you have ruled
 8 that they have a constitutional entitlement, while we
 9 disagree over whether the statute of limitations has
 10 already been resolved, could be implicated, the
 11 merits will drive this one, and the whole package
 12 should be before the appellate court so it can be
 13 decided for everybody in sufficient time --
 14 THE COURT: Or not.
 15 MR. KRISLOV: Or not -- well, they
 16 will decide it for everybody.
 17 THE COURT: Not necessarily.
 18 MR. KRISLOV: Whatever they decide. I
 19 concur.
 20 THE COURT: What's the City's
 21 position?
 22 MR. PRENDERGAST: Well, let me just
 23 say --
 24 THE COURT: We're talking about

1 subclass three.
 2 MR. PRENDERGAST: Going back to the
 3 days of Judge Green, Mr. Krislov has a tendency to
 4 use dispositions on motions to dismiss as if they are
 5 issued on the merits of the case, and I just want to
 6 state for the record, we've never gone into that --
 7 THE COURT: Well, that's because
 8 that's what the law says --
 9 MR. PRENDERGAST: That's right.
 10 (Simultaneous colloquy.)
 11 THE COURT: -- a motion to dismiss
 12 isn't a judgment on the merits of the case, so I
 13 don't know how you can appeal it.
 14 But go ahead.
 15 MR. PRENDERGAST: And to the point on
 16 subclass four -- no, I mean subclass three -- we're
 17 going to be up there on everything else, Judge. I
 18 don't care.
 19 THE COURT: He doesn't care.
 20 MR. PRENDERGAST: I do care, but --
 21 THE COURT: Granted.
 22 MR. PRENDERGAST: Fine.
 23 THE COURT: All right. I will,
 24 however, say it was a motion to dismiss, and it

1 was -- there are factual situations that it was
 2 not -- well, my ruling on subclass three is my ruling
 3 on subclass three. I don't think it's right, but you
 4 want it. He doesn't care. You got it.
 5 MR. KRISLOV: Thank you.
 6 THE COURT: You're welcome.
 7 MR. KRISLOV: Okay. Just so we've got
 8 the clear outline of the scorecard on everything so
 9 we don't have any disagreements --
 10 MR. BURKE: Well, I'd like to
 11 address --
 12 MR. PRENDERGAST: If I can just say --
 13 Judge, let me back off a little bit on what I said.
 14 Subclass three is denied? The motion
 15 to dismiss was denied?
 16 THE COURT: Yes, it was.
 17 MR. PRENDERGAST: So I don't know how
 18 he can appeal it, so --
 19 THE COURT: And you can make that
 20 argument on appeal, and I guess you will. You just
 21 told me you have no objection.
 22 MR. PRENDERGAST: Well, I don't know
 23 how it can be -- as a matter of law, I don't know
 24 that the Court can enter 304(a) --

1 THE COURT: Well, now, Richard, I
 2 agree with you, and I've think I made that record all
 3 along. There is nothing to appeal. I haven't made
 4 any findings of fact, and I haven't made any findings
 5 of law, and no judgments have been entered with
 6 regard to subclass three.
 7 But I don't see how it is subject to
 8 appeal, and the appellate court will note that on
 9 their own, and they'll either agree with me or not.
 10 And then they can take me to task, as they will, for
 11 granting this language that you just a few seconds
 12 ago agreed to.
 13 So I'm going to grant it, and then
 14 everything's before them, and they're going to send
 15 things back anyway. And it gives Mr. Krislov the
 16 opportunity to do that which he wants for his
 17 clients.
 18 I think sometimes the parties forget
 19 to remember that we're dealing with human beings, and
 20 it's important for them to know what they're going to
 21 do.
 22 And by the way, these are not young
 23 human beings. These are people who are about to
 24 enter into retirement in terms of subclass three, and

1 they need to know what it is they have to do, and
 2 they need to know their rights.
 3 So if the appellate court can do that,
 4 great. I don't think they can. But Mr. Krislov
 5 wants it before them, and you didn't object until you
 6 started to backtrack. In fact, you agreed to it.
 7 So I'm going to stick with your
 8 original position. And I assume that the appellate
 9 court's going to knock it back to me.
 10 But nothing -- I would have entered a
 11 stay anyway, Richard, with regard to subclass three,
 12 because I expect something to come back maybe with
 13 regard to -- well, anyway, and if they only knock
 14 back subclass three, great. If they knock back
 15 subclass one and two, fine. We'll see.
 16 MR. PRENDERGAST: Judge, may I just,
 17 for my own benefit?
 18 THE COURT: Of course you may.
 19 MR. PRENDERGAST: When I said I don't
 20 care about 304, what I meant to convey was it doesn't
 21 make any difference to me whether we're arguing on
 22 three classes or four because we're going to be
 23 arguing. But I do not want this record to reflect a
 24 waiver.

1 And if there is a waiver, or a notion
2 of a waiver, I want to clarify I'm not waiving
3 anything. All I'm saying is this, and I'm saying
4 this for the record: The reason that I believe you
5 cannot -- no matter whether I like it or not -- enter
6 a 304(a) finding is because --
7 THE COURT: That's the subclass.
8 MR. PRENDERGAST: Yes -- is because
9 you denied the motion to dismiss, and he has nothing
10 to appeal.
11 THE COURT: Sure. I agree with you.
12 MR. PRENDERGAST: Thank you.
13 THE COURT: And I did not take your
14 statement as being a waiver. I took it as being,
15 actually, a -- as you said before, you're
16 modifying -- the preface was he's going to do it
17 anyway. And so that's how I took it.
18 MR. PRENDERGAST: Thank you.
19 THE COURT: And that's how I still
20 take it.
21 I do not consider it to be a waiver.
22 I still consider you to have objected with regard to
23 that; is that correct?
24 MR. PRENDERGAST: That's correct, Your

1 Honor.
2 THE COURT: And Mr. Krislov can argue
3 anything he wants, and he's going to, and that's
4 fine, as it should be.
5 But I'm going to grant 304(a) language
6 as to all the classes, there being no just reason to
7 delay enforcement of an appeal of all of these
8 orders, and we'll see what happens. And I wish you
9 well.
10 Yes, Mr. Burke.
11 MR. BURKE: Judge, I have -- my
12 understanding of your rulings on 1983, 1985 statutes
13 is that was a lifetime benefit.
14 What that benefit is is altogether
15 different from the benefits that are set out in this
16 letter of May 13, 2013, to which the funds had no
17 business agreeing or being part of.
18 And the reason I raise that, Your
19 Honor, is that there is a subsidy under the old
20 agreement. That subsidy is gone, and, therefore,
21 that is an enormous expense to the funds.
22 And I think that it's not clear that
23 what this Court is ruling. Is it the 2000 -- 1983,
24 1985 statutes, or is it some interpretation of this

1 letter?
2 So that on appeal, for the record, on
3 appeal, I would like the Court to clarify.
4 MR. KRISLOV: Can I weigh in on that?
5 I think I can give some clarity to what I think the
6 Court either would rule or may rule.
7 MR. BURKE: Not would rule, Judge.
8 THE COURT: Well, I ruled under the
9 1983 and 1985 statutes. I didn't rule based on that
10 May 2013 letter.
11 And you don't need to speculate,
12 Mr. Krislov, or be a mind reader with regard to me.
13 That's what I said in my opinions over and over
14 again, and I'm saying it again now.
15 It's your position, based upon your
16 consultation with the City, as I understand it, that
17 you consider that letter to be somehow a binding
18 contract that changed the terms that the City is --
19 has voluntarily agreed to accept.
20 That's not before me. That wasn't
21 raised before me. That's just statements that have
22 been made in your submissions to me, and I understand
23 what you're saying. And it's not important for me to
24 agree or disagree about that since no one has ever

1 filed anything in front of me with regard to that.
2 What was filed was whether there
3 was -- what the parties' obligations were under the
4 '83 and '85 amendments to the Pension Code and the
5 agreements and the ones thereafter.
6 And I made that clear over and over
7 and over again in many written opinions. And there's
8 no reason for me to say otherwise now. There's
9 nothing that you said that changes my opinion.
10 But you want to talk. Go ahead.
11 MR. KRISLOV: Here's what Mr. Burke's
12 point raises.
13 You ruled that class one and class two
14 have a permanent benefit, and it protects them
15 from -- the benefit --
16 THE COURT: Because there's was no
17 time limitation.
18 MR. KRISLOV: Correct. At least, no
19 more, no less. We have a difference of opinion on
20 that. But Mr. Burke is saying they're stopping that
21 subsidy at the end of the year, even for the class
22 one and class two people.
23 We don't think that they have a right
24 to do that, and we -- this business about --

1 THE COURT: Well, my ruling was that
2 it is -- and I was clear on this, and the City agrees
3 with me, and the Funds disagree with me -- maybe they
4 should ask me to recuse myself -- but was that it is
5 the Funds' obligation under the '83 and '85 statute
6 that the City has to levy taxes to support that -- I
7 just looked at this -- at the language of the
8 amendments and enforce it.

9 So that hasn't changed. And if the
10 Funds are going to do something, then the funds are
11 going to do something, and I'll await any motions
12 with regard to that.

13 But my order was clear with regard to
14 that.

15 MR. KRISLOV: And I think Mr. Burke's
16 statement is this they're not going to comply with
17 that order.

18 THE COURT: I don't know that he said
19 that. I didn't hear him saying that. I didn't hear
20 him say that he was about to violate my order.

21 I do understand his disagreement with
22 my order, and I can understand why he does. I don't
23 agree that he's right, but there you go.

24 MR. KRISLOV: I'd like to know. If

1 they're going to end the subsidy at the end of the
2 year, then this makes it acute that we do need a
3 preliminary injunction.

4 We restate our request previously in
5 order to protect the participants while these matters
6 are being sorted out.

7 THE COURT: Mr. Burke?

8 MR. BURKE: Judge, again, I just want
9 to make it clear on the record, what is this Court's
10 ruling if it's going to go up? What's the Court's
11 ruling on 1983 and '85?

12 THE COURT: I told you --

13 MR. BURKE: It's --

14 THE COURT: -- Mr. Burke, it's in my
15 opinion not once, not twice, but at least three
16 times, you got to do it.

17 MR. BURKE: I agree.

18 THE COURT: All right. He agrees.

19 MR. BURKE: We have no problem with
20 it.

21 THE COURT: He's got no problem.

22 MR. BURKE: My problem is how does
23 that make sense in connection with the letter, the
24 City's letter, not the Funds', the City's letter in

1 2013?

2 THE COURT: I don't find the City's
3 letter -- I'm not making any ruling upon the legal
4 obligation -- the legal affect of that letter because
5 no one has asked me --

6 MR. BURKE: That's what I want.
7 That's all I asked.

8 THE COURT: -- and the record is
9 clear.

10 There you go, Mr. Krislov, are you
11 pleased?

12 MR. KRISLOV: I'm happy.

13 THE COURT: He's happy. Okay. What
14 else do you want from me?

15 MR. DONHAM: I just want to say that
16 I'd like to be on the record that we object to the
17 304(a) finding. We understand that you've -- Your
18 Honor's ruling, but I don't want there to be any
19 doubt that we object to the Rule 304(a) finding with
20 regard to subclass three for a number of reasons.

21 THE COURT: Yes. And your objection
22 is noted, and I agree with your objection. But your
23 objection is not good enough to counteract what I
24 read the City as saying.

1 They have -- without waiving their
2 same position, that it's going to be before the court
3 anyway, I believe the court is going to bring --
4 throw that back to me. I also believe they should.
5 And so if anyone's at fault, it's me for granting
6 304(a) language as to subclass three.

7 But as Mr. Prendergast alluded to,
8 it's going to be argued by Mr. Krislov anyway. And
9 let the court do what the court's going to do. I
10 think Mr. Krislov, it's clear, needs a statement from
11 a higher court before he will -- as to subclass three
12 before he gives up, because he's tenacious, and
13 that's who he is, and that's why they've hired him,
14 and that's why people like him.

15 And I told you before, Mr. Krislov,
16 don't, please, take any statement I make in terms of
17 this case as anything less than respect for you and
18 the job that you do.

19 So I'm going to let him to do that,
20 and your objection is noted with all the statements I
21 made, all the statements Mr. Prendergast has made,
22 and I don't want to review this anymore.

23 So go ahead. What?

24 MR. PRENDERGAST: Just when you read

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1 the transcript to hear what you just said now about
2 the City's position. And I believe you indicated
3 earlier you regard the City's position to be an
4 objection.
5 THE COURT: I do.
6 MR. PRENDERGAST: Not a waiver.
7 THE COURT: There's no waiver.
8 There's an objection by the City or by the Funds.
9 MR. PRENDERGAST: Secondly, Your
10 Honor, earlier you talked about whether we thought
11 there was going to be no 304(a) finding on the class.
12 THE COURT: Which class?
13 MR. PRENDERGAST: Subclass three, that
14 as we go forward with the appeal, you were going to
15 stay proceedings on that.
16 THE COURT: Yes.
17 MR. PRENDERGAST: Now we're going
18 forward with the appeal, and I believe the
19 proceedings should be stayed until such time as the
20 court of appeals has the chance to give --
21 THE COURT: Sure. Don't you agree?
22 MR. KRISLOV: No.
23 THE COURT: Let ask you a question,
24 Mr. Krislov, since you think I'm wrong about

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1 everything -- excuse me, and since you want review of
2 everything I've ruled on, how is it efficient? How
3 is use of our resources, yours, theirs, but most
4 importantly, since I am the center of the universe,
5 mine, to go forward with anything that may not -- we
6 may not go forward and on?
7 MR. KRISLOV: It's time to have them
8 answer the complaint.
9 THE COURT: He's not. It's stayed.
10 It's stayed pending an appeal.
11 MR. KRISLOV: They didn't make a
12 motion before on the 304(a). Why does it -- I don't
13 understand. Under 304 it doesn't stop proceedings.
14 You have ordered them to --
15 THE COURT: Do I have the discretion
16 to run discovery?
17 MR. KRISLOV: You obviously do.
18 THE COURT: Thank you. I'm exercising
19 my discretion --
20 MR. KRISLOV: All I --
21 THE COURT: Excuse me, Clint.
22 -- for the efficient use of resources,
23 mine, as well as yours, as well as theirs, to stay
24 all the proceedings and the need for them to answer

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1 anything until I find out that either I'm right or
2 you're right with regard to classes one through four.
3 If I have to go on with those matters,
4 then I will require them to answer forthwith. But
5 it's silly to do so before they need to.
6 MR. KRISLOV: No, because -- and
7 here's why I disagree. If you're right on the law,
8 they still have to respond to what the facts are. If
9 they admit most of the facts in the complaint that
10 give rise to it, I mean, it's only been 30 years.
11 They can -- they filed an answer in Korshak. They
12 can file an answer here. There's nothing --
13 THE COURT: Well, but that's not true
14 in total. If my dismissal of class one and class two
15 is right, then they don't have to respond to the
16 complaint with regard to class one and class two.
17 If I'm wrong with regard to subclass
18 four and it is out for some reason, then they don't
19 have to respond to that.
20 You know, we're not -- I'd like to not
21 deal with Plato's cave here and go with shadows until
22 I know exactly what is and what is not. I'm not
23 going to require them to respond. That would be
24 silly.

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1 MR. KRISLOV: Then you should enjoin
2 them as well from changing the terms of the
3 healthcare, you should -- then it's very important to
4 put in a preliminary injunction to preserve the
5 status quo from being basically --
6 THE COURT: But you've raised that
7 thought four times now, and it's denied again.
8 MR. KRISLOV: Okay. I hear you. I
9 understand your ruling. Respectfully, I disagree
10 with you.
11 THE COURT: That's nothing new.
12 MR. KRISLOV: We have a history
13 together.
14 THE COURT: We have no history
15 together.
16 MR. KRISLOV: I mean in this case.
17 THE COURT: Believe me, we have no
18 history together.
19 So everything is given, and I look
20 forward to seeing you on the flip side of the appeal.
21 MR. KRISLOV: Can we ask you one other
22 thing?
23 THE COURT: Sure.
24 MR. KRISLOV: Since we're dealing with

1 everything on a class basis, can you certify it as a
2 class case on behalf of the four classes?

3 THE COURT: Not until I have it.
4 We'll see you on the flip side of the appeal.

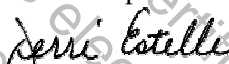
5 MR. KRISLOV: Thank you, Judge.
6 Proceedings adjourned at 11:30 a.m.,
7 August 31, 2016.)
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1 REPORTER'S CERTIFICATE
2

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

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

12 IN WITNESS WHEREOF, I hereunto set my
13 hand as Certified Shorthand Reporter in and for the
14 State of Illinois on September 6, 2016.

15
16 
17 Jerri Estelle, CSR, RPR
18 License Number: 084-003284
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September 23, 2016

VIA ELECTRONIC MAIL

Clinton A. Krislov
KRISLOV & ASSOCIATES, LTD.
20 N. Wacker Drive, Suite 1300
Chicago, Illinois 60606

Dear Clint:

This letter responds to the issues raised by your letter dated September 19, 2016.

We respectfully disagree with your position that the Funds are obligated to provide retirees with a health care plan or that they have any obligation to subsidize retiree health care. Judge Cohen has dismissed all of the plaintiffs' claims with the limited exception that he denied the motion to dismiss as to plaintiffs' Pension Clause claim based upon the 1983 and 1985 amendments. But to be clear, no relief has been awarded on that sole remaining claim; rather, that claim will be the subject of further litigation before Judge Cohen after your Rule 304(a) appeal is resolved, including without limitation defendants' statute of limitations defense, which Judge Cohen indicated could not be resolved at the motion to dismiss stage.

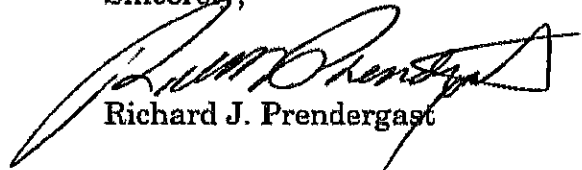
On a related subject, in order to provide City retirees with additional options beyond what is available in the marketplace (*i.e.*, the Affordable Care Act or otherwise) for their 2017 coverage, the City, on its own initiative, has coordinated with Blue Cross Blue Shield of Illinois to offer a number of group insurance plans. On September 20, representatives of the City met with union representatives to outline these group insurance plans that will be available for retirees for the 2017 year. (Please find enclosed information distributed during the union meetings). As Jennifer Naber advised you on September 19, the City has also met with the Funds'

Clinton A. Krislov
September 23, 2016
Page 2

Executive Directors to request that retirees will have the option, if they select coverage under one of these plans, to pay the premiums by deducting such amounts from their monthly pension payments. The Funds' trustees need to vote to approve that process. We understand that the Laborers' Fund Trustees voted to do so on Tuesday and that the other Funds have met or will be meeting in the near future to consider this request.

As to your request for information relating to the rates for members of the Korshak and Window sub-classes, the City expects to provide that information by no later than early October 2016. Consistent with past practice, these rates will be determined by Segal's projections of health care costs for 2017. When available, the City will share Segal's basis for the projections.

Sincerely,



Richard J. Prendergast

RJP/jls

Enclosures

Summary of Blue Cross Blue Shield Non-Medicare Insured Plans for 2017

	Option A	Option B*
Provider Network	Blue Cross Blue Shield Illinois PPO Network	Blue Cross Blue Shield of Illinois Options Network
Metro Chicago	10,358 Primary Care Doctors	10,358 Primary Care Doctors combined in Tiers 1 and 2
Metro Chicago	16,023 Specialist Doctors	16,023 Specialist Doctors combined in Tiers 1 and 2
State of Illinois	226 Hospitals	226 Hospitals combined in Tiers 1 and 2
Single Premium	\$1,466	\$1,295
Couple Premium	\$2,610	\$2,395
Family Premium	\$3,622	\$3,185
Lifetime Maximum Amount	Unlimited	Unlimited
In-Network Individual Deductible	\$427	Tier 1 is \$1545; Tier 2 is \$2545
Individual Out of Pocket Limit	\$2,497	Tier 1: \$6180; Tier 2: \$7,180
In-Network Coinsurance	100% diagnostic tests at independent labs/90% physician services/80% other services/80% out of area services	100% diagnostic tests at independent labs/Tier 1: 90% all other services; Tier 2: 75% all other services
Preventive Services covered at \$0 in network	Yes	Yes
In Network Primary Care/Specialist Office Visit co-pay	Not Applicable; Office visits subject to co-insurance and deductible.	Tier 1: \$20 primary care/\$45 specialist; Tier 2: \$30/\$55
In and Out of Network Emergency Room Co-pay	\$0	\$258
Emergency Room Co-insurance	90% after deductible is met	90% after deductible is met
In patient in-network Co-Pay	\$0	Tiers 1 and 2: \$250 per admit
In-network out-patient surgical co-pay for facility charges	\$0	\$200
Out of Network Individual Deductible	\$998	\$3,545
Out of Network Individual Out of Pocket expense	\$4,989	\$8,180
Out of Network co-insurance rate	70%	50%
Out of network in-patient hospital co-pay	\$0	\$350
Out of network out-patient surgical co-pay	\$0	\$300
Prescription drug co-pays for generic drugs, formulary brand drugs	20% retail; \$27 generic/\$71 formulary brand mail order	20% retail; \$27 generic/\$71 brand mail order

* Tier 1 Providers are located in Cook, DuPage, Will, Kane, McHenry, Lake, and Kankakee Counties

Actualy Input	S.O.B #	Column:	Option 1			Option 2			Option 3			
			HCSC City of Chicago PASSIVE	HCSC City of Chicago PASSIVE	HCSC City of Chicago PASSIVE	HCSC City of Chicago PASSIVE	HCSC City of Chicago PASSIVE	HCSC City of Chicago PASSIVE	HCSC City of Chicago PASSIVE	HCSC City of Chicago PASSIVE	HCSC City of Chicago PASSIVE	
001	001	Provider	PPD - In Network	PPD - Out of Network	PPD - In Network	PPD - Out of Network	PPD - In Network	PPD - Out of Network	PPD - In Network	PPD - Out of Network	PPD - In Network	PPD - Out of Network
001	001	Product										
001	001	Star Rating										
001	001	Members										
001	001	Premium	\$339.00	\$0	\$339.00	\$0	\$339.00	\$0	\$339.00	\$0	\$339.00	\$0
001	001	MOORE (Maximum out of Pocket)	\$0	\$0	\$1,500	\$0	\$1,500	\$0	\$1,500	\$0	\$1,500	\$0
001	001	Combined GOP Max	\$0	\$0	\$1,500	\$0	\$1,500	\$0	\$1,500	\$0	\$1,500	\$0
001a	001a	Inpatient Hospital - Acute	\$0/Day	\$0	\$0/Day	\$0	\$0/Day	\$0	\$0/Day	\$0	\$0/Day	\$0
001b	001b	Inpatient Hospital - Psychiatric	\$0/Day	\$0	\$0/Day	\$0	\$0/Day	\$0	\$0/Day	\$0	\$0/Day	\$0
001c	001c	Skilled Nursing Facility	\$0 (days 1-100)	\$0 (days 1-100)	\$0 (days 1-100)	\$0 (days 1-100)	\$0 (days 1-100)	\$0 (days 1-100)	\$0 (days 1-100)	\$0 (days 1-100)	\$0 (days 1-100)	\$0 (days 1-100)
003	003	Cardiac and Pulmonary Rehabilitation Services	\$0	\$0	\$50 copay	\$0	\$50 copay	\$0	\$50 copay	\$0	\$50 copay	\$0
004	004	Emergency Care	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
004a	004a	Urgent Care Facility	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
005	005	Partial Hospitalization	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
006	006	Home Health Service	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
007	007	Primary Care Physician Services	\$0	\$0	\$25 copay	\$0	\$25 copay	\$0	\$25 copay	\$0	\$25 copay	\$0
007a	007a	Chiropractic Services	\$0	\$0	\$25 copay	\$0	\$25 copay	\$0	\$25 copay	\$0	\$25 copay	\$0
007b	007b	Occupational Therapy Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
007c	007c	Physician Specialist Services Excluding Psychiatric Services (exclude Radiology)	\$0	\$0	\$25 copay	\$0	\$25 copay	\$0	\$25 copay	\$0	\$25 copay	\$0
007d	007d	Mental Health Specialty Services - Non-Physician	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
007e	007e	Podiatry Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
007f	007f	Other Health Care Profession Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
007g	007g	Psychiatric Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
007h	007h	Physical Therapy and Speech Language Pathology Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
008	008	Lab Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
008a	008a	Diagnostic Procedures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
008b	008b	Therapeutic Radiology	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
008c	008c	Diagnostic Radiology services / X-Ray	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
008d	008d	Advanced Imaging (MRI, MRA, CT Scan, PET)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
009	009	Outpatient Hospital Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
009a	009a	Ambulatory Surgical Center (ASC) Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
009b	009b	Outpatient Substance Abuse	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
009c	009c	OP Blood	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
010	010	Ambulance Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
010a	010a	Transportation Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
010b	010b	Durable Medical Equipment (DME)	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered
011	011	Prosthetics/Medical Supplies	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
011a	011a	Diabetes Supplies and Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
011b	011b	End-Stage Renal Disease	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
011c	011c	Acupuncture	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered
012	012	Over-the-counter RX	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered
013	013	Meal Benefit	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered
014	014	Medicare-covered Preventive Services	\$0 copay	\$0 copay	\$0 copay	\$0 copay	\$0 copay	\$0 copay	\$0 copay	\$0 copay	\$0 copay	\$0 copay
014a	014a	Annual Physical Exam	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%

Code	Supplemental Education / Wellness Programs	SilverSneakers	SilverSneakers	SilverSneakers	SilverSneakers	SilverSneakers
014c	Kidney Disease Education Services	\$0	\$0	\$0	20%	20%
014d	Diabetes Self-Management Training	\$0	\$0	\$0	20%	20%
015	Medicare Part B Rx Drugs	Not Covered	Not Covered	20%	Not Covered	20%
015a	Preventive Dental	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered
015b	Comprehensive Dental	\$0 Medicare Covered	\$0 Medicare Covered	20% Medicare Covered	20% Medicare Covered	20% Medicare Covered
017a	Eye Exams	\$0 Medicare Covered	\$0 Medicare Covered	20% Medicare Covered	20% Medicare Covered	20% Medicare Covered
017b	Eye Wear	\$0 Medicare Covered	\$0 Medicare Covered	20% Medicare Covered	20% Medicare Covered	20% Medicare Covered
018	Hearing Exams	\$0 Medicare Covered	\$0 Medicare Covered	20% Medicare Covered	20% Medicare Covered	20% Medicare Covered
018a	Hearing Aids	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered
018b	Rx Iters (initial design)	PD 1	PD 1	PD 2	PD 3	PD 3
019	Gap Coverage	See Rx Tab	See Rx Tab	See Rx Tab	See Rx Tab	See Rx Tab
020	Worldwide emergency benefit	Urgent/Emergent only : \$0; no limit.	Urgent/Emergent only : \$50; no limit	Urgent/Emergent only : \$50; no limit	Urgent/Emergent only : 20%; no limit	Urgent/Emergent only : 20%; no limit
021	Travel benefit	For members that are outside of the service area for up to 4 times per year	For members that are outside of the service area for up to 4 times per year	For members that are outside of the service area for up to 4 times per year	For members that are outside of the service area for up to 4 times per year	For members that are outside of the service area for up to 4 times per year
022	Incentive	\$25 for up to 4 times per year	\$25 for up to 4 times per year	\$25 for up to 4 times per year	\$25 for up to 4 times per year	\$25 for up to 4 times per year

* Deductible is applicable to all CEs with a coinsurance. Deductible is not applicable to any CE's with a copay. The deductible must be met before a member will pay a coinsurance.

**Option 1 Drug Coverage
City of Chicago**

Premiums	
2017	2017
Rates are per member per month for persons who have Medicare as primary coverage.	

Description of Benefit	2017					
	Retail (30-day)	Retail (60-day)	Retail (90-day)	Mail Order (30-day)	Mail Order (60-day)	Mail Order (90-day)
Part D phase: Deductible	\$100 deductible					
Part D phase: Initial Coverage Limit (ICL) - The following copays below will apply up to the ICL amount of \$3,766						
Tier 1 - Preferred Generic	20%	20%	20%	\$10	\$20	\$30
Tier 2 - Non-Preferred Generic	20%	20%	20%	\$10	\$20	\$30
Tier 3 - Preferred Brand	20%	20%	20%	20%	20%	20%
Tier 4 - Non-Preferred Brand	20%	20%	20%	20%	20%	20%
Tier 5 - Specialty	20%	20%	20%	20%	20%	20%
Part D phase: Coverage Gap - The following copays will apply for the Coverage Gap until member reaches the Troop amount of \$4,950						
Part D phase: Coverage Gap						
Tier 1 - Preferred Generic	20%	20%	20%	\$10	\$20	\$30
Tier 2 - Non-Preferred Generic	20%	20%	20%	\$10	\$20	\$30
Tier 3 - Preferred Brand	20%	20%	20%	20%	20%	20%
Tier 4 - Non-Preferred Brand	20%	20%	20%	20%	20%	20%
Tier 5 - Specialty	20%	20%	20%	20%	20%	20%
Troop amount that begins Catastrophic phase	\$4,950					
Catastrophic Phase cost sharing amounts	Catastrophic Phase cost sharing amounts					
After your yearly out-of-pocket drug costs (including drugs purchased through your retail pharmacy and through mail order) reach \$4,950 you pay the greater of						
<ul style="list-style-type: none"> • 5% of the cost, or • \$3.30 copay for generic (including brand drugs treated as generic) and a \$8.25 copayment for all other drugs 						
Account Executive(s):	Date Submitted:					

PLEASE NOTE:

- Areas in red indicate amounts required by the federal government to all 2017 Medicare Part D program and are not subject to negotiation. These amounts may be subject to change in 2017.
- All cost-sharing presumes eligible prescriptions filled at a network pharmacy or our mail-order vendor, PrimeMail.
- The Blue Cross MedicareRx formulary is reviewed and approved annually by the Centers for Medicare & Medicaid Services (CMS), but is subject to change as maintenance updates are made throughout the year.
- Formulary: Expanded Formulary
- Supplemental drug buy up list #2
- Service Mark of the Blue Cross and Blue Shield Association, an Association of Independent Blue Cross and Blue Shield Plans
- Registered Service Marks of the Blue Cross and Blue Shield Association, an Association of Independent Blue Cross and Blue Shield Plans
- Blue Cross MedicareRx (POP) is a Medicare Prescription Drug plan offered by HCSC Insurance Services Company, an Independent Licensee of the Blue Cross and Blue Shield Association under contract H8634 with the Centers for Medicare and Medicaid Services.

**Option 2 Drug Coverage
City of Chicago**

Premiums	
2017	2017
Rates are per member per month for persons who have Medicare as primary coverage.	

Description of Benefit	Retail (30-day)	Retail (60-day)	Retail (90-day)	Mail Order (30-day)	Mail Order (60-day)	Mail Order (90-day)
Part D phase: Deductible						
Part D phase: Initial Coverage Limit (ICL) - The following copays below will apply up to the ICL amount of \$3,700						
Part D phase: Coverage Gap - The following copays will apply for the Coverage Gap until member reaches the Troop amount of \$4,950						
Tier 1 - Preferred Generic	20%	20%	20%	\$10	\$20	\$30
Tier 2 - Non-Preferred Generic	20%	20%	20%	\$10	\$20	\$30
Tier 3 - Preferred Brand	20%	20%	20%	20%	20%	20%
Tier 4 - Non-preferred Brand	20%	20%	20%	20%	20%	20%
Tier 5 - Specialty	20%	20%	20%	20%	20%	20%
Part D phase: Coverage Gap						
Tier 1 - Preferred Generic	20%	20%	20%	\$10	\$20	\$30
Tier 2 - Non-Preferred Generic	20%	20%	20%	\$10	\$20	\$30
Tier 3 - Preferred Brand	20%	20%	20%	20%	20%	20%
Tier 4 - Non-preferred Brand	20%	20%	20%	20%	20%	20%
Tier 5 - Specialty	20%	20%	20%	20%	20%	20%
Troop amount that begins Catastrophic phase						
Catastrophic Phase cost sharing amounts						
Catastrophic Phase cost sharing amounts						
After your yearly out-of-pocket drug costs (including drugs purchased through your retail pharmacy and through mail order) reach \$4,950 you pay the greater of:						
<ul style="list-style-type: none"> • 5% of the cost, or • \$3.30 copay for generic (including brand drugs treated as generic) and a \$8.25 copayment for all other drugs 						
Account Executive(s):	Date Submitted:					

PLEASE NOTE:

- Areas in red indicate amounts required by the federal government to all 2017 Medicare Part D program and are not subject to negotiation. These amounts may be subject to change in 2017
- All cost-sharing presumes eligible prescriptions filled at a network pharmacy or our mail-order vendor, PrimeMail.
- This Blue Cross Medicare formulary is reviewed and approved annually by the Centers for Medicare & Medicaid Services (CMS), but is subject to change as maintenance updates are made throughout the year.
- Formulary Term - Custom
- SM Service Mark of the Blue Cross and Blue Shield Association, an Association of Independent Blue Cross and Blue Shield Plans
- ® Registered Service Marks of the Blue Cross and Blue Shield Association, an Association of Independent Blue Cross and Blue Shield Plans
- Blue Cross MedicareRx (PDP) is a Medicare Prescription Drug plan offered by HCSC Insurance Services Company, an Independent Licensee of the Blue Cross and Blue Shield Association under contract #8634 with the Centers for Medicare and Medicaid Services.

Option 3 Drug Coverage

City of Chicago

Premiums	2017	2017
Rates are per member per month for persons who have Medicare as primary coverage.		

Description of Benefit	2017					
	Retail (30-day)	Retail (60-day)	Retail (90-day)	Mail Order (30-day)	Mail Order (60-day)	Mail Order (90-day)
Part D phase: Deductible	\$400 deductible					
Part D phase: Initial Coverage Limit (ICL) - The following copays below will apply up to the ICL amount of \$3,700						
Tier 1 - Preferred Generic	25%	25%	25%	\$10	\$20	\$30
Tier 2 - Non-Preferred Generic	25%	25%	25%	\$10	\$20	\$30
Tier 3 - Preferred Brand	25%	25%	25%	25%	25%	25%
Tier 4 - Non-preferred Brand	25%	25%	25%	25%	25%	25%
Tier 5 - Specialty	25%	25%	25%	25%	25%	25%

Part D phase: Coverage Gap	The following copays will apply for the Coverage Gap until member reaches the Troop amount of \$4,950				
Tier 1 - Preferred Generic	No Gap Coverage				
Tier 2 - Non-Preferred Generic	No Gap Coverage				
Tier 3 - Preferred Brand	No Gap Coverage				
Tier 4 - Non-preferred Brand	No Gap Coverage				
Tier 5 - Specialty	No Gap Coverage				

Troop amount that begins Catastrophic phase	\$4,950
Catastrophic Phase cost sharing amounts	Catastrophic Phase cost sharing amounts
Account Executive(s):	Date Submitted:

After your yearly out-of-pocket drug costs (including drugs purchased through your retail pharmacy and through mail order) reach \$4,950, you pay the greater of:

- 5% of the cost, or
- \$3.30 copay for generic (including brand drugs treated as generic) and a \$8.25 copayment for all other drugs

PLEASE NOTE:

- Areas in red indicate amounts required by the federal government to all 2017 Medicare Part D program and are not subject to negotiation. These amounts may be subject to change in 2017.
- All cost-sharing presumptions eligible prescriptions filled at a network pharmacy or our mail-order vendor, PrimeMail.
- The Blue Cross MedicareRx formulary is reviewed and approved annually by the Centers for Medicare & Medicaid Services (CMS), but is subject to change as maintenance updates are made throughout the year.
- Standard 5 tier with Specialty formulary.

SM Service Mark of the Blue Cross and Blue Shield Association, an Association of Independent Blue Cross and Blue Shield Plans
 ® Registered Service Marks of the Blue Cross and Blue Shield Association, an Association of Independent Blue Cross and Blue Shield Plans
 Blue Cross MedicareRx (PDP) is a Medicare Prescription Drug plan offered by HCSC Insurance Services Company, an Independent Licensee of the Blue Cross and Blue Shield Association under contract H8634 with the Centers for Medicare and Medicaid Services.



**DEPARTMENT OF FINANCE
CITY OF CHICAGO**

October 2016

**Important Healthcare Information
for Medicare Eligible Retirees Who Retired on or After August 23, 1989**

As you are aware, your City of Chicago retiree healthcare plan coverage that supplements your Medicare coverage is ending on December 31, 2016. If you want more than Medicare Parts A and B coverage, you will have to enroll for other insurance coverage that starts on January 1, 2017. If you do not enroll for other coverage, you will have no prescription drug coverage (retail or mail order) and you will be responsible for all expenses not paid by Medicare.

You may be able to obtain coverage through an employer if you are working or through your spouse's employer. You can purchase individual insurance plans offered during the Medicare open enrollment season. In addition, the City has arranged for Blue Cross Blue Shield of Illinois to offer three optional group insurance plans to City of Chicago retirees who are Medicare eligible. You should explore and compare all options before making a decision.

Medicare Open Enrollment for Individual Insurance Coverage for 2017

Every year Medicare sends a booklet to the home of each Medicare beneficiary called "Medicare & You." It includes detailed information on the types of available Medicare plan options. If you wish to download the 2017 edition of "Medicare & You" please go here:

<https://www.medicare.gov/medicare-and-you/different-formats/m-and-y-different-formats.html>

You have an opportunity to enroll in plans during the Medicare Open Enrollment season, which starts October 15 and ends December 7, 2016, for coverage beginning on January 1, 2017. You may elect a Medicare Supplement plan, a Medicare Advantage plan, or a Medicare Advantage plan with Prescription Drug coverage included. If you elect a Medicare Supplement plan or a Medicare Advantage plan with no drug coverage, you will also need to purchase a separate Medicare Part D prescription drug plan.

Your current coverage through the City is Medicare Supplement type coverage with a separate prescription drug benefit. Your current prescription drug benefit does not have a coverage gap (the “donut hole”). The individual Medicare Part D prescription drug plans offered during the Open Enrollment season all have a coverage gap. Similarly, Medicare Advantage Plans that include coverage for prescription drugs have a coverage gap. This coverage gap puts a temporary limit on what the plan pays for drugs. This coverage gap begins when you and your drug plan have spent a certain amount for covered drugs. Then, you pay out-of-pocket for prescription drugs until an out-of-pocket cost maximum amount is reached. After the maximum out-of-pocket limit is reached, the plan then provides payment for covered drugs again. The coverage gap is becoming smaller each year until 2020 when it will be eliminated.

Any coverage you purchase during the Medicare open enrollment on Medicare.gov or through an insurance agent will be individual insurance coverage. You will pay your premium directly to the insurance company.

Blue Cross Blue Shield Group Insurance Options for 2017

In addition to the individual insurance plans available to you in the marketplace during the Medicare Open Enrollment season, the City has arranged for Blue Cross Blue Shield of Illinois to offer three different optional group Medicare Advantage plans with Prescription Drug coverage for 2017. If you elect to enroll in any of these optional insurance plans, you will be responsible for paying the premium charged by Blue Cross Blue Shield of Illinois, and you may elect to have your premium deducted from your annuity. The three plans provide different levels of out-of-pocket expense for medical services and prescription drugs. Two of the plans cover prescription drugs including gap coverage (this means they have no “donut hole”). The third plan, the least expensive plan, does not include gap coverage.

Blue Cross Blue Shield of Illinois will be mailing information regarding the three available plans, to your home during the week of October 3rd. The information will be in an envelope marked with the note “Special Enrollment Information for 2017”. Blue Cross Blue Shield of Illinois will have a special enrollment team available to answer your questions about the three plans, and the team can help you identify how your prescription drugs are covered by the plans. Blue Cross Blue Shield of Illinois will also have representatives available to visit your home to help you with your plan choice.

Please note that while the City has arranged for Blue Cross Blue Shield of Illinois to offer you these options, the City is not endorsing or administering these plans.

Prescription Drug Information

In addition to the information that you will receive from Blue Cross Blue Shield of Illinois, you will also receive a letter from Caremark, mailed October 14th, which lists all of the prescription medications you have purchased within the period of July 1, 2015 through June 30, 2016. Each person covered by the City's retiree medical plans will receive an individualized letter from Caremark.

The Medicare website (www.Medicare.gov) includes a feature that allows you to enter your drug information and save it for future use, so that you can see how your drugs are covered by each insurance plan and if they are on the plan's preferred drug list. Similarly, if you call Blue Cross Blue Shield of Illinois to talk about the group insurance plan options, please have the Caremark letter with you-- the representative will ask you about the drugs you use and will be able to tell you how the drugs are covered by the Blue Cross Blue Shield of Illinois optional plans. You also may wish to research whether your prescriptions will be covered by any coverage that may be available to you.

You Must Choose a Plan and Enroll!

To have coverage in place for January 1, 2017, you must make a decision and complete the enrollment process. ***There will be NO "automatic" enrollment.*** If you do not make a decision and take the steps necessary to enroll, on January 1, 2017, you will have Original Medicare Part A and Part B coverage only. You won't have prescription drug coverage and you won't have any coverage to help you pay expenses not paid by Medicare. Please review your options and make a choice before the enrollment deadlines.

Note:

1) Included with this notice is a Notice of Creditable Coverage for Prescription Drugs that you may be asked to provide when you enroll in a Medicare Part D or Medicare Advantage with Prescription Drug coverage plan. It will verify to your new insurer that your coverage under the City's retiree plan was at least as good as coverage under a Part D plan. As long as your coverage was at least as good as Part D plan coverage, you cannot be required to pay any penalty amounts associated with not having drug coverage.

2) You will not receive a general certificate of credible coverage this year. However, if you need more specific or personalized information about the coverage you or your dependents previously had through the City, please contact the Benefits Service Center at 1-877-299-5111.



**DEPARTMENT OF FINANCE
CITY OF CHICAGO**

October 2016

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Medicare Open Enrollment for Individual Insurance Coverage for 2017

Every year Medicare sends a booklet to the home of each Medicare beneficiary called "Medicare & You." It includes detailed information on the types of available Medicare plan options. If you wish to download the 2017 edition of "Medicare & You" please go here:

<https://www.medicare.gov/medicare-and-you/different-formats/m-and-y-different-formats.html>

You have an opportunity to enroll in plans during the Medicare Open Enrollment season, which starts October 15 and ends December 7, 2016, for coverage beginning on January 1, 2017. You may elect a Medicare Supplement plan, a Medicare Advantage plan, or a Medicare Advantage plan with Prescription Drug coverage included. If you elect a Medicare Supplement plan or a Medicare Advantage plan with no drug coverage, you will also need to purchase a separate Medicare Part D prescription drug plan.

Your current coverage through the City is Medicare Supplement type coverage with a separate prescription drug benefit. Your current prescription drug benefit does not have a coverage gap (the “donut hole”). The individual Medicare Part D prescription drug plans offered during the Open Enrollment season all have a coverage gap. Similarly, Medicare Advantage Plans that include coverage for prescription drugs have a coverage gap. This coverage gap puts a temporary limit on what the plan pays for drugs. This coverage gap begins when you and your drug plan have spent a certain amount for covered drugs. Then, you pay out-of-pocket for prescription drugs until an out-of-pocket cost maximum amount is reached. After the maximum out-of-pocket limit is reached, the plan then provides payment for covered drugs again. The coverage gap is becoming smaller each year until 2020 when it will be eliminated.

Any coverage you purchase during the Medicare open enrollment on Medicare.gov or through an insurance agent will be individual insurance coverage. You will pay your premium directly to the insurance company.

Blue Cross Blue Shield Group Insurance Options for 2017

In addition to the individual insurance plans available to you in the marketplace during the Medicare Open Enrollment season, the City has arranged for Blue Cross Blue Shield of Illinois to offer three different optional group Medicare Advantage plans with Prescription Drug coverage for 2017. If you elect to enroll in any of these optional insurance plans, you will be responsible for paying the premium charged by Blue Cross Blue Shield of Illinois, and you may elect to have your premium deducted from your annuity. The three plans provide different levels of out-of-pocket expense for medical services and prescription drugs. Two of the plans cover prescription drugs including gap coverage (this means they have no “donut hole”). The third plan, the least expensive plan, does not include gap coverage.

Blue Cross Blue Shield of Illinois will be mailing information regarding the three available plans, to your home during the week of October 3rd. The information will be in an envelope marked with the note “Special Enrollment Information for 2017”. Blue Cross Blue Shield of Illinois will have a special enrollment team available to answer your questions about the three plans, and the team can help you identify how your prescription drugs are covered by the plans. Blue Cross Blue Shield of Illinois will also have representatives available to visit your home to help you with your plan choice.

Please note that while the City has arranged for Blue Cross Blue Shield of Illinois to offer you these options, the City is not endorsing or administering these plans.

Prescription Drug Information

In addition to the information that you will receive from Blue Cross Blue Shield of Illinois, you will also receive a letter from Caremark, mailed October 14th, which lists all of the prescription medications you have purchased within the period of July 1, 2015 through June 30, 2016. Each person covered by the City's retiree medical plans will receive an individualized letter from Caremark.

The Medicare website (www.Medicare.gov) includes a feature that allows you to enter your drug information and save it for future use, so that you can see how your drugs are covered by each insurance plan and if they are on the plan's preferred drug list. Similarly, if you call Blue Cross Blue Shield of Illinois to talk about the group insurance plan options, please have the Caremark letter with you-- the representative will ask you about the drugs you use and will be able to tell you how the drugs are covered by the Blue Cross Blue Shield of Illinois optional plans. You also may wish to research whether your prescriptions will be covered by any coverage that may be available to you.

You Must Choose a Plan and Enroll!

To have coverage in place for January 1, 2017, you must make a decision and complete the enrollment process. ***There will be NO "automatic" enrollment.*** If you do not make a decision and take the steps necessary to enroll, on January 1, 2017, you will have Original Medicare Part A and Part B coverage only. You won't have prescription drug coverage and you won't have any coverage to help you pay expenses not paid by Medicare. Please review your options and make a choice before the enrollment deadlines.

Note:

- 1) Included with this notice is a Notice of Creditable Coverage for Prescription Drugs that you may be asked to provide when you enroll in a Medicare Part D or Medicare Advantage with Prescription Drug coverage plan. It will verify to your new insurer that your coverage under the City's retiree plan was at least as good as coverage under a Part D plan. As long as your coverage was at least as good as Part D plan coverage, you cannot be required to pay any penalty amounts associated with not having drug coverage.*
- 2) You will not receive a general certificate of credible coverage this year. However, if you need more specific or personalized information about the coverage you or your dependents previously had through the City, please contact the Benefits Service Center at 1-877-299-5111.*
- 3) Retired public safety officers, as defined by federal law, are eligible to take advantage of a special tax law (the Pension Protection Act of 2006) that allows a retired public safety officer to exclude up to \$3,000 per tax year from federal taxable income for health, accident or long-term care insurance premiums that are deducted from annuity benefits. The premium deduction from the annuity check for any of the optional Blue Cross Blue Shield of Illinois healthcare insurance options would qualify for this purpose.*



**DEPARTMENT OF FINANCE
CITY OF CHICAGO**

October 2016

**Important Healthcare Coverage Information
for Retirees Who Are Not Eligible for Medicare and Retired on or After August 23, 1989**

As you are aware, your City of Chicago retiree healthcare plan coverage will end on December 31, 2016. To ensure that you have healthcare coverage in place for January 1, 2017, you must enroll in another plan. ***There will be NO “automatic” enrollment.*** You may be able to obtain coverage through an employer if you are working or through your spouse’s employer. If you are unable to obtain employer sponsored healthcare coverage, you have two options. You can obtain coverage through the Health Insurance Marketplace (also known as the Exchange). Alternatively, for 2017, the City has arranged for Blue Cross Blue Shield of Illinois to offer two optional group insurance plans that include provider networks not available in the Marketplace plans. You should explore and compare all options before making a decision.

Health Insurance Marketplace Individual Insurance Plan Options for 2017

You will be able to enroll for coverage on the Health Insurance Marketplace for 2017 during the annual open enrollment which begins on November 1, 2016. The enrollment period ends on January 31, 2017, for 2017 coverage. However, if you wish to have coverage beginning on January 1, 2017 and avoid a gap in coverage, you must complete your enrollment by December 15, 2016. Any person who does not have Medicare coverage may apply for coverage on the Marketplace.

If your household modified adjusted gross income is less than 400 percent of the Federal Poverty Level (FPL), you may be eligible for premium reductions (subsidies) for a Marketplace plan. For purposes of 2017 coverage for a household size of one, 400% of the FPL is \$47,520; for a household size of two, it is \$64,080. If your household income is less than 250% of the FPL, you may also qualify for additional reductions in the amount of co-pays, co-insurance and out of pocket expense limits.

Enrollment for Marketplace plans in Illinois and other states can be done on the Health Insurance Marketplace website at (www.healthcare.gov). Please note, however, that the healthcare plans available for 2017 will not be displayed on the Marketplace website until open enrollment begins on November 1, 2016.

Health Insurance Marketplace Individual Insurance Plan Options for 2017 (cont)

The City is in the process of arranging for easily accessible help to assist you in evaluating your health plan options and determining if you qualify for subsidies to lower the cost of your monthly premium. You will receive more information about these resources before open enrollment begins.

The Marketplace offers a variety of plans with different cost sharing requirements, co-pay amounts, co-insurance amounts, premiums, and provider networks. All Marketplace plans cover prescription drugs; however, plan terms – including co-pay amounts and the preferred drug list – will differ. Information about how Marketplace plans cover specific prescription medications is available at www.healthcare.gov. Any coverage you purchase on the Marketplace or through an insurance agent will be individual insurance coverage. You will pay your premium directly to the insurance company.

Blue Cross Blue Shield of Illinois Group Insurance Plan Options for 2017

For 2017, the City has arranged to have Blue Cross Blue Shield of Illinois offer two different group medical insurance plan options that are not available on the Marketplace. If you enroll in either of the two optional group plans offered by Blue Cross Blue Shield of Illinois, you will be responsible for the premium charged by Blue Cross Blue Shield of Illinois and you can elect to have your premium deducted from your annuity.

The first option is very similar to the plan that you have today and includes the Blue Cross Blue Shield of Illinois PPO network. The second option is a three tiered-network plan (the Blue Cross Blue Shield of Illinois Blue Choice OPT Network) that allows you to access all of the hospitals in the PPO network, but imposes higher out-of-pocket expenses if you obtain care from providers in Tier 2 or from an out-of-network provider. The Blue Choice OPT plan option has lower premiums, but higher out-of-pocket limits. The plan covers preventive care and includes co-pays for doctors' office visits so that you can see a doctor without having to meet the deductible.

Blue Cross will mail an informational packet to your home during the week of October 3rd. The package will arrive in an envelope marked with the notation "Important 2017 Enrollment Information." In addition, they will have a team of representatives available to answer any questions you may have about the plans or the networks.

Please note that while the City has arranged for Blue Cross Blue Shield of Illinois to offer you these options, the City is not endorsing or administering these plans.

Prescription Drug Information

In addition to the information that you will receive from Blue Cross Blue Shield of Illinois, you will also receive a letter from Caremark, mailed October 14th, which lists all of the prescription medications you have purchased within the period of July 1, 2015, through June 30, 2016. Whether you enroll in a Marketplace plan, one of the two Blue Cross Blue Shield of Illinois insurance plans or another employer-sponsored plan, you can use the information to help you determine how your current medications are covered by the plan and if they are on the plan's preferred drug list. Each person covered by the City's retiree medical plans will receive an individualized letter from Caremark.

You Must Choose a Plan and Enroll!

To have coverage in place for January 1, 2017, you must select a plan and complete the enrollment process. ***There will be NO "automatic" enrollment.*** If you do not choose a plan and do not take the steps necessary to enroll by December 15, 2016, you will not have medical coverage or prescription drug coverage beginning January 1, 2017. We encourage you to review your options and make a choice before the enrollment deadlines.

Note:

1) Included with this notice is a Notice of Creditable Coverage for Prescription Drugs that you may be asked to provide when you enroll in a Medicare Part D or Medicare Advantage with Prescription Drug coverage plan. It will verify to your new insurer that your coverage under the City's retiree plan was at least as good as coverage under a Part D plan. As long as your coverage was at least as good as Part D plan coverage, you cannot be required to pay any penalty amounts associated with not having drug coverage.

2) You will not receive a general certificate of credible coverage this year. However, if you need more specific or personalized information about the coverage you or your dependents previously had through the City, please contact the Benefits Service Center 1-877-299-5111.



**DEPARTMENT OF FINANCE
CITY OF CHICAGO**

October 2016

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for Retirees Who Are Not Eligible for Medicare and Retired on or After August 23, 1989**

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The first option is very similar to the plan that you have today and includes the Blue Cross Blue Shield of Illinois PPO network. The second option is a three tiered-network plan (the Blue Cross Blue Shield of Illinois Blue Choice OPT Network) that allows you to access all of the hospitals in the PPO network, but imposes higher out-of-pocket expenses if you obtain care from providers in Tier 2 or from an out-of-network provider. The Blue Choice OPT plan option has lower premiums, but higher out-of-pocket limits. The plan covers preventive care and includes co-pays for doctors' office visits so that you can see a doctor without having to meet the deductible.

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Note:

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- 2) You will not receive a general certificate of credible coverage this year. However, if you need more specific or personalized information about the coverage you or your dependents previously had through the City, please contact the Benefits Service Center 1-877-299-5111.*
- 3) Retired public safety officers, as defined by federal law, are eligible to take advantage of a special tax law (the Pension Protection Act of 2006) that allows a retired public safety officer to exclude up to \$3,000 per tax year from federal taxable income for health, accident or long-term care insurance premiums that are deducted from annuity benefits. The premium deduction from the annuity check for any of the optional Blue Cross Blue Shield of Illinois healthcare insurance options would qualify for this purpose.*

Notice of Prescription Drug Creditable Coverage City of Chicago Retiree Healthcare Plan

The City of Chicago has determined that Retiree Healthcare Plans prescription drug benefits are, on average, “creditable coverage,” which means the City’s coverage is expected to pay as much (or more in some cases) as standard Medicare Prescription Drug Coverage.

Because the City’s prescription drug benefits are creditable coverage, you can enroll in a Medicare Prescription Drug Coverage plan for 2017 and not be subject to the Medicare premium penalty.

Keep this Notice. If you enroll for Medicare Prescription Drug Coverage, you may need a copy of this Notice when you enroll. This Notice verifies that you have creditable coverage and that you are not required to pay the premium penalty.

Your Choices and the Consequences

You should compare the coverage and cost of the Medicare plans in your area.

Important Note: If you or a dependent are eligible for Medicare and drop or lose your coverage with the City, and do not enroll for Medicare Prescription Drug Coverage after your current coverage ends, you may pay more for Medicare Prescription Drug Coverage later. If you go 63 days or longer without prescription drug coverage that is at least as good as Medicare Prescription Drug Coverage, your monthly premium for Medicare Prescription Drug Coverage will increase. The increase will be 1% per month for every month that you were eligible for but did not have coverage. For example, if you go 19 months without coverage, your monthly premium will always be 19% higher than what most other people pay. You will have to pay the premium penalty as long as you have Medicare Prescription Drug Coverage. In addition, you may have to wait until the next open enrollment period (October 15 through December 7 each year) to enroll.

Eligible individuals who are entitled to Medicare Part A or enrolled in Part B can enroll for Medicare Prescription Drug Coverage when they are first eligible or during the annual Medicare enrollment period (October 15 through December 7 each year). Medicare eligible individuals who lose or drop creditable prescription drug benefits may be eligible for a two month Special Enrollment Period to sign up for Medicare Prescription Drug Coverage. Detailed information about Special Enrollment Periods is included in the *Medicare & You* handbook sent to Medicare eligible individuals each fall.

(TURN THIS PAGE OVER FOR MORE INFORMATION)

For More Information About Medicare Prescription Drug Coverage

More information about Medicare Prescription Drug Coverage is available in the “Medicare & You” handbook that Medicare publishes and sends to Medicare beneficiaries each fall. You may also be contacted directly by Medicare prescription drug plans.

To get more information, you can:

- Visit www.medicare.gov for personalized help.
- Call your State Health Insurance Assistance Program (the telephone number is in the “Medicare & You” handbook).
- Call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

For people with limited income and assets, extra help paying for a Medicare Prescription Drug Coverage is available. Additional information is available from the Social Security Administration by:

- Visiting www.socialsecurity.gov/prescriptionhelp.
- Calling 1-800-772-1213 (TTY users should call 1-800-325-0778).

For More Information About this Notice

If you have any questions about this Notice please call the Chicago Benefits Office.

You may request a copy of this Notice at any time from the Chicago Benefits Office.

Date of Notice:	September 2016
Entity/Sender:	The City of Chicago
Contact:	Chicago Benefits Office
Address:	333 South State Street, Room 400, Chicago, Illinois 60604-3978
Telephone Number:	1-877-299-5111
Web Site:	www.cityofchicago.org/benefits

Benefits under the City of Chicago Retiree Healthcare Plan may be modified, reduced, or terminated as specified in the legal documents that establish the Plan. The City expressly reserves all rights to make amendments or terminate the Plan as allowed by the legal documents that establish the Plan.



DEPARTMENT OF FINANCE
CITY OF CHICAGO

September, 2016

Dear City of Chicago Medicare Supplement Retiree Healthcare Plan Participant who Retired Before August 23, 1989:

This letter and the enclosed documents contain important information about your health care benefits and the premium rates that will be effective on January 1, 2017, including the following:

- 1) A new 2017 premium rate chart.
- 2) A 2017 Benefits Summary.
- 3) The Notice of Creditable Coverage for prescription drugs.
- 4) Information on the Means Test--a way for certain low income plan members to save money for premiums and/or for prescription drug co-payments.

Rate Changes: Your premium rates for 2017 are enclosed. These rates are based on the projected cost of the Plan minus the City of Chicago's contribution.

Benefit Summary: Attached is an updated Benefits Summary of the 2017 Medicare Supplement Retiree Healthcare Plan for those retired before August 23, 1989. Remember, the Plan also requires that you use the mail order pharmacy for maintenance prescriptions.

Creditable Coverage Notice: This notice verifies that you have creditable drug coverage under the Plan. This means that the coverage provided under the Plan is at least as good as the coverage under a Medicare Part D plan. Please keep this notice in your permanent records.

Means Test: Certain low income Plan participants may be eligible to have co-pays for mail order drugs and/or premiums reduced. To be eligible for these benefits, your combined household adjusted gross income, as reported to the Internal Revenue Service in the immediately preceding tax year, must be at or below 250% of the federal poverty guidelines for your family size for the year. As part of the application process, you will be required to provide a release that allows the City to receive a copy of your most recently filed tax return.

If your annual annuity amount is less than 250% of the federal poverty level for 2016, a Means Test application has been sent to you under separate cover. (250% of the federal poverty level for a single person for 2016 is \$29,700; for a couple it is \$40,050.) If your annuity is more than that but you believe that your

Medicare retirees who retired before 8/23/89

adjusted gross income may qualify you for the benefit based on your family size, you may call the benefits service center at 1-877-299-5111, or you may find the application at www.cityofchicago.org/benefits then click on “View all Supporting Documentation” and scroll down to “2016 Means Test Application”.

Please call the Benefits Service Center at 1-877-299-5111 if you have any questions about this letter.

Sincerely,
Chicago Benefits Office



BENEFITS SUMMARY †

Medicare Eligible

Effective January 1, 2017

†The plan document defines and controls the terms of the benefits provided.

Medicare Supplement

Retiree Healthcare Plan Retired Before 8/23/89

The Medicare Supplement Retiree Healthcare Plan pays the percentages listed below after Medicare pays and you meet any annual deductibles. The maximum amount that the Plan will pay is based on the Medicare allowable charge.* Services must be medically necessary.

Medical Benefits	Coverage
Lifetime Maximum	\$1.5 million per person for medical and prescription drug benefits ¹
Plan Deductible ²	\$100 per person each calendar year (separate from Medicare Part B deductible)
Hospitalization	
Days 1 – 60	You pay \$50 of the Medicare Part A Inpatient Deductible for the first hospital stay in each calendar year. The Plan pays all but \$50 of the Medicare Part A Inpatient Deductible for the first hospital stay each calendar year.
Days 61 – 90	You pay \$0. Plan pays 100% of the Medicare daily co-payment, which is 25% of the Medicare Part A Inpatient Deductible.
Days 91 – 150	You pay \$0. Plan pays 100% of the Medicare daily co-payment, which is 50% of the Medicare Part A Inpatient Deductible.
Additional Days	Additional days may be covered under Medicare Part A and/or the Plan.
Skilled Nursing Facility	
Days 1 – 20	You pay \$0. Medicare pays 100% of first 20 days each Medicare Benefit Period.
Days 21 – 100	You pay \$0. Plan pays 100% of the Medicare daily co-payment, which is 1/8 of the Medicare Part A Inpatient Deductible.
Additional Days	You pay 100%. No Medicare or Plan benefits are paid after 100 days in a Medicare Benefit Period.
Other Covered Services	Plan pays 20% of the Medicare approved amount after Part B deductible and Plan deductible.
Out-of-Country Services	If you are in a foreign country and are hospitalized due to an emergency, the Plan pays 80% of eligible charges for medically necessary services during the first 60 days of your hospitalization. Benefits are subject to a separate \$250 calendar year deductible. The total lifetime maximum that the City's Plan pays is limited to \$50,000.
Diabetic Supplies	Medicare Part B covers diabetic supplies such as glucose testing monitors, blood glucose test strips, lancets, and glucose control solutions. There may be limits on supplies or how to get them. Ask your pharmacy or supplier if they are enrolled in the Medicare program. If they are not, Medicare will not pay and neither will the City's Plan because the City's Plan is only a supplement to Medicare. If you have paid the yearly Part B deductible as well as the City's \$100 annual deductible, the City will pay 20% of the Medicare approved amount.

¹ The lifetime maximum includes expenses paid under both the Non-Medicare and Medicare plans combined.

² Medicare Part A and Medicare Part B: **No expense is covered by the Plan if Medicare does not cover it unless otherwise specified.** If you are only enrolled in Medicare Part A, the Plan will pay benefits as though you are enrolled in both Medicare Part A and Medicare Part B.

Prescription Drug Benefits	Coverage
Caremark Retail Pharmacy – up to a 30 day supply or 100 unit dose (whichever is less)	<p>After you've met the separate \$100 annual prescription drug deductible (does not apply to Means Test Eligible Retirees**), for each prescription, you pay:</p> <ul style="list-style-type: none"> • 20% of the contracted cost for generic drugs • 20% of the contracted cost for formulary brand name drugs*** when no generic is available • 20% of the contracted cost plus \$15 for non-formulary brand name drugs**** when no generic is available
Mail Order Program - Up to a 90 day supply	<p>For each prescription, you pay:</p> <ul style="list-style-type: none"> • \$28 for 2017 (\$7 for Means Test Eligible Retirees) for generic drugs • \$75 for 2017 (\$20 for Means Test Eligible Retirees) for formulary brand name drugs when no generic is available <p>Note: non-formulary brand name medications are not available through the mail order program.</p>
Restrictions: Why choose a generic?	<p>If a brand name drug is dispensed when a generic alternative is available, you pay the difference in cost between the generic and the brand name as well as the generic co-payment. The Plan will not pay more than it would pay for the generic medication if you buy a brand name drug when a generic alternative is available.</p>
Generic Step Therapy Program for generics available in the therapeutic class	<p>If you elect to purchase a brand medication without trying an appropriate generic medication in the same therapeutic class, you will pay the full cost of the medication. If you try the generic medication and your physician finds that the generic medication is not effective in treating your condition, you will be able to receive the brand medication at the co-payment applicable to non-formulary or formulary drugs.</p>
Specialty Medications	<p>If you do not try the preferred medication for the therapeutic class, you will pay the full cost of the medication. If you try the preferred specialty medication and it is not effective in treating your condition, you will be able to receive a non-preferred formulary drug at retail.</p>
Mandatory Mail Order	<p>Requiring the use of mail order will reduce costs for the City and Retirees. After 2 fills of your generic or formulary brand medication at a retail pharmacy, you will be required to use mail order for any additional fills through CVS-Caremark in Mount Prospect, IL. If you do not use the mail order program for your 3rd or any subsequent fills, you will pay the full cost of the prescription. If your medication is non-formulary, however, you must continue to use the retail pharmacy.</p>
Out-of-network pharmacy reimbursement	<p>If you do not go to a network retail pharmacy, you pay the full amount when you pick up your prescription. You must then submit a receipt for reimbursement. The Plan will pay 60% of the Plan's cost, after you've met the deductible (if applicable). There is no formulary list if you go to an out-of-network pharmacy.</p>

* **Medicare allowable charge** – the amount that Medicare determines a particular service or supply should cost. The Medicare Supplement Retiree Healthcare Plan bases payment on the Medicare allowable charge.

** **Means test eligible retiree** – generally, the combined household adjusted gross income, as reported to the Internal Revenue Service in the immediately preceding tax year, must be at or below 250% of federal poverty guidelines for your family size that year.

*** **Formulary brand name drugs** – a formulary drug is a brand name drug that has been designated as a preferred drug by CVS Caremark. The preferred drug list (formulary) may change periodically at the discretion of the pharmacy benefits manager.

**** **Non-formulary brand name drug** – a non-formulary brand name drug is a brand name drug that is not on the preferred list of formulary drugs.

Retiree Healthcare Contribution Rates - 2017

Retired before 08/23/89 - Medicare Only

Retiree Code
F

PENSION CODE	MEDICARE STATUS			RETIREE CONTRIBUTION RATES
	ANNUITANT	SPOUSE	CHILD(REN).	
01	MEDICARE ELIGIBLE	-----	-----	\$147.00
02	MEDICARE ELIGIBLE	MEDICARE ELIGIBLE	-----	\$286.00

Notice of Prescription Drug Creditable Coverage City of Chicago Retiree Healthcare Plan

The City of Chicago has determined that Retiree Healthcare Plans prescription drug benefits are, on average, “creditable coverage,” which means the City’s coverage is expected to pay as much (or more in some cases) as standard Medicare Prescription Drug Coverage.

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You should compare the coverage and cost of the Medicare plans in your area.

Important Note: If you or a dependent are eligible for Medicare and drop or lose your coverage with the City, and do not enroll for Medicare Prescription Drug Coverage after your current coverage ends, you may pay more for Medicare Prescription Drug Coverage later. If you go 63 days or longer without prescription drug coverage that is at least as good as Medicare Prescription Drug Coverage, your monthly premium for Medicare Prescription Drug Coverage will increase. The increase will be 1% per month for every month that you were eligible for but did not have coverage. For example, if you go 19 months without coverage, your monthly premium will always be 19% higher than what most other people pay. You will have to pay the premium penalty as long as you have Medicare Prescription Drug Coverage. In addition, you may have to wait until the next open enrollment period (October 15 through December 7 each year) to enroll.

Eligible individuals who are entitled to Medicare Part A or enrolled in Part B can enroll for Medicare Prescription Drug Coverage when they are first eligible or during the annual Medicare enrollment period (October 15 through December 7 each year). Medicare eligible individuals who lose or drop creditable prescription drug benefits may be eligible for a two month Special Enrollment Period to sign up for Medicare Prescription Drug Coverage. Detailed information about Special Enrollment Periods is included in the *Medicare & You* handbook sent to Medicare eligible individuals each fall.

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More information about Medicare Prescription Drug Coverage is available in the “Medicare & You” handbook that Medicare publishes and sends to Medicare beneficiaries each fall. You may also be contacted directly by Medicare prescription drug plans.

To get more information, you can:

- Visit www.medicare.gov for personalized help.
- Call your State Health Insurance Assistance Program (the telephone number is in the “Medicare & You” handbook).
- Call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

For people with limited income and assets, extra help paying for a Medicare Prescription Drug Coverage is available. Additional information is available from the Social Security Administration by:

- Visiting www.socialsecurity.gov/prescriptionhelp.
- Calling 1-800-772-1213 (TTY users should call 1-800-325-0778).

For More Information About this Notice

If you have any questions about this Notice, please call the Chicago Benefits Office.

You may request a copy of this Notice at any time from the Chicago Benefits Office.

Date of Notice:	September 2016
Entity/Sender:	The City of Chicago
Contact:	Chicago Benefits Office
Address:	333 South State Street, Room 400, Chicago, Illinois 60604-3978
Telephone Number:	1-877-299-5111
Web Site:	www.cityofchicago.org/benefits

Benefits under the City of Chicago Retiree Healthcare Plan may be modified, reduced, or terminated as specified in the legal documents that establish the Plan. The City expressly reserves all rights to make amendments or terminate the Plan as allowed by the legal documents that establish the Plan.



DEPARTMENT OF FINANCE
CITY OF CHICAGO

September, 2016

Dear City of Chicago Retiree Plan Participant Who is not Medicare Eligible and Who Retired Before August 23, 1989:

This letter and the enclosed documents contain important information about your health care benefits and the premium rates that will be effective on January 1, 2017, including the following:

- 1) A new premium rate chart.
- 2) A 2017 Benefits Summary for non-Medicare eligible covered participants who retired before August 23, 1989.
- 3) The Notice of Creditable Coverage for prescription drug coverage.
- 4) Information on the Means Test--a way for certain low income plan members to save money for premiums and/or for prescription drug co-payments.
- 5) An important reminder about Medicare enrollment.

Rate Changes: Your premium rates for 2017 are enclosed. These rates are based on the projected cost of the Plan minus the City of Chicago's contribution.

Benefits Summary: A Benefits Summary for 2017. Please review the enclosed materials.

Enrollment Periods: If you, or if applicable your covered spouse and/or child(ren), want to explore other health plan options, the enrollment period for *Get Covered Illinois* for Marketplace plans will begin on November 1, 2016 and extend to January 31, 2017. The Medicare Open Enrollment period begins on October 15, 2016 and ends December 7, 2016. However, keep in mind that your coverage with the City of Chicago will continue for your lifetime or until you elect not to continue coverage with the City. Dependent children's coverage ends when their eligibility for coverage ends.

Creditable Coverage Notice: This notice verifies that you have creditable drug coverage under the Plan. This means that the coverage provided under the Plan is at least as good as the coverage under a Medicare Part D plan. This is for Medicare eligible Plan participants or those who will become Medicare eligible in 2016 or 2017. Please keep this notice in your permanent records.

Means Test: Certain low income Plan participants may be eligible to have co-pays for mail order drugs and/or premiums reduced. To be eligible for these benefits, your combined household adjusted gross income, as reported to the Internal Revenue Service in the immediately preceding tax year, must be at or below 250% of the federal poverty guidelines for your family size for the year. As part of the application process you must provide a release that allows the City to receive a copy of your most recently filed tax return.

If your annual annuity amount is less than 250% of the federal poverty level for 2015, a Means Test application has been sent to you under separate cover. (250% of the federal poverty level for a single person for 2016 is \$29,700; for a couple it is \$40,050.) If your annuity is more than that but you believe that your adjusted gross income may qualify you for the benefit based on your family size, you may call the Benefits Service Center at 1-877-299-5111, or you may find the application at www.cityofchicago.org/benefits, then click on “View all Supporting Documentation” and scroll down to “2016 Means Test Application”.

Important Reminder About Medicare Enrollment: If you are approaching Medicare age (age 65 for most people), you need to apply for Medicare and provide the Chicago Benefits Office and your pension fund with a copy of the Medicare card. If you are not eligible for free Part A based on your work record or your spouse's or former spouse's work record, you must provide the Chicago Benefits Office with the letter from Social Security advising you of this. Failure to provide us the proper documentation does not mean that you will remain in the plan for non-Medicare eligible retirees. You will be placed in the Medicare supplement plan and you will face financial consequences for not taking the necessary steps to secure Medicare enrollment. This also applies to your spouse if your spouse is approaching Medicare age.

Please call the Benefits Service Center at 1-877-299-5111 if you have any questions about this letter.

Sincerely,
Chicago Benefits Office



PPO STANDARD PLAN BENEFITS SUMMARY[†]

Effective January 1, 2017

For Non-Medicare Eligible Retirees Retired Before 8/23/89

[†]The plan document defines and controls the terms of the benefits provided.

The PPO Standard Plan pays as shown below after you meet the annual deductible. The maximum amount that the Plan will pay is based on the Plan's PPO maximum allowance.** Services must be medically necessary. ***This Plan includes the Blue Cross Blue Shield PPO Network.***

Medical Benefits	In Network PPO Providers	Out Of Network Providers
Lifetime Maximum	\$1.5 million per covered person for medical and prescription drugs. The lifetime maximum includes expenses paid under all Non-Medicare and Medicare plans combined.	
Deductible		
Individual	\$440	\$1028
Family	\$1,320	\$3,084
Out-of-Pocket Expense Limit		
Individual	\$2,572	\$5,139
Family	\$5,144	\$10,278
In-network and not in network cannot be combined		
Coinsurance		Plan Pays:
Emergency Room Services	90%**	
MRI Scans, PET Scans, CAT Scans *	80%**	
Occupational and Speech Therapy *		
Prosthetic Devices and Durable Medical Equipment (DME) *		
Ambulance Transportation *		
Skilled Nursing Facility *		
Skilled Home Health Care *		
Hospice Care *		
Outpatient Mental Health and Substance Abuse *		
Diagnostic Testing Incentive Program**		
Diagnostic Lab Tests performed by an independent PPO lab (i.e. Quest) paid in full by Plan if all requirements are met. Members must use a free standing in network lab, e.g., Quest, for diagnostic tests ordered by their physician to have the expense paid in full by the Plan. If a member uses a hospital based laboratory or the claims for lab services are billed by a hospital, the expenses are subject to deductible and co-insurance.**		
Other Covered Services, for example: • Hospital Inpatient * • Hospital Outpatient • Doctor (Office) Visits Note: Routine Screening Exams/Physicals are not covered Preventive care is not covered.	90%**	70%**

*These services require pre-certification through Telligen. Call 1-800-373-3727.

**PPO maximum allowance – The amount that providers who have contracted with the claims administrator have agreed to accept as reimbursement. The maximum amount that will be considered by the plan as covered for services is the lowest of the provider's actual charge, the PPO contracted rate or the usual and customary charge.



BENEFITS SUMMARY RETIREE HEALTH PLAN

For Retirees Who Retired Prior To 8/23/89

PRESCRIPTION DRUG COVERAGE

Effective January 1, 2017

†The plan document defines and controls the terms of the benefits provided.

Prescription Drug Benefits	Coverage
Caremark Retail Pharmacy – up to a 30 day supply or 100 unit dose (whichever is less)	<p>After you've met the separate \$100 annual prescription drug deductible (does not apply to Means Test Eligible Retirees*), for each prescription, you pay:</p> <ul style="list-style-type: none"> 20% of the contracted cost for generic drugs 20% of the contracted cost for formulary brand name drugs** when no generic is available 20% of the contracted cost plus \$15 for non-formulary brand name drugs*** when no generic is available
Mail Order Program - Up to a 90 day supply	<p>For each prescription, you pay:</p> <ul style="list-style-type: none"> \$28 for 2017 (\$7 for Means Test Eligible Retirees) for generic drugs \$75 for 2017 (\$20 for Means Test Eligible Retirees) for formulary brand name drugs when no generic is available <p>Note: non-formulary brand name medications are not available through the mail order program.</p>
Restrictions: Why choose a generic?	<p>If a brand name drug is dispensed when a generic alternative is available, you pay the difference in cost between the generic and the brand name as well as the generic copayment. The Plan will not pay more than it would pay for the generic medication if you buy a brand name drug when a generic alternative is available.</p>
Generic Step Therapy Program for generics available in the therapeutic class	<p>If you elect to purchase a brand medication without trying an appropriate generic medication in the same therapeutic class, you will pay the full cost of the medication. If you try the generic medication and your physician finds that the generic medication is not effective in treating your condition, you will be able to receive the brand medication at the copayment applicable to non-formulary or formulary drugs.</p>
Specialty Medications	<p>If you do not try the preferred medication for the therapeutic class, you will pay the full cost of the medication. If you try the preferred specialty medication and it is not effective in treating your condition, you will be able to receive a non-preferred formulary drug at retail.</p>
Mandatory Mail Order	<p>Requiring the use of mail order will reduce costs for the City and Retirees. After 2 fills of your generic or formulary brand medication at a retail pharmacy, you will be required to use mail order for any additional fills through CVS-Caremark in Mount Prospect, IL. If you do not use the mail order program for your 3rd or any subsequent fills, you will pay the full cost of the prescription. If your medication is non-formulary, however, you must continue to use the retail pharmacy.</p>
Out-of-network pharmacy reimbursement	<p>If you do not go to a network retail pharmacy, you pay the full amount when you pick up your prescription. You must then submit a receipt for reimbursement. The Plan will pay 60% of the Plan's cost, after you've met the deductible (if applicable). There is no formulary list if you go to an out-of-network pharmacy.</p>

* **Means test eligible retiree** – generally, the combined household adjusted gross income, as reported to the Internal Revenue Service in the immediately preceding tax year, must be at or below 250% of federal poverty guidelines for your family size that year.

** **Formulary brand name drugs** – a formulary drug is a brand name drug that has been designated as a preferred drug by CVS Caremark. The preferred drug list (formulary) may change periodically at the discretion of the pharmacy benefits manager.

*** **Non-formulary brand name drug** – a non-formulary brand name drug is a brand name drug that is not on the preferred list of formulary drugs.

Retiree Healthcare Contribution Rates - 2017

Retired before 08/23/89

**Retiree Code
F**

PENSION CODE	MEDICARE STATUS *			RETIREE CONTRIBUTION RATES
	ANNUITANT	SPOUSE	CHILD(REN).	
01	MEDICARE	-----	-----	\$147.00
03	NON-MEDICARE	-----	-----	\$147.00
02	MEDICARE	MEDICARE	-----	\$286.00
04	MEDICARE	NON-MEDICARE	-----	\$286.00
10	NON-MEDICARE	MEDICARE	-----	\$286.00
05	NON-MEDICARE	NON-MEDICARE	-----	\$286.00
09	MEDICARE	MEDICARE	CHILD(REN)	\$425.00
11	MEDICARE	-----	CHILD(REN)	\$286.00
17	NON-MEDICARE	-----	CHILD(REN)	\$286.00
19	-----	-----	CHILD(REN)	\$147.00

* All Medicare eligible retirees will be enrolled into the Medicare Supplement Plan.

Notice of Prescription Drug Creditable Coverage City of Chicago Retiree Healthcare Plan

The City of Chicago has determined that Retiree Healthcare Plans prescription drug benefits are, on average, “creditable coverage,” which means the City’s coverage is expected to pay as much (or more in some cases) as standard Medicare Prescription Drug Coverage.

Because the City’s prescription drug benefits are creditable coverage, you can enroll in a Medicare Prescription Drug Coverage plan for 2017 and not be subject to the Medicare premium penalty.

Keep this Notice. If you enroll for Medicare Prescription Drug Coverage, you may need a copy of this Notice when you enroll. This Notice verifies that you have creditable coverage and that you are not required to pay the premium penalty.

Your Choices and the Consequences

You should compare the coverage and cost of the Medicare plans in your area.

Important Note: If you or a dependent are eligible for Medicare and drop or lose your coverage with the City, and do not enroll for Medicare Prescription Drug Coverage after your current coverage ends, you may pay more for Medicare Prescription Drug Coverage later. If you go 63 days or longer without prescription drug coverage that is at least as good as Medicare Prescription Drug Coverage, your monthly premium for Medicare Prescription Drug Coverage will increase. The increase will be 1% per month for every month that you were eligible for but did not have coverage. For example, if you go 19 months without coverage, your monthly premium will always be 19% higher than what most other people pay. You will have to pay the premium penalty as long as you have Medicare Prescription Drug Coverage. In addition, you may have to wait until the next open enrollment period (October 15 through December 7 each year) to enroll.

Eligible individuals who are entitled to Medicare Part A or enrolled in Part B can enroll for Medicare Prescription Drug Coverage when they are first eligible or during the annual Medicare enrollment period (October 15 through December 7 each year). Medicare eligible individuals who lose or drop creditable prescription drug benefits may be eligible for a two month Special Enrollment Period to sign up for Medicare Prescription Drug Coverage. Detailed information about Special Enrollment Periods is included in the *Medicare & You* handbook sent to Medicare eligible individuals each fall.

(TURN THIS PAGE OVER FOR MORE INFORMATION)

For More Information About Medicare Prescription Drug Coverage

More information about Medicare Prescription Drug Coverage is available in the “Medicare & You” handbook that Medicare publishes and sends to Medicare beneficiaries each fall. You may also be contacted directly by Medicare prescription drug plans.

To get more information, you can:

- Visit www.medicare.gov for personalized help.
- Call your State Health Insurance Assistance Program (the telephone number is in the “Medicare & You” handbook).
- Call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

For people with limited income and assets, extra help paying for a Medicare Prescription Drug Coverage is available. Additional information is available from the Social Security Administration by:

- Visiting www.socialsecurity.gov/prescriptionhelp.
- Calling 1-800-772-1213 (TTY users should call 1-800-325-0778).

For More Information About this Notice

If you have any questions about this Notice, please call the Chicago Benefits Office.

You may request a copy of this Notice at any time from the Chicago Benefits Office.

Date of Notice:	September 2016
Entity/Sender:	The City of Chicago
Contact:	Chicago Benefits Office
Address:	333 South State Street, Room 400, Chicago, Illinois 60604-3978
Telephone Number:	1-877-299-5111
Web Site:	www.cityofchicago.org/benefits

Benefits under the City of Chicago Retiree Healthcare Plan may be modified, reduced, or terminated as specified in the legal documents that establish the Plan. The City expressly reserves all rights to make amendments or terminate the Plan as allowed by the legal documents that establish the Plan.



DEPARTMENT OF FINANCE
CITY OF CHICAGO

September, 2016

Dear City of Chicago Retiree Plan Participants who retired before August 23, 1989:

- **Who is not Medicare eligible but whose spouse or other covered dependent is Medicare eligible;**
or
- **Who is Medicare eligible but whose spouse or other covered dependent is not Medicare eligible**

This letter and the enclosed documents contain important information about your health care benefits and the premium rates that will be effective on January 1, 2017, including the following:

- 1) A new premium rate chart.
- 2) 2017 Benefits Summaries.
- 3) The Notice of Creditable Coverage for prescription drug coverage.
- 4) Information on the Means Test--a way for certain low income plan members to save money for premiums and/or for prescription drug co-payments.
- 5) An important reminder about Medicare enrollment.

Rate Changes: Your premium rates for 2017 are enclosed. These rates are based on the projected cost of the Plan minus the City of Chicago's contribution.

Benefits Summaries: Benefits Summaries for 2017 are enclosed: One for the Medicare eligible covered participants retired before August 23, 1989 and the other is for non-Medicare eligible covered participants retired before August 23, 1989. Please review the enclosed materials.

Enrollment Periods: If you, or if applicable, your covered spouse and/or child(ren), want to explore other health plan options, the enrollment period for *Get Covered Illinois* for Marketplace plans will begin on November 1, 2016 and extend to January 31, 2017. The Medicare Open Enrollment period begins on October 15 and ends December 7, 2016. However, keep in mind that your coverage with the City of Chicago will continue for your lifetime or until you elect not to continue coverage with the City. Dependent children's coverage ends when their eligibility for coverage ends.

Creditable Coverage Notice: This notice verifies that you have creditable drug coverage under the Plan. This means that the coverage provided under the Plan is at least as good as the coverage under a Medicare Part D plan. This is for Medicare eligible Plan participants or those who will become Medicare eligible in 2016 or 2017. Please keep this notice in your permanent records.

Mixed Medicare and non-Medicare retirees, retired before 8/23/89

Means Test: Certain low income Plan participants may be eligible to have co-pays for mail order drugs and/or premiums reduced. To be eligible for these benefits, your combined household adjusted gross income, as reported to the Internal Revenue Service in the immediately preceding tax year, must be at or below 250% of the federal poverty guidelines for your family size for the year. As part of the application process you must provide a release that allows the City to receive a copy of your most recently filed tax return.

If your annual annuity amount is less than 250% of the federal poverty level for 2016, a Means Test application has been sent to you under separate cover. (250% of the federal poverty level for a single person for 2016 is \$29,700; for a couple it is \$40,050.) If your annuity is more than that but you believe that your adjusted gross income may qualify you for the benefit based on your family size, you may call the Benefits Service Center at 1-877-299-5111, or you may find the application at www.cityofchicago.org/benefits then click on “View all Supporting Documentation” and scroll down to “2016 Means Test Application”.

Important Reminder About Medicare Enrollment: If you are approaching Medicare age (age 65 for most people), you need to apply for Medicare and provide the Chicago Benefits Office and your pension fund with a copy of the Medicare card. If you are not eligible for free Part A based on your work record or your spouse's or former spouse's work record, you must provide the Chicago Benefits Office with a letter from Social Security advising you of this. Failure to provide the proper documentation does not mean that you will remain in the plan for non-Medicare eligible retirees. You will be placed in the Medicare supplement plan and face financial consequences for not taking the necessary steps to secure Medicare enrollment. This also applies to your spouse, if your spouse is approaching Medicare age.

Please call the Benefits Service Center at 1-877-299-5111 if you have any questions about this letter.

Sincerely,
Chicago Benefits Office



BENEFITS SUMMARY †

Medicare Eligible

Effective January 1, 2017

†The plan document defines and controls the terms of the benefits provided.

Medicare Supplement

Retiree Healthcare Plan Retired Before 8/23/89

The Medicare Supplement Retiree Healthcare Plan pays the percentages listed below after Medicare pays and you meet any annual deductibles. The maximum amount that the Plan will pay is based on the Medicare allowable charge.* Services must be medically necessary.

Medical Benefits	Coverage
Lifetime Maximum	\$1.5 million per person for medical and prescription drug benefits ¹
Plan Deductible ²	\$100 per person each calendar year (separate from Medicare Part B deductible)
Hospitalization	
Days 1 – 60	You pay \$50 of the Medicare Part A Inpatient Deductible for the first hospital stay in each calendar year. The Plan pays all but \$50 of the Medicare Part A Inpatient Deductible for the first hospital stay each calendar year.
Days 61 – 90	You pay \$0. Plan pays 100% of the Medicare daily co-payment, which is 25% of the Medicare Part A Inpatient Deductible.
Days 91 – 150	You pay \$0. Plan pays 100% of the Medicare daily co-payment, which is 50% of the Medicare Part A Inpatient Deductible.
Additional Days	Additional days may be covered under Medicare Part A and/or the Plan.
Skilled Nursing Facility	
Days 1 – 20	You pay \$0. Medicare pays 100% of first 20 days each Medicare Benefit Period.
Days 21 – 100	You pay \$0. Plan pays 100% of the Medicare daily co-payment, which is 1/8 of the Medicare Part A Inpatient Deductible.
Additional Days	You pay 100%. No Medicare or Plan benefits are paid after 100 days in a Medicare Benefit Period.
Other Covered Services	Plan pays 20% of the Medicare approved amount after Part B deductible and Plan deductible.
Out-of-Country Services	If you are in a foreign country and are hospitalized due to an emergency, the Plan pays 80% of eligible charges for medically necessary services during the first 60 days of your hospitalization. Benefits are subject to a separate \$250 calendar year deductible. The total lifetime maximum that the City's Plan pays is limited to \$50,000.
Diabetic Supplies	Medicare Part B covers diabetic supplies such as glucose testing monitors, blood glucose test strips, lancets, and glucose control solutions. There may be limits on supplies or how to get them. Ask your pharmacy or supplier if they are enrolled in the Medicare program. If they are not, Medicare will not pay and neither will the City's Plan because the City's Plan is only a supplement to Medicare. If you have paid the yearly Part B deductible as well as the City's \$100 annual deductible, the City will pay 20% of the Medicare approved amount.

¹ The lifetime maximum includes expenses paid under both the Non-Medicare and Medicare plans combined.

² Medicare Part A and Medicare Part B: **No expense is covered by the Plan if Medicare does not cover it unless otherwise specified.** If you are only enrolled in Medicare Part A, the Plan will pay benefits as though you are enrolled in both Medicare Part A and Medicare Part B.

Prescription Drug Benefits	Coverage
Caremark Retail Pharmacy – up to a 30 day supply or 100 unit dose (whichever is less)	<p>After you've met the separate \$100 annual prescription drug deductible (does not apply to Means Test Eligible Retirees**), for each prescription, you pay:</p> <ul style="list-style-type: none"> • 20% of the contracted cost for generic drugs • 20% of the contracted cost for formulary brand name drugs*** when no generic is available • 20% of the contracted cost plus \$15 for non-formulary brand name drugs**** when no generic is available
Mail Order Program - Up to a 90 day supply	<p>For each prescription, you pay:</p> <ul style="list-style-type: none"> • \$28 for 2017 (\$7 for Means Test Eligible Retirees) for generic drugs • \$75 for 2017 (\$20 for Means Test Eligible Retirees) for formulary brand name drugs when no generic is available <p>Note: non-formulary brand name medications are not available through the mail order program.</p>
Restrictions: Why choose a generic?	<p>If a brand name drug is dispensed when a generic alternative is available, you pay the difference in cost between the generic and the brand name as well as the generic co-payment. The Plan will not pay more than it would pay for the generic medication if you buy a brand name drug when a generic alternative is available.</p>
Generic Step Therapy Program for generics available in the therapeutic class	<p>If you elect to purchase a brand medication without trying an appropriate generic medication in the same therapeutic class, you will pay the full cost of the medication. If you try the generic medication and your physician finds that the generic medication is not effective in treating your condition, you will be able to receive the brand medication at the co-payment applicable to non-formulary or formulary drugs.</p>
Specialty Medications	<p>If you do not try the preferred medication for the therapeutic class, you will pay the full cost of the medication. If you try the preferred specialty medication and it is not effective in treating your condition, you will be able to receive a non-preferred formulary drug at retail.</p>
Mandatory Mail Order	<p>Requiring the use of mail order will reduce costs for the City and Retirees. After 2 fills of your generic or formulary brand medication at a retail pharmacy, you will be required to use mail order for any additional fills through CVS-Caremark in Mount Prospect, IL. If you do not use the mail order program for your 3rd or any subsequent fills, you will pay the full cost of the prescription. If your medication is non-formulary, however, you must continue to use the retail pharmacy.</p>
Out-of-network pharmacy reimbursement	<p>If you do not go to a network retail pharmacy, you pay the full amount when you pick up your prescription. You must then submit a receipt for reimbursement. The Plan will pay 60% of the Plan's cost, after you've met the deductible (if applicable). There is no formulary list if you go to an out-of-network pharmacy.</p>

* **Medicare allowable charge** – the amount that Medicare determines a particular service or supply should cost. The Medicare Supplement Retiree Healthcare Plan bases payment on the Medicare allowable charge.

** **Means test eligible retiree** – generally, the combined household adjusted gross income, as reported to the Internal Revenue Service in the immediately preceding tax year, must be at or below 250% of federal poverty guidelines for your family size that year.

*** **Formulary brand name drugs** – a formulary drug is a brand name drug that has been designated as a preferred drug by CVS Caremark. The preferred drug list (formulary) may change periodically at the discretion of the pharmacy benefits manager.

**** **Non-formulary brand name drug** – a non-formulary brand name drug is a brand name drug that is not on the preferred list of formulary drugs.



PPO STANDARD PLAN BENEFITS SUMMARY[†]

Effective January 1, 2017

For Non-Medicare Eligible Retirees Retired Before 8/23/89

[†]The plan document defines and controls the terms of the benefits provided.

The PPO Standard Plan pays as shown below after you meet the annual deductible. The maximum amount that the Plan will pay is based on the Plan's PPO maximum allowance.** Services must be medically necessary. ***This Plan includes the Blue Cross Blue Shield PPO Network.***

Medical Benefits	In Network PPO Providers	Out Of Network Providers
Lifetime Maximum	\$1.5 million per covered person for medical and prescription drugs. The lifetime maximum includes expenses paid under all Non-Medicare and Medicare plans combined.	
Deductible		
Individual	\$440	\$1028
Family	\$1,320	\$3,084
Out-of-Pocket Expense Limit		
Individual	\$2,572	\$5,139
Family	\$5,144	\$10,278
In-network and not in network cannot be combined		
Coinsurance		Plan Pays:
Emergency Room Services	90%**	
MRI Scans, PET Scans, CAT Scans *	80%**	
Occupational and Speech Therapy *		
Prosthetic Devices and Durable Medical Equipment (DME) *		
Ambulance Transportation *		
Skilled Nursing Facility *		
Skilled Home Health Care *		
Hospice Care *		
Outpatient Mental Health and Substance Abuse *		
Diagnostic Testing Incentive Program**		
Diagnostic Lab Tests performed by an independent PPO lab (i.e. Quest) paid in full by Plan if all requirements are met. Members must use a free standing in network lab, e.g., Quest, for diagnostic tests ordered by their physician to have the expense paid in full by the Plan. If a member uses a hospital based laboratory or the claims for lab services are billed by a hospital, the expenses are subject to deductible and co-insurance.**		
Other Covered Services, for example: <ul style="list-style-type: none"> • Hospital Inpatient * • Hospital Outpatient • Doctor (Office) Visits Note: Routine Screening Exams/Physicals are not covered Preventive care is not covered.	90%**	70%**

*These services require pre-certification through Telligen. Call 1-800-373-3727.

**PPO maximum allowance – The amount that providers who have contracted with the claims administrator have agreed to accept as reimbursement. The maximum amount that will be considered by the plan as covered for services is the lowest of the provider's actual charge, the PPO contracted rate or the usual and customary charge.



BENEFITS SUMMARY RETIREE HEALTH PLAN

For Retirees Who Retired Prior To 8/23/89

PRESCRIPTION DRUG COVERAGE

Effective January 1, 2017

†The plan document defines and controls the terms of the benefits provided.

Prescription Drug Benefits	Coverage
Caremark Retail Pharmacy – up to a 30 day supply or 100 unit dose (whichever is less)	<p>After you've met the separate \$100 annual prescription drug deductible (does not apply to Means Test Eligible Retirees*), for each prescription, you pay:</p> <ul style="list-style-type: none"> • 20% of the contracted cost for generic drugs • 20% of the contracted cost for formulary brand name drugs** when no generic is available • 20% of the contracted cost plus \$15 for non-formulary brand name drugs*** when no generic is available
Mail Order Program - Up to a 90 day supply	<p>For each prescription, you pay:</p> <ul style="list-style-type: none"> • \$28 for 2017 (\$7 for Means Test Eligible Retirees) for generic drugs • \$75 for 2017 (\$20 for Means Test Eligible Retirees) for formulary brand name drugs when no generic is available <p>Note: non-formulary brand name medications are not available through the mail order program.</p>
Restrictions: Why choose a generic?	<p>If a brand name drug is dispensed when a generic alternative is available, you pay the difference in cost between the generic and the brand name as well as the generic copayment. The Plan will not pay more than it would pay for the generic medication if you buy a brand name drug when a generic alternative is available.</p>
Generic Step Therapy Program for generics available in the therapeutic class	<p>If you elect to purchase a brand medication without trying an appropriate generic medication in the same therapeutic class, you will pay the full cost of the medication. If you try the generic medication and your physician finds that the generic medication is not effective in treating your condition, you will be able to receive the brand medication at the copayment applicable to non-formulary or formulary drugs.</p>
Specialty Medications	<p>If you do not try the preferred medication for the therapeutic class, you will pay the full cost of the medication. If you try the preferred specialty medication and it is not effective in treating your condition, you will be able to receive a non-preferred formulary drug at retail.</p>
Mandatory Mail Order	<p>Requiring the use of mail order will reduce costs for the City and Retirees. After 2 fills of your generic or formulary brand medication at a retail pharmacy, you will be required to use mail order for any additional fills through CVS-Caremark in Mount Prospect, IL. If you do not use the mail order program for your 3rd or any subsequent fills, you will pay the full cost of the prescription. If your medication is non-formulary, however, you must continue to use the retail pharmacy.</p>
Out-of-network pharmacy reimbursement	<p>If you do not go to a network retail pharmacy, you pay the full amount when you pick up your prescription. You must then submit a receipt for reimbursement. The Plan will pay 60% of the Plan's cost, after you've met the deductible (if applicable). There is no formulary list if you go to an out-of-network pharmacy.</p>

* **Means test eligible retiree** – generally, the combined household adjusted gross income, as reported to the Internal Revenue Service in the immediately preceding tax year, must be at or below 250% of federal poverty guidelines for your family size that year.

** **Formulary brand name drugs** – a formulary drug is a brand name drug that has been designated as a preferred drug by CVS Caremark. The preferred drug list (formulary) may change periodically at the discretion of the pharmacy benefits manager.

*** **Non-formulary brand name drug** – a non-formulary brand name drug is a brand name drug that is not on the preferred list of formulary drugs.

Retiree Healthcare Contribution Rates - 2017

Retired before 08/23/89

**Retiree Code
F**

PENSION CODE	MEDICARE STATUS *			RETIREE CONTRIBUTION RATES
	ANNUITANT	SPOUSE	CHILD(REN).	
01	MEDICARE	-----	-----	\$147.00
03	NON-MEDICARE	-----	-----	\$147.00
02	MEDICARE	MEDICARE	-----	\$286.00
04	MEDICARE	NON-MEDICARE	-----	\$286.00
10	NON-MEDICARE	MEDICARE	-----	\$286.00
05	NON-MEDICARE	NON-MEDICARE	-----	\$286.00
09	MEDICARE	MEDICARE	CHILD(REN)	\$425.00
11	MEDICARE	-----	CHILD(REN)	\$286.00
17	NON-MEDICARE	-----	CHILD(REN)	\$286.00
19	-----	-----	CHILD(REN)	\$147.00

* All Medicare eligible retirees will be enrolled into the Medicare Supplement Plan.

Notice of Prescription Drug Creditable Coverage City of Chicago Retiree Healthcare Plan

The City of Chicago has determined that Retiree Healthcare Plans prescription drug benefits are, on average, “creditable coverage,” which means the City’s coverage is expected to pay as much (or more in some cases) as standard Medicare Prescription Drug Coverage.

Because the City’s prescription drug benefits are creditable coverage, you can enroll in a Medicare Prescription Drug Coverage plan for 2017 and not be subject to the Medicare premium penalty.

Keep this Notice. If you enroll for Medicare Prescription Drug Coverage, you may need a copy of this Notice when you enroll. This Notice verifies that you have creditable coverage and that you are not required to pay the premium penalty.

Your Choices and the Consequences

You should compare the coverage and cost of the Medicare plans in your area.

Important Note: If you or a dependent are eligible for Medicare and drop or lose your coverage with the City, and do not enroll for Medicare Prescription Drug Coverage after your current coverage ends, you may pay more for Medicare Prescription Drug Coverage later. If you go 63 days or longer without prescription drug coverage that is at least as good as Medicare Prescription Drug Coverage, your monthly premium for Medicare Prescription Drug Coverage will increase. The increase will be 1% per month for every month that you were eligible for but did not have coverage. For example, if you go 19 months without coverage, your monthly premium will always be 19% higher than what most other people pay. You will have to pay the premium penalty as long as you have Medicare Prescription Drug Coverage. In addition, you may have to wait until the next open enrollment period (October 15 through December 7 each year) to enroll.

Eligible individuals who are entitled to Medicare Part A or enrolled in Part B can enroll for Medicare Prescription Drug Coverage when they are first eligible or during the annual Medicare enrollment period (October 15 through December 7 each year). Medicare eligible individuals who lose or drop creditable prescription drug benefits may be eligible for a two month Special Enrollment Period to sign up for Medicare Prescription Drug Coverage. Detailed information about Special Enrollment Periods is included in the *Medicare & You* handbook sent to Medicare eligible individuals each fall.

(TURN THIS PAGE OVER FOR MORE INFORMATION)

For More Information About Medicare Prescription Drug Coverage

More information about Medicare Prescription Drug Coverage is available in the “Medicare & You” handbook that Medicare publishes and sends to Medicare beneficiaries each fall. You may also be contacted directly by Medicare prescription drug plans.

To get more information, you can:

- Visit www.medicare.gov for personalized help.
- Call your State Health Insurance Assistance Program (the telephone number is in the “Medicare & You” handbook).
- Call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

For people with limited income and assets, extra help paying for a Medicare Prescription Drug Coverage is available. Additional information is available from the Social Security Administration by:

- Visiting www.socialsecurity.gov/prescriptionhelp.
- Calling 1-800-772-1213 (TTY users should call 1-800-325-0778).

For More Information About this Notice

If you have any questions about this Notice, please call the Chicago Benefits Office.

You may request a copy of this Notice at any time from the Chicago Benefits Office.

Date of Notice:	September 2016
Entity/Sender:	The City of Chicago
Contact:	Chicago Benefits Office
Address:	333 South State Street, Room 400, Chicago, Illinois 60604-3978
Telephone Number:	1-877-299-5111
Web Site:	www.cityofchicago.org/benefits

Benefits under the City of Chicago Retiree Healthcare Plan may be modified, reduced, or terminated as specified in the legal documents that establish the Plan. The City expressly reserves all rights to make amendments or terminate the Plan as allowed by the legal documents that establish the Plan.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

Michael W. Underwood, Joseph M. Vuich, Raymond)
Scacchitti, Robert McNulty, John E. Dorn, William J.)
Selke, Janiece R. Archer, Dennis Mushol, Richard)
Aguinaga, James Sandow, Catherine A. Sandow, Marie)
Johnston, and 337 other Named Plaintiffs listed in)
Exhibit 23,)
Plaintiffs,)
vs.)
CITY OF CHICAGO, a Municipal Corporation,)
Defendant,)
and)
Trustees of the **Policemen’s Annuity and Benefit Fund**)
of Chicago;)
Trustees of the **Firemen’s Annuity and Benefit Fund**)
of Chicago;)
Trustees of the **Municipal Employees’ Annuity and**)
Benefit Fund of Chicago; and)
Trustees of the Laborers’ & Retirement Board)
Employees’ Annuity & Benefit Fund of Chicago)
Defendants.)

**CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Case No. 2013 CH 17450
Calendar No. 5

Judge: Hon. Neil H. Cohen
Previous Nos. in Cook County
Circuit Court
01 CH 4962
87 CH 10134

**THIRD AMENDED CLASS ACTION COMPLAINT
By Participants in the City of Chicago’s Annuitant Medical Benefits Plan
For Declaratory and other 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 protection for participants in the City of Chicago Annuitant Medical Benefits Plan, in this continuing litigation originally initiated by the City on October 19, 1987. Plaintiffs, for themselves and for the classes they seek to represent, assert that the City annuitants are entitled to protect the terms and benefits of their City Annuitant Medical Benefit Plan, permanently for each one on the best terms in effect during his or her participation in their respective Annuity & Benefit Fund, under the Illinois Constitution, as

well as principles of contract and estoppel; that they are entitled to enforce the benefits of the City of Chicago Annuitant Medical Benefits Plan, for their lives, against the City and the Trustees of their respective retirement systems.

2. Background of the Annuitant Benefit sought to be protected: The City of Chicago Annuitant Health Benefits Plan. The City has provided healthcare benefits to its annuitants since the 1960s. Since at least 1980, the City has provided it as the “City of Chicago Annuitant Medical Benefits Plan”¹, explicitly for annuitants of its four annuity and benefit Funds²; i.e., for Police, Fire, Municipal Officers and Employees, and Laborers Fund participants.

According to the City’s original complaint that launched this litigation:

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

3. As the City recognizes³, it has never merely “subsidized” the Plan; it is, and has always been self-insured, the *actual provider* of the benefit:

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

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

¹ Exhibit 6, “Your City of Chicago Annuitant Medical Benefits Plan” Handbook.

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

³ Exhibit 22, December 23, 2015 testimony of City Budget Director Alexandra Holt (36:13 and 37:2) and Benefits Manager Nancy Currier (77:17 and 77:22).

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

6. Thus, in 1982, the City and the Police and Fire Funds' trustees, caused the 1983 Pension Code amendments to be enacted⁴, which created a way to offset some of the City's healthcare costs without a City Budget increase, by adding the Funds' trustees obligation to obtain health coverage for their annuitants, and authorizing them to pay a subsidy to the "provider", set intentionally in the amount that the City charged for coverage, with the subsidy funded by the Funds' corresponding financing provision (§5-168 for the Police Fund, §6-165 for the Firemen's Fund).

7. The result of this was that the Funds fulfilled that obligation by engaging the City's Annuitant Health Benefits Plan; i.e., obtaining annuitant healthcare coverage by the City's providing the benefit at a fixed rate premium (\$55 per month for NonMedicare⁵, \$21 for Medicare participants) and the Funds subsidizing it for their annuitants by paying the annuitant's

⁴ Exhibit 8A, 1983 Pension Code amendments creating §§ 5-167.5 and 6-164.2; both added by P.A. 82-1044, § 1, eff. Jan. 12, 1983.

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

premium. Indeed, the Police Fund explicitly appointed the City the Administrator of its annuitant health plan.⁶

8. And, Fund participants were routinely and repeatedly informed, both in writing and in pre-retirement seminars conducted by the City over the following years, at least through 1987, with presentations by authorized City and Fund speakers, representing that this was their lifetime benefit; i.e., that the City charged a premium and their Fund paid it. (See e.g., Exhibit 7, Policemen’s Fund “Your Service Retirement Benefits” effective January 1, 1986⁷, at 10:

Deductions

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

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

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

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

⁶ Exhibit 24, “Defendants’ Exhibit 19” PABF Minutes June 27, 1985.

⁷ It is likely that Firemens’ Fund annuitants were similarly informed.

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

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

17. The City's actions described above gave rise to an implied contract between the Fund, the annuitants and the City under which the City agreed to include the annuitants in the Plan's coverage and to pay the cost of the annuitants' medical benefits coverage to the extent that it exceeds the rates established for the medical benefits coverage effective April 1, 1982.⁸

12. **Caught converting Funds' tax receipts, the City concocts a "game plan" to offset that liability by threatening to cut off annuitant healthcare benefits.** That arrangement continued until early 1987, when the City's Byrne administration was found liable for converting pension fund tax levies, in *Ryan v Chicago*, 148 Ill.App.3d 638 (1st Dist. 1986)(participant derivative action filed for benefit of the Funds) and 274 Ill.App.3d 913(1st Dist. 1995), and faced a liability to the Funds in excess of \$25 Million. As part of a "game plan"⁹ retaliation to offset its liability for converting the Funds' assets,¹⁰ the Washington administration

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

⁹ Testimony by City Comptroller Ronald Picur, Ex. 9, 44:5-8

¹⁰ Ex.1, Police Fund Trustees' Minutes of May 11, 1987, meeting with City.

approached the Funds' trustees, with a concocted threat to discontinue healthcare coverage, but would drop the matter if the trustees would forego the City's *Ryan* case liability¹¹.

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

14. The trustees/board members of the four affected annuity and benefit funds (the "Funds"), and the annuitant healthcare plan participants (eventually certified to proceed for the then-existing annuitant/participant classes) asserted counterclaims¹⁴, asserting that as a term of employment, and under principles of contract and estoppel, the City was obligated to continue annuitant healthcare coverage under the terms of the Annuitant Healthcare Plan as in effect on October 19, 1987, and the Funds were obligated to continue their subsidies, both for participants' lifetimes.

15. **The Korshak trial and first Settlement.** This Circuit Court (Hon. Albert Green) dismissed the City's claims entirely,¹⁵ but upheld the claims asserted by both the Funds and Participants' counterclaims against the City, that the City had voluntarily agreed to be the insurer, provide the annuitant medical benefits coverage, and represented to City employees that

¹¹ Exhibit 1, Minutes of Police Fund trustees meeting May 11, 1987.

¹² Named for Marshall Korshak, the first named defendant Fund trustee.

¹³ Exhibit 2, *City v. Korshak*, original City Complaint, Oct. 19, 1987.

¹⁴ Exhibit 3, *Korshak Funds Counterclaims*, and Exhibit 4, *Participants' Counterclaim*

¹⁵ Exhibit 5, May 16, 1988 Decision by Hon. Albert Green, *City v Korshak*.

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this was a lifetime benefit, provided by the City and subsidized by the Funds. These claims proceeded to trial before Judge Green, in June 1988. After the trial was concluded, but before Judge Green rendered his verdict, the City and Trustees entered into a 10-year settlement¹⁶ (obligating the City to continue providing the Annuitant Medical Benefits Plan and pay at least 50% of annuitant healthcare costs through 12/31/1997, allocating costs among the City, the Funds and participants over the settlement period, and preserving participants’ right to revive these claims if no permanent annuitant healthcare solution was reached by the end of the settlement period). Approved by the Circuit Court over the participant class’ objections, and affirmed by the Illinois Appellate Court, *City v Korshak*, 206 Ill.App.3d 968 (1st Dist.1991), PLA Den., Cert.Den., the ten-year interim settlement proceeded according to its terms.

16. **The First Settlement Period Ends, without a “permanent resolution”.** At the conclusion of the ten-year settlement,12/31/1997, the participants moved to revive the litigation, were initially denied by Judge Green¹⁷, who was then reversed by the Illinois Appellate Court¹⁸, 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. Exhibit 13,Korshak 2003

Settlement.

17. During the course of this settlement, it was also discovered that the basis on which the City set the premiums, based on “Segal” estimates, resulted in charges to annuitants

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

that exceeded their settlement percentages of their healthcare costs. The City and Class Counsel entered into an Audit and Reconciliation Agreement, which produced refunds to annuitants totaling over \$51 million over the 2003-6/30/2013 Settlement period.

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

19. Instead, the City issued a May 15, 2013, letter to annuitants declaring it would extend the benefits of the settlement through the end of 2013, then “phase out” annuitant healthcare coverage over the next three years, ending it altogether by January 1, 2017.¹⁹

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

21. Accordingly, undersigned counsel filed the original Complaint in this case, in order to assert Participants’ retained rights to permanent healthcare in their retirements. It being a new complaint, and one in which the City was now a defendant²⁰, the City removed this case to the United States District Court (N.D.Illinois). District Judge Holderman’s dismissal of the complaint²¹ (in his view that healthcare benefits were *not* protected by the Illinois Constitution) was, following the Illinois Supreme Court’s *Kanerva v. Weems* decision declaring that retiree

¹⁹ Exhibit 21, City Letter May 15, 2013.

²⁰ Plaintiffs, having chosen a forum, are ordinarily barred from removing a case.

²¹ *Underwood v. City of Chicago.*, 2013 U.S. Dist. LEXIS 174455 (N.D. Ill. Dec. 13, 2013).

healthcare benefits are protected by Illinois Constitution Art. XIII, §5, reversed, vacated and remanded with directions to remand the case to this court²².

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

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

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

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

²² *Underwood v. City of Chicago.*, 779 F.3d 461 (7th Cir. Ill. 2015)

- i. First, that the City of Chicago Annuitant Medical Benefit Plan (as it was in effect on August 23, 1989, and subsequent dates pertaining to particular subclasses), is a **benefit of participation** in the City's annuity and benefit plans, and thus protected by 1970 Illinois Constitution Article XIII, §5, against being diminished or impaired by reducing either the benefit or its funding appropriation;
- ii. Second, to the extent that the court views the claims as limited to the Pension Code provisions, that the Funds were and remain obligated to provide healthcare coverage for annuitants for life, and that they did so by enforceably contracting the City to provide the City of Chicago Annuitant Medical Benefits Plan, and that that promise, as well as the Funds' subsidies, are enforceable against both the City and the Funds;
- iii. Third, that under principles of **contract**, the City has made the annuitant benefits a term of participants' employment, contractually binding the City, such that it may not accept the benefits of the participants work but then renege on its agreement.
- iv. Fourth, that , under principles of **estoppel**, the City is estopped to deny its obligation to provide the promised benefit, because it has induced participants to provide services in exchange for repeated representations that the City's Annuitant Medical Benefits Plan is a permanent benefit for life, such that the City cannot accept their services over the promised period, then renege on its commitment;

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

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

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

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

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

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

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

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

31. Eligibility is described as follows:

ELIGIBILITY

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

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

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

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

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

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

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

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

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

doubt regarding the meaning or effect of those provisions, we are obliged to resolve that doubt in favor of the members of the State's public retirement systems.

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

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

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

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

- (a) Contract. The city bound itself contractually to cover the then-existing annuitants healthcare for life charging premiums equal to the statutory supplement paid by the pension funds; the premiums were subsidized by the Funds--the annuitants' entire premium for Police and Fire annuitants, \$25 per month for Municipal and Laborers.
- (b) Detrimental Reliance/Estoppel. The city, through its authorized officials, affirmatively induced the annuitants to act to their detriment, in joining and continuing their coverage the City's annuitant healthcare plan, in

reliance upon the City's assurance of lifetime medical care coverage, and the City is now estopped from terminating or reducing those benefits.

- (c) Illinois Constitution. The Annuitant Healthcare Plan, as in effect on October 1, 1987 through August 23, 1989, was a benefit of participation in an Illinois statutory pension or retirement system, so 1970 Illinois Constitution, Art. 13, Section 5, prohibits the city's attempt to eliminate or reduce Lifetime fixed rate subsidized Medical Care as a retirement benefit.
- (i) The City of Chicago Retirement Medical Plan is a pension and retirement benefit of City of Chicago employment.
 - (ii) A participant's right to coverage under the plan vests, and cannot be reduced after his entry into the system.
 - (iii) A participant's right to coverage under the City's Retiree Healthcare Plan vests no later than his retirement, and the terms of the benefits cannot be reduced thereafter.
- (d) Illinois Constitution, Special Legislation. The statutory provisions (P.A. 86-273 and P.A. 90-32/June 27, 1997) as they purport to change the terms or protection of class members' healthcare coverage are invalid special legislation because they apply only from employment by a named municipality. (1970 Ill. Const. Art. IV, Sec. 13).

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

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

42. No permanent resolution of the retiree healthcare issue was reached by the end of 1997. Consequently, the litigation revived once again thereafter, culminating in a series of

Settlements which though reaching the end of their terms on June 30, 2013 for the 2003 Settlement, all explicitly preserve Class members' rights to assert:

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

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

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

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

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

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

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

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

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

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

Plaintiffs, Class Members believe that there is no material dispute as to the following facts:²³

Parties:

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

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

47. The Pension Funds. The POLICEMEN'S ANNUITY & BENEFIT FUND OF THE CITY OF CHICAGO (the "Police Fund"), the FIREMEN'S ANNUITY, BENEFIT FUND OF THE CITY OF CHICAGO, (the "Firemen's Fund" or the "Fire Fund"), the MUNICIPAL EMPLOYEES, OFFICERS AND OFFICIAL ANNUITY AND BENEFIT FUND (the "Municipal Fund"), and the LABORERS' AND RETIREMENT BOARD EMPLOYEES' AND

²³ References and Authorities Cited. Unless otherwise described:

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

BENEFIT FUND OF CHICAGO (the "Laborers Fund") were each created and operate under, respectively, Articles 5, 6, 8 and 11 of the Illinois Pension Code. Previously contained in Ill.Rev.Stat. Ch. 108-1/2, the "Pension Code's current provisions are contained in 40 ILCS 5/Arts. 5, 6, 8 and 11).

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

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

50. Additionally, where the particular statutory provision requires the Trustees to provide health insurance, Plaintiffs assert that the trustees did so by enforceably contracting with the City to provide such coverage under the City of Chicago Annuitant Health Benefit Plan. In the event that the City is relieved or excused of that obligation, then the Participants assert that their respective Fund's trustees are obligated to obtain equivalent coverage.

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

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

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

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

55. **Annuitant Participation.** Based on the most recent reconciliation report for the period ended 6/30/2013, the participants in the Plan (that is, annuitants who were then enrolled in

the City's Annuitant Health Benefits Plan²⁴ total approximately 23,800; including annuitants of all four Annuity & Benefit Funds, plus survivors and dependents who participate in the City's Annuitant Medical Plan for their primary medical coverage.; Policemen's Fund participants in the Annuitant Health Plan: 8,965, Firemen's Fund: 3,023, Municipal Employees' Fund: 9,245 and Laborers' Fund: 2,584.

56. Although many of these annuitants are over age 65, some very old, with serious medical problems, many people who began working for the City before April 1, 1986 (thus cannot qualify at all from their City employment), many are still well below age 65.²⁵ Due to age and existing medical conditions, some (probably most of them) would be unable to obtain their own medical coverage at an affordable cost or to qualify for alternative medical coverage at all. Based on their initial hire date, many of them cannot qualify for Medicare coverage from their City employment; some are without sufficient qualifying employment quarters at all, and can obtain Medicare coverage only by paying additional premiums.

Relevant Constitutional and Statutory Provisions

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

"Membership in any pension or retirement system of the State, any unit of local government . . . or any agency or instrumentality thereof, shall be an enforceable contractual

²⁴ The number of "Class members" is a much greater number, because many of them are still working for the City, so are not yet annuitants. That said, the number of participants in the Annuitant Health Benefits Plan probably does not vary that much, owing to natural attrition.

²⁵ Anyone who began their City work in 1986 before reaching age 35 have still not reached age 65, even if they obtained qualifying quarters from other employment.

relationship, the benefits of which shall not be diminished or impaired."

1970 Illinois Constitution, Art. 13, §5.

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

59. The current Group Health Benefits for City Annuitants, the City of Chicago Annuitant Medical Benefits Plan, was created by a "handshake" agreement, incorporated into the statutes, and have thereafter been a benefit of participation in the City's Annuity & Benefit Funds since at least 1980, subsidized by the Funds since 1982. The City of Chicago's Annuitant Medical Benefits Plan in existence from 1982 through at least 1989, was the statutory result of a "handshake" agreement between the City's Byrne administration, the Police and Fire Unions and/or Funds trustees, under which the City agreed to provide healthcare coverage to annuitants at a fixed-rate monthly premium(\$55 for non-Medicare qualified, \$21 for Medicare-qualified persons) that was to be subsidized by the Police and Fire Funds' payment of the annuitant's monthly premium, that was financed by a special tax levy for the Funds. This was understood and intended to be both a benefit of a person's employment by the City and participation in the annuitant's respective annuity and benefit fund. (Exhibit 18, McDonough declaration and Testimony at 30ff)

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

ELIGIBILITY

You will be eligible for coverage if you are:

- An Annuitant of the City of Chicago. "Annuitant" means a former employee who is receiving an age and service annuity from one of four retirement funds,
- The spouse of a deceased Annuitant if you are receiving spousal annuity payments, or
- A dependent of a deceased Annuitant if you are receiving annuity payments. (Plan Handbook, at 2)

Exhibit 6.

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

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

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

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

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

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

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

68. Statutory Subsidy: Police and Firemen's Funds. Since January 12, 1983, and continuing through 8/22/1989 (the date of enactment of P.A.86-273) Pension Code Sections 5-167.5, 6-164.2, respectively, required the Police and Firemen's Funds' Boards to each contract

for group health insurance and required the City to pay for a portion of its cost, for electing annuitants, out of the City's levy for its contribution to the Police Fund.

* * *

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

* * *

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

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

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

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

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

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

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

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

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

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

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

Different from the earlier provisions for Police and Firemen, the 1984 legislation creating Pension Code Sections 8-164.1 and 11-160.1 characterizes the group hospital and medical care benefits provided for Municipal and Laborers' Funds participants as not being pension or retirement benefits under Section 5 of Article XIII of the Illinois Constitution of 1970.

74. Legal issue of the legality of creating a non-protected benefit of participation.

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

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

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

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

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

78. Thus, from April 1, 1982 through August 23, 1989, annuitants received their healthcare coverage as a benefit of participation in their Funds, who obtained that coverage from the City, who acted as the self-insured provider of the plan, and paid all of the “insurer’s” costs of the Funds' annuitants medical benefits program to the extent that they have exceeded the premium rates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: DX37-43.

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

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

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

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

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

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

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

Source: DX33, City X3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Back to the Present:

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

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

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

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

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

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

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

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

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

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

141. The “new rates” imposed by the City for the post- 6/30/2013 Settlement period are unlawful on at least three grounds. They are not entitled to enforcement, first, since they are calculated by a flawed method that systematically overcharges annuitants, and also results from the City’s unilateral diminution in its annuitant healthcare benefit. Additionally, there are two unilateral diminishment actions by the City: (i) increasing the premiums by an estimated costs factor that has been overstated in every previous year going back to its 2003 inception²⁷ and (ii) reducing its appropriation for the benefit, viewed either individually or in the aggregate, from the \$102,326,353 aggregate appropriation and expenditure in in 2013, to \$80,609,808 in 2014, reduced to \$62,912,845 in 2015, reducing it by a further 50% or \$31 million in just the 2016 appropriation alone²⁸; (a total diminution of \$ 100 million through 2015; \$130,755,496 million by the end of 2016; all of which diminutions result in corresponding increases in premiums to annuitants.

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

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

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

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

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

144. The City’s flawed calculation of premiums.

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

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

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147. Since the June 30 2013 expiration of the 2003 Settlement, the City has refused to audit and reconcile the rates charged to actual experience; refused for the last half of 2013, and will not audit or reconcile the rates to actual charges for 2014, 2015 or 2016.²⁹

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

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

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

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

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

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

²⁹ Exhibit 26, Chart of City Rate Changes for 2016.

³⁰ Testimony of Nancy Currier, Exhibit 22 at 80-82.

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

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

Class Allegations

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

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

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

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

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

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

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

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

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

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

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

categories, who will fairly and adequately protect the interest of the classes. The proposed participant class representatives understand the nature of the claim, the purpose of the litigation, their role in it, and have no interests antagonistic to the class. And participants' undersigned counsel is well experienced and capable of representing the class or classes, and has long acted as the certified class counsel in this specific case, already.

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

COUNTS AND CAUSES OF ACTION

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

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

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

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

166. Participants' healthcare coverage under the City of Chicago Annuitant Medical Benefits Plan, terms and Fund subsidy under the Illinois Pension Code, as they existed on a participant's entry into their particular retirement system (and with improvements thereafter) are benefits of membership in a pension or retirement system of a unit of Illinois local government, that are enforceable for life, by the protections of 1970 Illinois Constitution, Art. 13, §5, which prohibits them from being diminished or impaired.

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

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

COUNT II - Common Law Breach of Contract

169. Plaintiffs re-allege paragraphs 1 through 163.

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

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

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

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

COUNT III - Common Law Estoppel

174. Participants re-allege paragraphs 1 through 163.

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

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

COUNT IV - U.S.C. § 1983

For Record Purposes Only-No Answer is Required.

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

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

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

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

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

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

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

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

184. Plaintiffs re-allege the foregoing paragraphs.

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

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

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

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

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

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

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

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

191. Plaintiffs re-allege the foregoing paragraphs.

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

Section 2. Due Process and Equal Protection.

No person shall be deprived of life, liberty or property without due process of law nor **be denied the equal protection of the laws.**

Count VII-Invalid Special or Local Legislation.

193. Plaintiffs re-allege the foregoing paragraphs.

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

Section 13. Special Legislation.

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

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

Conclusion

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

Prayer for Relief

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

- A. Certify the case as a class action for City of Chicago Retiree Healthcare Plan Participants, with the following proposed subclasses:
 - i. Korshak subclass-12/31/1987 annuitant participants,
 - ii. Window subclass-retired Post-Korshak, but pre-8/23/1989,
 - iii. Pre-8/23/1989 Hirees,
 - iv. And Pre-4/1/1986 Hirees;
 - v. Participants –First hired date after 8/23/1989;all represented by undersigned Counsel;

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- B. Declare the pre 8/23,1989 retiree participants' entitlement to resumption of the fixed-rate subsidized \$55/\$21 monthly premium retiree healthcare plan, fully subsidized by the Funds;
- C. Declare that PA 86-273 and PA 90-32 are (i) invalid to the extent the statutes purport to either create a class of non-protected benefits of membership or (ii) invalid as applied to the class to convert existing protected benefits into non-protected benefits;
- D. Declare that the 1989 and later statutory annuitant healthcare statutory amendments are invalid, for (i) unconstitutionally stripping the benefits of the protections of Article XIII, Section 5, (ii) invalidly diminishing their benefits by their time limitations, and (iii) invalidly limiting their benefits to persons who are annuitants "by reason of employment by the City of Chicago".
- E. 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;
- F. Award Plaintiffs' Attorneys fees and costs;
- G. Any and all other relief the Court deems just and proper.

Dated: January 13, 2016

By: /s/ Clinton A. Krislov
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EXHIBITS

- EXHIBIT 1 Korshak Police Fund Trustees Minutes, May 11, 1987
- EXHIBIT 2 Korshak original city complaint, Oct 19, 1987
- EXHIBIT 3 Korshak Funds counterclaims
- EXHIBIT 4 Korshak counterclaim by intervenors participants
- EXHIBIT 5 Korshak, May 16, 1988 transcripts
- EXHIBIT 6 City of Chicago "Your City of Chicago Annuitant Medical Benefits Plan"
- EXHIBIT 7 Police Fund -Your Service Retirement Benefits
- EXHIBIT 8 A-E Progression of Pension Code Group Healthcare Statutes
- EXHIBIT 9 Testimony by Ronald Picur
- EXHIBIT 10 Korshak December 15, 1989 settlement between City and Funds
- EXHIBIT 11 Korshak Memorandum approving City-Funds Settlement over objection of participants
- EXHIBIT 12 Illinois Appellate Court June 15, 2000 order restoring case to active calendar
- EXHIBIT 13 Korshak 2003 Settlement
- EXHIBIT 14 Agreed Audit and Reconciliation Agreement order
- EXHIBIT 15 Korshak Pre-Retirement Seminars 1987
- EXHIBIT 16 Example of City Appropriation for Annuitant Healthcare
- EXHIBIT 17 Barbara Malloy testimony
- EXHIBIT 18 McDonough Declaration and Testimony
- EXHIBIT 19 Kordeck Declaration and Testimony
- EXHIBIT 20 December 3, 2015 Memorandum and Opinion by Hon. Neil H. Cohen
- EXHIBIT 21 May 13, 2013 City Letter regarding plan to phase out annuitant healthcare coverage
- EXHIBIT 22 Transcript of December 23, 2015 Hearing on Plaintiffs' Motion for Preliminary Injunction
- EXHIBIT 23 List of Named Plaintiffs
- EXHIBIT 24 Minutes of Proceedings, PABF, June 27, 1985
- EXHIBIT 25 Comparison of City Appropriations and Expenditures for Annuitant Healthcare 2012 -2016
- EXHIBIT 26 Chart of City Rate Changes for 2016

EXHIBIT 8A

**ILLINOIS PENSION CODE
GROUP HEALTH BENEFIT PROVISIONS
AS IN EFFECT PRIOR TO
ENACTMENT OF P.A. 86-273**

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PENSION CODE

ARTICLE 5. POLICEMEN'S ANNUITY AND BENEFIT FUND--CITIES OVER 500,000

Pension Code § 5-167.5

5-167.5. Group health benefit

§ 5-167.5. Group health benefit. (a) For the purposes of this Section:

"Annuitant" means a person receiving an age and service annuity or a prior service annuity under this Article on or after January 1, 1983.

"Carrier" means an insurance company, or a corporation organized under the Nonprofit Hospital Service Plan Act, [FN1] the Medical Service Plan Act [FN2] or the Voluntary Health Services Plan Act, [FN3] which is authorized to do group health insurance business in Illinois.

(b) The Board shall contract with one or more carriers to provide group health insurance for all annuitants. Such group health insurance shall provide for protection against the financial costs of health care expenses incurred in and out of hospital including basic hospital-surgical-medical coverages and major medical coverage. The program may include such supplemental coverages as out-patient diagnostic X-ray and laboratory expenses, prescription drugs and similar group benefits.

The group health insurance program may also include:

- (1) prepaid preventive health care through health maintenance organizations;
- (2) coverage for those who rely on treatment by prayer or spiritual means alone for healing in accordance with the tenets and practice of a recognized religious denomination;
- (3) optional coverage for dependents of the annuitant;
- (4) other optional coverage, such as for dental, psychological, or optometric services.

(c) The group contract shall be on terms deemed by the Board to be in the best interest of the Fund and its annuitants, based on, but not limited to, such criteria as administrative cost factors, the service capabilities of the carrier, and the premiums charged.

The term of any contract made under authority of this Section may not extend beyond 2 fiscal years, with such renewal options, for not more than 2 one-year periods, as may be deemed by the Board to be most advantageous to and in the best interest of the Fund and its annuitants. No renewal may be exercised without the conclusion of a qualified independent actuary that any increase in premium requested by a carrier is justified on the basis of audited experience data, increases in the cost of health care services, carrier performance, or any combination thereof.

(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, 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. The full cost of any optional coverage elected by the annuitant shall be deducted from his monthly annuity.

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Laws 1963, p. 161, § 5-167.5, added by P.A. 82-1044, § 1, eff. Jan. 12, 1983.

[FN1] Chapter 32, ¶ 551 et seq.

[FN2] Chapter 32, ¶ 563 et seq.

[FN3] Chapter 32, ¶ 595 et seq.

REFERENCES

LIBRARY REFERENCES

1987 Main Volume Library References

States c=93,
C.J.S. States § 156.
Words and Phrases (Perm. Ed.)
S. H. A. ch. 108 1/2 ¶ 5-167.5
IL ST CH 108 1/2 ¶ 5-167.5
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S.H.A. ch. 108 1/2 ¶ 6-164.2

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CHAPTER 108 1/2 . PENSIONS
PENSION CODE

ARTICLE 6. FIREMEN'S ANNUITY AND BENEFIT FUND--CITIES OVER 500,000

Pension Code § 6-164.2

6-164.2. Group health benefit

§ 6-164.2. Group health benefit. (a) For the purposes of this Section:

"Annuitant" means a person receiving an age and service annuity or a prior service annuity under this Article on or after January 1, 1983.

"Carrier" means an insurance company, or a corporation organized under the Nonprofit Hospital Service Plan Act, [FN1] the Medical Service Plan Act [FN2] or the Voluntary Health Services Plan Act, [FN3] which is authorized to do group health insurance business in Illinois.

(b) The Board shall contract with one or more carriers to provide group health insurance for all annuitants. Such group health insurance shall provide for protection against the financial costs of health care expenses incurred in and out of hospital including basic hospital-surgical-medical coverages and major medical coverage. The program may include such supplemental coverages as out-patient diagnostic X-ray and laboratory expenses, prescription drugs and similar group benefits.

The group health insurance program may also include:

- (1) prepaid preventive health care through health maintenance organizations;
- (2) coverage for those who rely on treatment by prayer or spiritual means alone for healing in accordance with the tenets and practice of a recognized religious denomination;
- (3) optional coverage for dependents of the annuitant;
- (4) other optional coverage, such as for dental, psychological, or optometric services.

(c) The group contract shall be on terms deemed by the Board to be in the best interest of the Fund and its annuitants, based on, but not limited to, such criteria as administrative cost factors, the service capabilities of the carrier, and the premiums charged.

The term of any contract made under authority of this Section may not extend beyond 2 fiscal years, with such renewal options, for not more than 2 one-year periods, as may be deemed by the Board to be most advantageous to and in the best interest of the Fund and its annuitants. No renewal may be exercised without the conclusion of a qualified independent actuary that any increase in premium requested by a carrier is justified on the basis of audited experience data, increases in the cost of health care services, carrier performance, or any combination thereof.

(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 6-165, 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. The full cost of any optional coverage elected by the annuitant shall be deducted from his monthly annuity.

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Laws 1963, p. 161, § 6-164.2, added by P.A. 82-1044, § 1, eff. Jan. 12, 1983.

[FN1] Chapter 32, ¶ 551 et seq.

[FN2] Chapter 32, ¶ 563 et seq.

[FN3] Chapter 32, ¶ 595 et seq.

REFERENCES

LIBRARY REFERENCES

1987 Main Volume Library References

States 93.
C.J.S. States § 156.
Words and Phrases (Perm.Ed.)
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S.H.A. ch. 108 1/2 ¶ 8-164.1

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CHAPTER 108 1/2 . PENSIONS
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ARTICLE 8. MUNICIPAL EMPLOYEES', OFFICERS' AND OFFICIALS' ANNUITY AND
BENEFIT
FUND--CITIES OVER 500,000 INHABITANTS

Pension Code § 8-164.1

8-164.1. Group Health Care Plan

§ 8-164.1. Group Health Care Plan. 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.

Amounts contributed by the city as authorized under Section 8-189 for the benefits set forth in this Section shall be credited to the reserve for group hospital care and group medical and surgical plan benefits and all such premiums shall be charged to it.

The group hospital care plan and group medical and surgical plan established under this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

Laws 1963, p. 161, § 8-164.1, added by P.A. 84-23, § 1, eff. July 18, 1985.

REFERENCES

LIBRARY REFERENCES

1987 Main Volume Library References

Municipal Corporations ¶ 186(1), 187(2).

C.J.S. Municipal Corporations §§ 586, 588 et seq.

S. H. A. ch. 108 1/2 ¶ 8-164.1

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S.H.A. ch. 108 1/2 ¶ 11-160.1

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CHAPTER 108 1/2, PENSIONS
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ARTICLE 11. LABORERS' AND RETIREMENT BOARD EMPLOYEES' ANNUITY AND
BENEFIT
FUND--CITIES OVER 500,000 INHABITANTS

Pension Code § 11-160.1

11-160.1. Group health care plan

§ 11-160.1. Group Health Care Plan. 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.

Amounts contributed by the city as authorized under Section 11-178 for the benefits set forth in this Section shall be credited to the reserve for group hospital care and group medical and surgical plan benefits and all such premiums shall be charged to it.

The group hospital care plan and group medical and surgical plan established under this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

Laws 1963, p. 161, § 11-160.1, added by P.A. 84-159, § 1, eff. Aug. 16, 1985.

S. H. A. ch. 108 1/2 ¶ 11-160.1
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EXHIBIT 8B

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EXHIBIT 8B

S.A. 258

**ILLINOIS PENSION CODE
GROUP HEALTH BENEFIT PROVISIONS
AS AMENDED BY P.A. 86-273
EFFECTIVE AUGUST 23, 1989**

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P.A. 82-342, in the second paragraph, in the first sentence, inserted "from January 1, 1976 to July 1, 1981, and \$250 per month"; and at the end of cl. (a), added "or who dies in the service after June 30, 1981".

Section 2 of P.A. 82-342 provided:

"The General Assembly finds that the changes made by this amendatory Act of 1981 relating to Articles 5 and 6 of the Illinois Pension Code accommodate a request from local governments or organizations thereof, and therefore reimbursement of local governments is not required of the State under the State Mandates Act, by reason of the exclusion specified in clause (1) of subsection (1) of Section 8 of that Act."

P.A. 84-1104, in the second paragraph, substituted "January 1, 1986, the minimum amount of widow's annuity shall be \$325 per month for the following classes of widows", for "July 1, 1975 the minimum amount of

widow's annuity shall be \$175 per month from July 1, 1975 to January 1, 1976 and \$200 per month from January 1, 1976 to July 1, 1985 and \$250 per month thereafter for all widows hereinafter described"; inserted "of 1985" preceding "(b)", inserted "and"; and in "(b)" substituted "and does" for "who does".

P.A. 86-273, in the first paragraph, substituted "\$200 per month, without regard to when the deceased policeman was in service" for "the effective date of this amendatory Act of 1986" for "\$150 per month"; in the second paragraph, substituted "1990" for "1986", "\$400" for "\$325", "whether the deceased policeman was in service on" for "the fact that the death of the policeman occurred prior to" and "1989" for "1985".

P.A. 87-849 inserted the paragraph increasing the minimum amount of a widow's annuity effective Jan. 1, 1992.

Library References

- Municipal Corporations ¶187(7).
- WESTLAW Topic No. 268.
- C.J.S. Municipal Corporations §§ 588, 589.

5/5-167.5. Group health benefit

§ 5-167.5. Group health benefit. (a) For the purposes of this Section, "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity on or after January 1, 1988, under Article 5, 6, 8 or 11, by reason of previous employment by the City of Chicago (hereinafter, in this Section, "the city").

(b) The city shall continue to offer to annuitants and their dependents the same basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan), and may offer additional plans at its sole discretion.

(c) Effective the date the initial increased annuitant payments pursuant to subsection (g) take effect, the city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, of annuitants and their dependents under all health care plans offered by the city. The claims or premiums of all annuitants and their dependents under all of the plans offered by the city shall be aggregated for the purpose of calculating the city's payment required under this subsection, as well as for the setting of rates of payment for annuitants as required under subsection (g).

(d) From January 1, 1988 until December 31, 1992, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of \$65 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of \$35 per month for each such annuitant who is qualified to receive medicare benefits. From January 1, 1993 until December 31, 1997, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the

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following amounts: up to a maximum of \$75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of \$45 per month for each such annuitant who is qualified to receive medicare benefits.

For the period January 1, 1988 through the effective date of this amendatory Act of 1989, payments under this Section shall be reduced by the amounts paid by or on behalf of the board's annuitants covered during that period.

The payments described in this subsection shall be paid from the tax levy authorized under Section 5-168; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on December 31, 1997, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) The aggregate cost of claims and premiums for each calendar year from 1989 through 1997 of all annuitants and dependents covered by the city's group health care plans shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If such estimated cost is more than the estimated amount to be contributed by the city during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all participating annuitants. The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The initial determination of such payments shall be prospective only and shall be based upon the estimated costs for the balance of the year. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants.

(h) An annuitant may elect to terminate coverage in a plan at any time, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

Laws 1963, p. 161, § 5-167.5, added by P.A. 82-1044, § 1, eff. Jan. 12, 1983. Amended by P.A. 86-273, § 1, eff. Aug. 23, 1989. Formerly Ill.Rev.Stat.1991, ch. 108 1/2, ¶ 5-167.5.

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above 4% a year, to the extent necessary and available to finance the cost of such increases for the following year, shall be transferred each year beginning with the year 1969 to a fund account designated as the Supplementary Payment Reserve from the Interest and Investment Reserve set forth in Section 6-203.

If the money in the Supplementary Payment Reserve in any year arising from interest income above 4% a year as defined in this Section accruing in the preceding year; and the contributions by retired persons, are insufficient to make the total payments to all persons entitled to the annuity under this Section; and any investment earnings over 4% a year beginning with the year 1969 not previously used to finance such increases and transferred to the Prior Service Annuity Reserve, may be used to the extent necessary and available to provide sufficient funds to finance such increases for the current year. Such sums shall be transferred from the Prior Service Annuity Reserve. If the total money available in the Supplementary Payment Reserve from such sources are insufficient to make the total payments to all persons entitled to such increases for the year, a proportionate amount computed as the ratio of the money available to the total of all the payments specified for that year shall be paid to each person for that year.

No part of any such increase under this Section is an obligation of the fund otherwise established under this Article 6.

Laws 1963, p. 161, § 6-164.1, added by P.A. 76-1163, § 1, eff. Aug. 29, 1969. Amended by P.A. 77-1496, § 1, eff. Sept. 8, 1971; P.A. 79-633, § 1, eff. Oct. 1, 1975; P.A. 82-971, § 1, eff. Sept. 8, 1982.
Formerly Ill.Rev.Stat.1991, ch. 108½, ¶ 6-164.1.

Historical and Statutory Notes

P.A. 77-1496 substituted "2%" for "1½%" in the first and second sentences of the first paragraph.

P.A. 79-633 substituted "The provisions of the preceding paragraph of this Section apply" for "This Section applies" at the beginning of the second paragraph, inserted the third and fourth paragraphs, and in the fifth paragraph, substituted "the increases indicated in the preceding part of this Section" for "such increases".

P.A. 82-971, in the third paragraph, made the following substitutions: "in July, 1982" for "on July 1, 1975"; "1976" for "1967"; and "\$400" for "\$350.00 a month thereafter"; in the fourth paragraph, inserted "minimum"; substituted "specified in the preceding paragraph" for "of \$350.00"; and following "6-128.1", inserted a comma.

For retroactive application of P.A. 82-971, see note following 40 ILCS 5/5-167.2.

5/6-164.2. Group health benefit

§ 6-164.2. Group health benefit. (a) For the purposes of this Section, "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity on or after January 1, 1988, under Article 5, 6, 8 or 11, by reason of previous employment by the City of Chicago (hereinafter, in this Section, "the city").

(b) The city shall continue to offer to annuitants and their dependents the same basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan), and may offer additional plans at its sole discretion.

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(c) Effective the date the initial increased annuitant payments pursuant to subsection (g) take effect, the city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, of annuitants and their dependents under all health care plans offered by the city. The claims or premiums of all annuitants and their dependents under all of the plans offered by the city shall be aggregated for the purpose of calculating the city's payment required under this subsection, as well as for the setting of rates of payment for annuitants as required under subsection (g).

(d) From January 1, 1988 until December 31, 1992, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of \$65 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of \$35 per month for each such annuitant who is qualified to receive medicare benefits. From January 1, 1993 until December 31, 1997, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of \$75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of \$45 per month for each such annuitant who is qualified to receive medicare benefits.

For the period January 1, 1988 through the effective date of this amendatory Act of 1989, payments under this Section shall be reduced by the amounts paid by or on behalf of the board's annuitants covered during that period.

The payments described in this subsection shall be paid from the tax levy authorized under Section 6-165; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on December 31, 1997, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) The aggregate cost of claims and premiums for each calendar year from 1989 through 1997 of all annuitants and dependents covered by the city's group health care plans shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If such estimated cost is more than the estimated amount to be contributed by the city during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all participating annuitants. The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The initial determination of such payments shall be prospective only and shall be based upon the estimated costs for the balance

of the year. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants.

(h) An annuitant may elect to terminate coverage in a plan at any time, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

Laws 1963, p. 161, § 6-164.2, added by P.A. 82-1044, § 1, eff. Jan. 12, 1983. Amended by P.A. 86-273, § 1, eff. Aug. 23, 1989.

Formerly Ill.Rev.Stat.1991, ch. 108½, ¶ 6-164.2.

Historical and Statutory Notes

P.A. 86-273 rewrote this section which, prior thereto, provided:

"(a) For the purposes of this Section:

"'Annuitant' means a person receiving an age and service annuity or a prior service annuity under this Article on or after January 1, 1983.

"'Carrier' means an insurance company, or a corporation organized under the Nonprofit Hospital Service Plan Act, the Medical Service Plan Act or the Voluntary Health Services Plan Act, which is authorized to do group health insurance business in Illinois.

"(b) The Board shall contract with one or more carriers to provide group health insurance for all annuitants. Such group health insurance shall provide for protection against the financial costs of health care expenses incurred in and out of hospital including basic hospital-surgical-medical coverages and major medical coverage. The program may include such supplemental coverages as out-patient diagnostic X-ray and laboratory expenses, prescription drugs and similar group benefits.

"The group health insurance program may also include:

"(1) prepaid preventive health care through health maintenance organizations;

"(2) coverage for those who rely on treatment by prayer or spiritual means alone for healing in accordance with the tenets and practice of a recognized religious denomination;

"(3) optional coverage for dependents of the annuitant;

"(4) other optional coverage, such as for dental, psychological, or optometric services.

"(c) The group contract shall be on terms deemed by the Board to be in the best interest

of the Fund and its annuitants, based on, but not limited to, such criteria as administrative cost factors, the service capabilities of the carrier, and the premiums charged.

"The term of any contract made under authority of this Section may not extend beyond 2 fiscal years, with such renewal options, for not more than 2 one-year periods, as may be deemed by the Board to be most advantageous to and in the best interest of the Fund and its annuitants. No renewal may be exercised without the conclusion of a qualified independent actuary that any increase in premium requested by a carrier is justified on the basis of audited experience data, increases in the cost of health care services, carrier performance, or any combination thereof.

"(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 6-165, 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. The full cost of any optional coverage elected by the annuitant shall be deducted from his monthly annuity."

Library References

Municipal Corporations § 220(6), 220(9).
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations §§ 722, 727.

5/8-164.1. Group health benefit

§ 8-164.1. Group health benefit. (a) For the purposes of this Section, "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity on or after January 1, 1988, under Article 5, 6, 8 or 11, by reason of previous employment by the City of Chicago (hereinafter, in this Section, "the city").

(b) The city shall continue to offer to annuitants and their dependents the same basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan), and may offer additional plans at its sole discretion.

(c) Effective the date the initial increased annuitant payments pursuant to subsection (g) take effect, the city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, of annuitants and their dependents under all health care plans offered by the city. The claims or premiums of all annuitants and their dependents under all of the plans offered by the city shall be aggregated for the purpose of calculating the city's payment required under this subsection, as well as for the setting of rates of payment for annuitants as required under subsection (g).

(d) From January 1, 1988 until December 31, 1992, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of \$65 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of \$35 per month for each such annuitant who is qualified to receive medicare benefits. From January 1, 1993 until December 31, 1997, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of \$75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of \$45 per month for each such annuitant who is qualified to receive medicare benefits.

For the period January 1, 1988 through the effective date of this amendatory Act of 1989, payments under this Section shall be reduced by the amounts paid by or on behalf of the board's annuitants covered during that period.

Commencing on the effective date of this amendatory Act of 1989, the board is authorized to pay to the board of education on behalf of each person who chooses to participate in the board of education's plan the amounts specified in this subsection (d) during the years indicated. For the period January 1, 1988 through the effective date of this amendatory Act of 1989, the board shall pay to the board of education annuitants who participate in the board of education's health benefits plan for annuitants the following amounts: \$10 per month to each annuitant who is not qualified to receive medicare

benefits, and \$14 medicare benefits

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MUNICIPAL ANNUITY & BENEFIT FUND

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benefits, and \$14 per month to each annuitant who is qualified to receive medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 8-189; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on December 31, 1997, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) The aggregate cost of claims and premiums for each calendar year from 1989 through 1997 of all annuitants and dependents covered by the city's group health care plans shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If such estimated cost is more than the estimated amount to be contributed by the city during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all participating annuitants. The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The initial determination of such payments shall be prospective only and shall be based upon the estimated costs for the balance of the year. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants.

(h) An annuitant may elect to terminate coverage in a plan at any time, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

Laws 1963, p. 161, § 8-164.1, added by P.A. 84-23, § 1, eff. July 18, 1985. Amended by P.A. 86-273, § 1, eff. Aug. 23, 1989.

Formerly Ill.Rev.Stat.1991, ch. 108 1/2, ¶ 8-164.1.

Historical and Statutory Notes

P.A. 86-273 rewrote the section which prior thereto, provided:

"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.

"Amounts contributed by the city as authorized under Section 8-189 for the benefits set forth in this Section shall be credited to the reserve for group hospital care and group medical and surgical plan benefits and all such premiums shall be charged to it.

"The group hospital care plan and group medical and surgical plan established under this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970."

Library References

Municipal Corporations §§ 186(1), 187(2).
WESTLAW Topic No. 268.

C.J.S. Municipal Corporations §§ 586, 588, 589.

5/8-165. Re-entry into service

§ 8-165. Re-entry into service. (a) When an employee receiving age and service or prior service annuity who has withdrawn from service after the effective date re-enters service before age 65, any annuity previously granted and any annuity fixed for his wife shall be cancelled. The employee shall be credited for annuity purposes with sums sufficient to provide annuities equal to those cancelled, as of their ages on the date of re-entry; provided, the maximum age of the wife for this purpose shall be as provided in Section 8-155 of this Article.

The sums so credited shall provide for annuities to be fixed and granted in the future. Contributions by the employees and the city for the purposes of this Article shall be made, and when the proper time arrives, as provided in this Article, new annuities based upon the total credit for annuity purposes and the entire term of his service shall be fixed for the employee and his wife.

If the employee's wife died before he re-entered service, no part of any credits for widow's or widow's prior service annuity at the time annuity for his wife was fixed shall be credited upon re-entry into service, and no such sums shall thereafter be used to provide such annuity.

(b) When an employee re-enters service after age 65, payments on account of any annuity previously granted shall be suspended during the time thereafter that he is in service, and when he again withdraws, annuity payments shall be resumed. If the employee dies in service, his widow shall receive the amount of annuity previously fixed for her.

Laws 1963, p. 161, § 8-165, eff. July 1, 1963. Amended by P.A. 81-1187, § 1, eff. Jan. 1, 1981; P.A. 81-1536, § 1, eff. Jan. 1, 1981.
Formerly Ill.Rev.Stat.1991, ch. 108 1/2, ¶ 8-165.

Historical and Statutory Notes

P.A. 81-1187 inserted "or on behalf of" in the second paragraph of subd. (a).

P.A. 81-1536 in the second sentence of the second paragraph of subd. (a), following "Contributions by", deleted "or on behalf of".

Prior Laws:

Laws 1921, p. 203, § 34.

Laws 1935, p. 303, § 34.

Laws 1935, p. 303, § 38 1/2, added by Laws 1949, p. 829, § 1.

EXHIBIT 8C

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EXHIBIT 8C

S.A. 268

**ILLINOIS PENSION CODE
GROUP HEALTH BENEFIT PROVISIONS
AS AMENDED BY P.A. 90-32
EFFECTIVE JUNE 27, 1997**

ELECTRONICALLY FILED
1/13/2016 4:07 PM
2013-CH-17450
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PENSIONS

) any interest earnings over 4% a year... Reserve, may be used to the extent... Payment Reserve from such sources... the money available to the total of the each person for that year.

increases in annuity as provided for in purpose are available. 7, § 87, eff. July 20, 1999.

ry Notes

rect patent and technical errors, to revise references, to resolve multiple actions in the General Assembly and to make certain techni- tions in P.A. 90-567 through P.A. 90-810.

Beginning January 1, 1996, the person who is entitled to receive a... regard to whether the deceased... of this amendatory Act of 1995. Beginning January 1, 1999, the person who is entitled to receive a... regard to whether the deceased... of this amendatory Act of 1998. of widow's annuity shall be \$700 per... to whether the deceased policeman... amendatory Act of 1998: (1) the widow of a... of service credit, or who dies in service... who withdraws from service with 20 or... a refund, provided that the widow is... service.

therwise made by it under the other... tions as are necessary for the minimum... he manner prescribed in Section 5-175... -12, § 5, eff. April 20, 1995; P.A. 90-766, § 5,

tory Notes

ie deceased policeman was in service on the... tive date of P.A. 86-273. Effective January 1, 1990, the minimum amount... idow's annuity shall be \$400 per month for the... wing classes of widows, without regard to... her the deceased policeman was in service on... effective date of P.A. 86-273: (a) the widow of... iceman who dies in the service with at least 10... s of service credit at date of death in the... or who dies in the service after June 30,

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40 ILCS 5/5-167.5

1981; and (b) the widow of a policeman who withdraws after 20 or more years of service and does not withdraw a refund, provided the widow is married to the policeman before he withdraws from the service.

Effective January 1, 1992, the minimum amount of widow's annuity shall be \$500 per month for the following classes of widows, without regard to whether the deceased policeman is in service on or after the effective date of P.A. 87-849: (1) the widow of a policeman who dies in service with at least 10 years of service credit, or who dies in service after June 30, 1981; and (2) the widow of a policeman who withdraws from service with 20 or more years of service credit and does not withdraw a refund, provided that the widow is married to the policeman before he withdraws from service.

Effective January 1, 1993, the minimum amount of widow's annuity shall be \$600 per month for the following classes of widows, without regard to whether the deceased policeman is in service on or after the effective date of this amendatory Act of 1993: (1) the widow of a policeman who dies in service with at least 10 years of service credit, or who dies in service after June 30, 1981; and (2) the widow of a policeman who withdraws from service with 20 or more years of service credit and does not withdraw a refund, provided that the widow is married to the policeman before he withdraws from service.

inserted subsec. (a); and inserted subsection designations for the former fifth and sixth paragraphs. P.A. 90-766, in subsec. (a), added the second paragraph.

5/5-167.5. Group health benefit

§ 5-167.5. Group health benefit.

(a) For the purposes of this Section: (1) "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity, under Article 5, 6, 8 or 11, by reason of previous employment by the City of Chicago (hereinafter, in this Section, "the city"); (2) "Medicare Plan annuitant" means an annuitant described in item (1) who is eligible for Medicare benefits; and (3) "non-Medicare Plan annuitant" means an annuitant described in item (1) who is not eligible for Medicare benefits.

(b) The city shall offer group health benefits to annuitants and their eligible dependents through June 30, 2002. The basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan) shall cease to be a plan offered by the city, except as specified in subparagraphs (4) and (5) below, and shall be closed to new enrollment or transfer of coverage for any non-Medicare Plan annuitant as of the effective date of this amendatory Act of 1997. The city shall offer non-Medicare Plan annuitants and their eligible dependents the option of enrolling in its Annuitant Preferred Provider Plan and may offer additional plans for any annuitant. The city may amend, modify, or terminate any of its additional plans at its sole discretion. If the city offers more than one annuitant plan, the city shall allow annuitants to convert coverage from one city annuitant plan to another, except the basic city plan, during times designated by the city, which periods of time shall occur at least annually. For the period dating from the effective date of this amendatory Act of 1997 through June 30, 2002, monthly premium rates may be increased for annuitants during the time of their participation in non-Medicare plans, except as provided in subparagraphs (1) through (4) of this subsection.

(1) For non-Medicare Plan annuitants who retired prior to January 1, 1988, the annuitant's share of monthly premium for non-Medicare Plan coverage only shall not exceed the highest premium rate chargeable under any city non-Medicare Plan annuitant coverage as of December 1, 1996.

(2) For non-Medicare Plan annuitants who retire on or after January 1, 1988, the annuitant's share of monthly premium for non-Medicare Plan coverage only shall be the rate in effect on December 1, 1996, with monthly premium increases to take effect no sooner than April 1, 1998 at the lower of (i) the premium rate determined pursuant to subsection (g) or (ii) 10% of the immediately previous month's rate for similar coverage.

(3) In no event shall any non-Medicare Plan annuitant's share of monthly premium for non-Medicare Plan coverage exceed 10% of the annuitant's monthly annuity.

(4) Non-Medicare Plan annuitants who are enrolled in the basic city plan as of July 1, 1998 may remain in the basic city plan; if they so choose, on the condition that they are not entitled to the caps on rates set forth in subparagraphs (1) through (3), and their premium rate shall be the rate determined in accordance with subsections (c) and (g).

(5) Medicare Plan annuitants who are currently enrolled in the basic city plan for Medicare eligible annuitants may remain in that plan, if they so choose, through June 30, 2002. Annuitants shall not be allowed to enroll in or transfer into the basic city plan for Medicare eligible annuitants on or after July 1, 1999. The city shall continue to offer annuitants a supplemental Medicare Plan for Medicare eligible annuitants through June 30, 2002, and the city may offer additional plans to Medicare eligible annuitants in its sole discretion. All Medicare Plan annuitant monthly rates shall be determined in accordance with subsections (c) and (g).

(c) The city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, as determined in accordance with subsection (g), of annuitants and their dependents under all health care plans offered by the city. The city may reduce its obligation by application of price reductions obtained as a result of financial arrangements with providers or plan administrators.

(d) From January 1, 1999 until June 30, 2002, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans, the following amounts: up to a maximum of \$75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of \$45 per month for each such annuitant who is qualified to receive medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 5-168; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on June 30, 2002, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) For each annuitant plan offered by the city, the aggregate cost of claims, as reflected in the claim records of the plan administrator, shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If the estimated annual cost for each annuitant plan offered by the city is more than the estimated amount to be contributed by the city for that plan pursuant to subsections (b) and (c) during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all annuitants participating in the plan, except as provided in subsection (b). The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city as determined under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants, except as provided in subsection (b).

(h) An annuitant may elect to terminate coverage in a plan at the end of any month, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

(i) The city shall advise the board of all proposed premium increases for health care at least 75 days prior to the effective date of the change, and any increase shall be prospective only.

Amended by P.A. 90-32, § 5, eff. June 27, 1997.

Formerly Ill. Rev. Stat. 1991, ch. 108 ½, § 5-167.5.

140 ILCS 5/5-101 et seq., 5/6-101 et seq., 5/8-101 et seq. or 5/11-101 et seq.

January of the year following the year he attains the age of 65, or in January, 1970, if he is then over age 65, his then fixed and payable monthly annuity increased by an amount equal to 2% of the original grant of annuity, for each year he received annuity payments after the year in which he attains age 65. An additional 2% increase in such fixed and payable original granted annuity shall accrue in each January thereafter.

However, beginning January 1, 1996, the increases payable under this subsection (a) to a fireman born before January 1, 1945 shall be at the rate of 3% of the originally granted annuity amount, notwithstanding that the fireman terminated service prior to the effective date of this amendatory Act of 1995.

(b) The provisions of subsection (a) of this Section apply only to a retired fireman eligible for such increases in his annuity if he contributed to the fund a sum equal to 1% of the final average monthly salary used in the computation of the annuity for each full year of credited service upon which his annuity was computed. All such sums contributed shall be placed in a Supplementary Payment Reserve and used for the purposes of such fund account.

(c) Beginning with the monthly annuity payment due in July, 1982, the monthly annuity payment for any fireman who retired from the service before September 1, 1976 at age 50 or over with 20 or more years of service or who was granted duty disability benefits prior to September 1, 1957 and entitled to an annuity or duty disability benefits on July 1, 1975 shall be not less than \$400.

(d) The difference in amount between the minimum monthly annuity specified in subsection (c) and the minimum monthly annuity to which the fireman was entitled before July 1, 1975, in accordance with the provisions of Section 6-128.1, shall be paid as a supplement in the manner set forth in subsection (e).

(e) To defray the annual cost of the increases indicated in the preceding part of this Section, the annual income accruing from investments held by this fund, above 4% a year, to the extent necessary and available to finance the cost of such increases for the following year, shall be transferred each year beginning with the year 1969 to a fund account designated as the Supplementary Payment Reserve from the Interest and Investment Reserve set forth in Section 6-203.

If the money in the Supplementary Payment Reserve in any year arising from interest income above 4% a year as defined in this Section accruing in the preceding year; and the contributions by retired persons are insufficient to make the total payments to all persons entitled to the annuity under this Section; and any investment earnings over 4% a year beginning with the year 1969 not previously used to finance such increases and transferred to the Prior Service Annuity Reserve, may be used to the extent necessary and available to provide sufficient funds to finance such increases for the current year. Such sums shall be transferred from the Prior Service Annuity Reserve. If the total money available in the Supplementary Payment Reserve from such sources are insufficient to make the total payments to all persons entitled to such increases for the year, a proportionate amount computed as the ratio of the money available to the total of all the payments specified for that year shall be paid to each person for that year.

No part of any such increase under this Section is an obligation of the fund otherwise established under this Article 6.

Amended by P.A. 89-136, § 15, eff. July 14, 1965.

Formerly Ill.Rev.Stat.1991, ch. 108 1/2, § 6-164.1.

Historical and Statutory Notes

P.A. 89-136 inserted the section heading; designated the subsections; in subsec. (a), in the first paragraph, in the first sentence, inserted "on or"; added the second paragraph; in subsec. (b), in the first sentence, substituted "subsection (a)" for "the preceding paragraph"; and in subsec. (d), substituted "subsection (c)" for "the preceding paragraph" and "subsection (e)" for "the immediately following paragraph".

5/6-164.2. Group health benefit

§ 6-164.2. Group health benefit.

(a) For the purposes of this Section: (1) "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or

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40 ILCS 5/6-164.2

of 65, or in January, 1970, if he is
retired in January, 1970, if he is
retired in January, 1970, if he is
retired in January, 1970, if he is
retired in January, 1970, if he is

able under this subsection (a) to a
rate of 3% of the originally granted
annuity service prior to the effective

only to a retired fireman eligible
to receive a sum equal to 1% of the final
annuity for each full year of credited
service contributed shall be placed in a
fund account.

In July, 1982, the monthly annuity
for those retired prior to September 1, 1976 at age 50 or
older and disability benefits prior to
September 1, 1976 shall be paid as a supplement in the

monthly annuity specified in subsection
(a) was entitled before July 1, 1976,
shall be paid as a supplement in the

in the preceding part of this
fund, above 4% a year, to
the following year,
fund account designated as
Reserve set forth in

year arising from interest
the preceding year; and the
payments to all persons
earnings over 4% a year
such increases and transferred to
extent necessary and available to
current year. Such sums shall be
if the total money available in the
is insufficient to make the total
the year, a proportionate amount
of all the payments specified for that

an obligation of the fund otherwise

Notes

paragraph); and in subsec. (d), substitution
(c) for "the preceding paragraph"
substitution (c) for "the immediately following

means a person receiving an age and
a widow's prior service annuity, or

a minimum annuity, under Article 5, 6, 8 or 11, by reason of previous employment by the
City of Chicago (hereinafter, in this Section, "the city"); (2) "Medicare Plan annuitant" means
an annuitant described in item (1) who is eligible for Medicare benefits; and (3) "non-
Medicare Plan annuitant" means an annuitant described in item (1) who is not eligible for
Medicare benefits.

(b) The city shall offer group health benefits to annuitants and their eligible dependents
through June 30, 2002. The basic city health care plan available as of June 30, 1988
(hereinafter called the basic city plan), shall cease to be a plan offered by the city, except as
specified in subparagraphs (4) and (5) below, and shall be closed to new enrollment or
transfer of coverage for any non-Medicare Plan annuitant as of the effective date of this
amendatory Act of 1997. The city shall offer non-Medicare Plan annuitants and their eligible
dependents the option of enrolling in its Annuitant Preferred Provider Plan and may offer
additional plans for any annuitant. The city may amend, modify, or terminate any of its
additional plans at its sole discretion. If the city offers more than one annuitant plan, the city
shall allow annuitants to convert coverage from one city annuitant plan to another, except the
basic city plan, during times designated by the city, which periods of time shall occur at least
annually. For the period dating from the effective date of this amendatory Act of 1997
through June 30, 2002, monthly premium rates may be increased for annuitants during the
time of their participation in non-Medicare plans, except as provided in subparagraphs (1)
through (4) of this subsection.

(1) For non-Medicare Plan annuitants who retired prior to January 1, 1988, the annuitant's
share of monthly premium for non-Medicare Plan coverage only shall not exceed the
highest premium rate chargeable under any city non-Medicare Plan annuitant coverage as
of December 1, 1996.

(2) For non-Medicare Plan annuitants who retire on or after January 1, 1988, the
annuitant's share of monthly premium for non-Medicare Plan coverage only shall be the
rate in effect on December 1, 1996, with monthly premium increases to take effect no
sooner than April 1, 1998 at the lower of (i) the premium rate determined pursuant to
subsection (g) or (ii) 10% of the immediately previous month's rate for similar coverage.

(3) In no event shall any non-Medicare Plan annuitant's share of monthly premium for
non-Medicare Plan coverage exceed 10% of the annuitant's monthly annuity.

(4) Non-Medicare Plan annuitants who are enrolled in the basic city plan as of July 1,
1998 may remain in the basic city plan, if they so choose, on the condition that they are not
entitled to the caps on rates set forth in subparagraphs (1) through (3), and their premium
rate shall be the rate determined in accordance with subsections (c) and (g).

(5) Medicare Plan annuitants who are currently enrolled in the basic city plan for
Medicare eligible annuitants may remain in that plan, if they so choose, through June 30,
2002. Annuitants shall not be allowed to enroll in or transfer into the basic city plan for
Medicare eligible annuitants on or after July 1, 1999. The city shall continue to offer
annuitants a supplemental Medicare Plan for Medicare eligible annuitants through June 30,
2002, and the city may offer additional plans to Medicare eligible annuitants in its sole
discretion. All Medicare Plan annuitant monthly rates shall be determined in accordance
with subsections (c) and (g).

(c) The city shall pay 50% of the aggregated costs of the claims or premiums, whichever is
applicable, as determined in accordance with subsection (g), of annuitants and their depen-
dents under all health care plans offered by the city. The city may reduce its obligation by
application of price reductions obtained as a result of financial arrangements with providers
or plan administrators.

(d) From January 1, 1998 until June 30, 2002, the board shall pay to the city on behalf of
each of the board's annuitants who chooses to participate in any of the city's plans the
following amounts: up to a maximum of \$75 per month for each such annuitant who is not
qualified to receive medicare benefits, and up to a maximum of \$45 per month for each such
annuitant who is qualified to receive medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under
Section 6-165; such amounts shall be credited to the reserve for group hospital care and
group medical and surgical plan benefits, and all payments to the city required under this
subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on June 30, 2002, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) For each annuitant plan offered by the city, the aggregate cost of claims, as reflected in the claim records of the plan administrator, shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If the estimated annual cost for each annuitant plan offered by the city is more than the estimated amount to be contributed by the city for that plan pursuant to subsections (b) and (c) during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all annuitants participating in the plan, except as provided in subsection (b). The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city as determined under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants, except as provided in subsection (b).

(h) An annuitant may elect to terminate coverage in a plan at the end of any month, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

(i) The city shall advise the board of all proposed premium increases for health care at least 75 days prior to the effective date of the change, and any increase shall be prospective only.

Amended by P.A. 90-32, § 5, eff. June 27, 1997.
Formerly IL Rev. Stat. 1991, ch. 108, § 6-164.2.

40 ILCS 5/6-101 et seq.; 5/6-101 et seq., 5/8-101 et seq. or 5/11-101 et seq.

Historical and Statutory Notes

P.A. 90-32 rewrote this section, which prior thereto read:

"Group health benefit: (a) For the purposes of this Section, 'annuitant' means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity on or after January 1, 1988, under Article 5, 6, 8 or 11, by reason of previous employment by the City of Chicago (hereinafter, in this Section, 'the city')."

(b) The city shall continue to offer to annuitants and their dependents the same basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan), and may offer additional plans at its sole discretion.

(c) Effective the date the initial increased annuitant payments pursuant to subsection (g) take effect, the city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, of annuitants and their dependents under all health care plans offered by the city. The claims or premiums of all annuitants and their dependents under all of the plans offered by the city shall be aggregated for the purpose of calculating the city's payment required under this subsection, as well as

for the setting of rates of payment for annuitants as required under subsection (g).

(d) From January 1, 1988 until December 31, 1992, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of \$65 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of \$35 per month for each such annuitant who is qualified to receive medicare benefits. From January 1, 1993 until December 31, 1997, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of \$75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of \$45 per month for each such annuitant who is qualified to receive medicare benefits.

"For the period January 1, 1988 through the effective date of this amendatory Act of 1989, payments under this Section shall be reduced by the amounts paid by or on behalf of the board's annuitants covered during that period."

LOCAL 1640

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"(f) T... Section... pension... tion 5 of... 1970."

"(g) T... for each... all annuit... group he... city, base... fied inde... by the cit... more than... by the c...

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1... Const... City dic... surety bus... annuitant... nois Insur... 5/6-165.

§ 6-16

"(a) Ex... taxable p... prior to 1... Benefit F... and inclu... the Depa... and each... as equal... city that... contribut... year for... year 1981

"To pro... Article, ir... for the ye... and exclu... Section, u... Revenue, u... for each y

c) shall terminate on June 30, 2002, paid as of that date. This subsection law.

are not and shall not be construed to section 5 of Article XIII of the Illinois

gregate cost of claims, as reflected in estimated by the city, based upon a to be appointed and paid by the city annuitant plan offered by the city is the city for that plan pursuant to ted amounts to be paid pursuant to of other participating annuitants, the in the plan, except as provided in of the independent actuary, shall set annuitants. The board may deduct the ating annuitants' monthly annuities. om audited experience data, that the s more or less than the difference plans, and (2) the sum of the amount (c) and the amounts paid by all the city shall account for the excess or cept as provided in subsection (b).

plan at the end of any month, which ts toward payment of the excess

amount increases for health care at Increase shall be prospective

Notes

ing of rates of payment for annuitants as under subsection (g).

from January 1, 1988 until December 31, board shall pay to the city on behalf of the board's annuitants who chooses to be, in any of the city's plans the following up to a maximum of \$65 per month for a annuitant who is not qualified to receive benefits, and up to a maximum of \$35 per r each such annuitant who is qualified to medicare benefits. From January 1, 1993 umber 31, 1997, the board shall pay to the half of each of the board's annuitants who o participate in any of the city's plans the amounts: up to a maximum of \$75 per r each such annuitant who is not qualified r medicare benefits, and up to a maximum r month for each such annuitant who is o receive medicare benefits.

the period January 1, 1988 through the date of this amendatory Act of 1989, under this Section shall be reduced by the paid by or on behalf of the board's annu- ered during that period.

"The payments described in this subsection shall be paid from the tax levy authorized under Section 6-165; such amounts shall be credited to the reserve for group, hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on December 31, 1997, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) The aggregate cost of claims and premiums for each calendar year from 1989 through 1997 of all annuitants and dependents covered by the city's group health care plans shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If such estimated cost is more than the estimated amount to be contributed by the city during that year plus the estimated

amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all participating annuitants. The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The initial determination of such payments shall be prospective only and shall be based upon the estimated costs for the balance of the year. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

"If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants.

(h) An annuitant may elect to terminate coverage in a plan at any time, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

Notes of Decisions

Construction with other law 1

1. Construction with other law.

City did not engage in "any kind of insurance or surety business" so as to entitle attorney for class of annuitant intervenors to award of fees under Illinois Insurance Code where Pension Code requiring

city to contribute specified amount for annuitants' health care coverage focused upon governmental purpose and plainly did not place the city in the insurance business as contemplated by the Insurance Code. City of Chicago v. Korshak, App. 1 Dist. 1995, 213 Ill. Dec. 144, 276 Ill. App. 3d 597, 658 N.E.2d 1165, rehearing denied, appeal denied 217 Ill. Dec. 663, 167 Ill. 2d 551, 667 N.E.2d 1056.

5/6-165. Financing; tax

5-6-165. Financing; tax.

(a) Except as expressly provided in this Section, each city shall levy a tax annually upon all taxable property therein for the purpose of providing revenue for the fund. For the years prior to the year 1960, the tax rate shall be as provided for in the "Firemen's Annuity and Benefit Fund of the Illinois Municipal Code". The tax, from and after January 1, 1968 to and including the year 1971, shall not exceed .0868% of the value, as equalized or assessed by the Department of Revenue, of all taxable property in the city. Beginning with the year 1972 and each year thereafter the city shall levy a tax annually at a rate on the dollar of the value, as equalized or assessed by the Department of Revenue of all taxable property within such city that will produce, when extended, not to exceed an amount equal to the total amount of contributions by the employees to the fund made in the calendar year 2 years prior to the year for which the annual applicable tax is levied, multiplied by 2.23 through the calendar year 1981, and by 2.26 for the year 1982 and for each year thereafter.

To provide revenue for the ordinary death benefit established by Section 6-150 of this Article, in addition to the contributions by the firemen for this purpose, the city council shall for the year 1962 and each year thereafter annually levy a tax, which shall be in addition to and exclusive of the taxes authorized to be levied under the foregoing provisions of this Section, upon all taxable property in the city, as equalized or assessed by the Department of Revenue, at such rate per cent of the value of such property as shall be sufficient to produce for each year the sum of \$142,000.

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at the rate of 1% throughout his
rest on such amounts at the effective

90-855, § 48, eff. July 30, 1998.

Statutory Notes

1983 (increasing the maximum from \$400 to \$500 a
month) shall be effective as of January 1, 1984 and
apply in the case of every qualifying widow whose
husband dies in this service on or after January 1,
1984 or withdraws and enters on annuity on or after
January 1, 1984.

P.A. 90-655, the First 1998 General Revisory
Act, amended various Acts to delete obsolete text,
to correct patent and technical errors, to revise
cross references, to resolve multiple actions in the
9th and 90th General Assemblies and to make
certain technical corrections in P.A. 89-708 through
P.A. 90-566.

is payable monthly after the death of an
attainment of age 18, under the following
if he attained age 65, and before he withdrew

in the performance of an act of duty;
or in injury incurred in the performance
of service after the date of his original
entry into this service or his latest re-entry;

or after age 55 (or after age 50
if he entered this service after June 27, 1997) and who has

§ 5, eff. Aug. 14, 1998.

Statutory Notes

P.A. 90-766 incorporated the amendment by P.A.
90-31.

on the effective date of this amendatory
act, \$220 per month for each child while the
employee is receiving an annuity and \$250 per month for each child when no
longer receiving an annuity, subject to the following limitations:

(a) For the children of an employee whose death
occurred in the performance of duty, or for the children whose father was a widow
of an employee whose death occurred in the performance of duty, the annuity for each child
and the combined annuities for the family shall not exceed such

(2) For the family of an employee whose death is the result of any cause other than injury
incurred in the performance of duty, in which the combined annuities for the family exceed
60% of the employee's final monthly salary, the annuity for each child shall be reduced pro
rata so that the combined annuities for the family shall not exceed such limitation.

(3) The increase in child's annuity provided by this amendatory Act of 1997 shall apply to
all child's annuities being paid on or after the effective date of this amendatory Act of 1997.
The limitations on the combined annuities for a family in parts (1) and (2) of this Section do
not apply to families of employees who died before the effective date of this amendatory Act
of 1997.

(4) The amendments to parts (1) and (2) of this Section made by Public Act 84-1472
(eliminating the further limitation that the monthly combined family amount shall not exceed
\$500 plus 10% of the employee's final monthly salary) shall apply in the case of every
qualifying child whose employee parent dies in the service or enters on annuity on or after
January 23, 1987.

Amended by P.A. 90-32, § 5, eff. June 27, 1997; P.A. 90-511, § 2, eff. Aug. 22, 1997.

Formerly Ill.Rev.Stat.1981, ch. 108 1/2, 18-159.

Historical and Statutory Notes

The amendments by P.A. 90-32 and P.A. 90-511,
which were identical, in the introductory paragraph,
substituted "on the effective date of this amendatory
Act of 1997" for "January 1, 1988", "\$220" for
"\$120", and "\$250" for "\$150"; in subpar. (3), in
the first sentence, substituted "1997" for "1987"
and "the effective date of this amendatory Act of

1997" for "January 1, 1988, subject to"; in the
second sentence, deleted "above" preceding "limi-
tations" and added "in parts (1) and (2) of this
Section do not apply to families of employees who
died before the effective date of this amendatory
Act of 1997".

5/8-160. Duty disability benefit—Child's disability benefit

Cross References

Early retirement incentive, see 40 ILCS 5/8-
188.1.

5/8-161. Ordinary disability benefit

Cross References

Early retirement incentive, see 40 ILCS 5/8-
188.1.

5/8-164.1. Group health benefit

§ 5-164.1. Group health benefit.

(a) For the purposes of this Section: (1) "annuitant" means a person receiving an age and
service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or
a minimum annuity, under Article 5, 6, 8 or 11, by reason of previous employment by the
City of Chicago (hereinafter, in this Section, "the city"); (2) "Medicare Plan annuitant" means
an annuitant described in item (1) who is eligible for Medicare benefits; and (3) "non-
Medicare Plan annuitant" means an annuitant described in item (1) who is not eligible for
Medicare benefits.

(b) The city shall offer group health benefits to annuitants and their eligible dependents
through June 30, 2002. The basic city health care plan available as of June 30, 1988
(hereinafter called the basic city plan) shall cease to be a plan offered by the city, except as
specified in subparagraphs (4) and (5) below, and shall be closed to new enrollment or
transfer of coverage for any non-Medicare Plan annuitant as of the effective date of this
amendatory Act of 1997. The city shall offer non-Medicare Plan annuitants and their eligible
dependents the option of enrolling in its Annuitant Preferred Provider Plan and may offer
additional plans for any annuitant. The city may amend, modify, or terminate any of its
additional plans at its sole discretion. If the city offers more than one annuitant plan, the city
shall allow annuitants to convert coverage from one city annuitant plan to another, except the

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basic city plan, during times designated by the city, which periods of time shall occur at least annually. For the period dating from the effective date of this amendatory Act of 1997 through June 30, 2002, monthly premium rates may be increased for annuitants during the time of their participation in non-Medicare plans, except as provided in subparagraphs (1) through (4) of this subsection.

(1) For non-Medicare Plan annuitants who retired prior to January 1, 1988, the annuitant's share of monthly premium for non-Medicare Plan coverage only shall not exceed the highest premium rate chargeable under any city non-Medicare Plan annuitant coverage as of December 1, 1996.

(2) For non-Medicare Plan annuitants who retire on or after January 1, 1988, the annuitant's share of monthly premium for non-Medicare Plan coverage only shall be the rate in effect on December 1, 1996, with monthly premium increases to take effect no sooner than April 1, 1998 at the lower of (i) the premium rate determined pursuant to subsection (g) or (ii) 10% of the immediately previous month's rate for similar coverage.

(3) In no event shall any non-Medicare Plan annuitant's share of monthly premium for non-Medicare Plan coverage exceed 10% of the annuitant's monthly annuity.

(4) Non-Medicare Plan annuitants who are enrolled in the basic city plan as of July 1, 1998 may remain in the basic city plan, if they so choose, on the condition that they are not entitled to the caps on rates set forth in subparagraphs (1) through (3), and their premium rates shall be the rate determined in accordance with subsections (c) and (g).

(5) Medicare Plan annuitants who are currently enrolled in the basic city plan for Medicare eligible annuitants may remain in that plan, if they so choose, through June 30, 2002. Annuitants shall not be allowed to enroll in or transfer into the basic city plan for Medicare eligible annuitants on or after July 1, 1999. The city shall continue to offer annuitants a supplemental Medicare Plan for Medicare eligible annuitants through June 30, 2002, and the city may offer additional plans to Medicare eligible annuitants in its sole discretion. All Medicare Plan annuitant monthly rates shall be determined in accordance with subsections (c) and (g).

(c) The city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, as determined in accordance with subsection (g), of annuitants and their dependents under all health care plans offered by the city. The city may reduce its obligation by application of price reductions obtained as a result of financial arrangements with providers or plan administrators.

(d) From January 1, 1993 until June 30, 2002, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of \$75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of \$45 per month for each such annuitant who is qualified to receive medicare benefits.

Commencing on the effective date of this amendatory Act of 1989, the board is authorized to pay to the board of education on behalf of each person who chooses to participate in the board of education's plan the amounts specified in this subsection (d) during the years indicated. For the period January 1, 1988 through the effective date of this amendatory Act of 1989, the board shall pay to the board of education annuitants who participate in the board of education's health benefits plan for annuitants the following amounts: \$10 per month to each annuitant who is not qualified to receive medicare benefits; and \$14 per month to each annuitant who is qualified to receive medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 8-189; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on June 30, 2002, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

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on or after January 1, 1988, the are Plan coverages only shall be the remium increases to take effect. no mium rate determined pursuant to s month's rate for similar coverages, ant's share of monthly premium for nt's monthly annuity.

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Act of 1989, the board is authorized n who chooses to participate in the is subsection (d) during the years ffective date of this amendatory Act nitants who participate in the board llowing amounts: \$10 per month to benefits, and \$14 per month to each

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(g) For each annuitant plan offered by the city, the aggregate cost of claims, as reflected in the claim records of the plan administrator, shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If the estimated annual cost for each annuitant plan offered by the city is more than the estimated amount to be contributed by the city for that plan pursuant to subsections (b) and (c) during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all annuitants participating in the plan, except as provided in subsection (b). The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city as determined under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants, except as provided in subsection (b).

(h) An annuitant may elect to terminate coverage in a plan at the end of any month, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

(i) The city shall advise the board of all proposed premium increases for health care at least 75 days prior to the effective date of the change, and any increase shall be prospective only.

Amended by P.A. 90-32, § 5, eff. June 27, 1997.

Formerly Ill.Rev.Stat.1991, ch. 108 1/2, 18-164.1.

40 ILCS 5/8-101 et seq., 5/8-101 et seq., 5/8-101 et seq. or 5/11-101 et seq.

Historical and Statutory Notes

P.A. 90-32 rewrote this section, which prior thereto read:

"Group health benefit." (a) For the purposes of this Section, "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, or a minimum annuity on or after January 1, 1988, under Article 5, 6, 8 or 11, by reason of previous employment by the City of Chicago (hereinafter, in this Section, "the city").

(b) The city shall continue to offer to annuitants and their dependents the same basic city health care plan available as of June 30, 1988 (hereinafter called the basic city plan), and may offer additional plans at its sole discretion.

(c) Effective the date the initial increased annuitant payments pursuant to subsection (g) take effect, the city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, of annuitants and their dependents under all health care plans offered by the city. The claims or premiums of all annuitants and their dependents under all of the plans offered by the city shall be aggregated for the purpose of calculating the city's payment required under this subsection, as well as for the setting of rates of payment for annuitants as required under subsection (g).

(d) From January 1, 1988 until December 31, 1992, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of \$65 per month for

each such annuitant who is not qualified to receive medicare benefits; and up to a maximum of \$35 per month for each such annuitant who is qualified to receive medicare benefits. From January 1, 1993 until December 31, 1997, the board shall pay to the city on behalf of each of the board's annuitants who chooses to participate in any of the city's plans the following amounts: up to a maximum of \$75 per month for each such annuitant who is not qualified to receive medicare benefits, and up to a maximum of \$45 per month for each such annuitant who is qualified to receive medicare benefits.

For the period January 1, 1988 through the effective date of this amendatory Act of 1989, payments under this Section shall be reduced by the amounts paid by or on behalf of the board's annuitants covered during that period.

Commencing on the effective date of this amendatory Act of 1989, the board is authorized to pay to the board of education on behalf of each person who chooses to participate in the board of education's plan the amounts specified in this subsection (d) during the years indicated. For the period January 1, 1988 through the effective date of this amendatory Act of 1989, the board shall pay to the board of education annuitants who participate in the board of education's health benefits plan for annuitants the following amounts: \$10 per month to each annuitant who is not qualified to receive medicare benefits, and \$14 per month to each annuitant who is qualified to receive medicare benefits.

"The payments described by this subsection shall be paid from the tax levy authorized under Section 8-189; such amounts shall be credited to the fund for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on December 31, 1997, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) The aggregate cost of claims and premiums for each calendar year from 1989 through 1997 of all annuitants and dependents covered by the city's group health care plans shall be estimated by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If such estimated cost is more than the estimated amount to be contributed by the city during that year plus the estimated

amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all participating annuitants. The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The initial determination of such payments shall be prospective only and shall be based upon the estimated costs for the balance of the year. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans and (2) the sum of the amount to be paid by the city under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants.

(h) An annuitant may elect to terminate coverage in a plan at any time, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

Notes of Decisions:

Construction with other law 1

In Construction with other law, City did not engage in "any kind of insurance or surety business" so as to entitle attorney for class of annuitant intervenors to award of fees under Illinois Insurance Code where Pension Code requiring

city to contribute specified amount for annuitants' health care coverage focused upon governmental purpose and plainly did not place the city in the insurance business as contemplated by the Insurance Code. City of Chicago v. Korshak, App. 1 Dist.1995, 213 Ill.Dec. 144, 276 Ill.App.3d 597, 658 N.E.2d 1165, rehearing denied, appeal denied 217 Ill.Dec. 663, 167 Ill.2d 551, 667 N.E.2d 1056.

5/8-165. Re-entry into service

Cross References

Early retirement incentive, see 40 ILCS 5/8-188.1.

5/8-173. Financing; tax levy

5/8-173. Financing; tax levy.

(a) Except as provided in subsection (f) of this Section, the city council of the city shall levy a tax annually upon all taxable property in the city at a rate that will produce a sum which, when added to the amounts deducted from the salaries of the employees or otherwise contributed by them and the amounts deposited under subsection (f), will be sufficient for the requirements of this Article, but which when extended will produce an amount not to exceed the greater of the following: (a) the sum obtained by the levy of a tax of 1.093% of the value, as equalized or assessed by the Department of Revenue, of all taxable property within such city, or (b) the sum of \$12,000,000. However any city in which a Fund has been established and in operation under this Article for more than 3 years prior to 1970 shall levy for the year 1970 a tax at a rate on the dollar of assessed valuation of all taxable property that will produce, when extended, an amount not to exceed 1.2 times the total amount of contributions made by employees to the Fund for annuity purposes in the calendar year 1968, and, for the year 1971 and 1972 such levy that will produce, when extended, an amount not to exceed 1.3 times the total amount of contributions made by employees to the Fund for annuity purposes in the calendar years 1969 and 1970, respectively; and for the year 1973 an amount not to

LOCAL 1164

ILLINOIS COMPILED STATUTES ANNOTATED
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*** THIS SECTION IS CURRENT THROUGH PUBLIC ACT 91-712 ***
*** ANNOTATIONS CURRENT THROUGH 721 N.E.2d 1118 ***

CHAPTER 40. PENSIONS
ILLINOIS PENSION CODE

TITLE 11. LABORERS' AND RETIREMENT BOARD EMPLOYEES' ANNUITY AND BENEFIT FUND
-- CITIES OVER 500,000 INHABITANTS

40 ILCS 5/11-160.1 (2000)

[Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 108 1/2, para. 11-160.1]

40 ILCS 5/11-160.1. Group health benefit

Sec. 11-160.1. Group health benefit. (a) For the purposes of this Section:
) "annuitant" means a person receiving an age and service annuity, a prior
service annuity, a widow's annuity, a widow's prior service annuity, or a
minimum annuity, under Article 5, 6, 8 or 11, by reason of previous employment
with the City of Chicago (hereinafter, in this Section, "the city"); (2) "Medicare
Plan annuitant" means an annuitant described in item (1) who is eligible for
Medicare benefits; and (3) "non-Medicare Plan annuitant" means an annuitant
described in item (1) who is not eligible for Medicare benefits.

(b) The city shall offer group health benefits to annuitants and their
eligible dependents through June 30, 2002. The basic city health care plan
in effect as of June 30, 1988 (hereinafter called the basic city plan) shall
continue to be a plan offered by the city, except as specified in subparagraphs (4)
and (5) below, and shall be closed to new enrollment or transfer of coverage for
Medicare Plan annuitant as of the effective date of this amendatory Act
to the city shall offer non-Medicare Plan annuitants and their eligible
dependents the option of enrolling in its Annuitant Preferred Provider Plan and
other additional plans for any annuitant. The city may amend, modify, or
terminate any of its additional plans at its sole discretion. If the city offers
more than one annuitant plan, the city shall allow annuitants to convert
coverage from one city annuitant plan to another, except the basic city plan,
during times designated by the city, which periods of time shall occur at least
annually. For the period dating from the effective date of this amendatory Act
1997 through June 30, 2002, monthly premium rates may be increased for
annuitants during the time of their participation in non-Medicare plans, except
as provided in subparagraphs (1) through (4) of this subsection.

(1) For non-Medicare Plan annuitants who retired prior to January 1, 1988,
the annuitant's share of monthly premium for non-Medicare Plan coverage only
shall not exceed the highest premium rate chargeable under any city non-Medicare
annuitant coverage as of December 1, 1996.

(2) For non-Medicare Plan annuitants who retire on or after January 1, 1988,
the annuitant's share of monthly premium for non-Medicare Plan coverage only
shall be the rate in effect on December 1, 1996, with monthly premium increases
take effect no sooner than April 1, 1998 at the lower of (i) the premium

be determined pursuant to subsection (g) or (ii) 10% of the immediately previous month's rate for similar coverage.

In no event shall any non-Medicare Plan annuitant's share of monthly premium for non-Medicare Plan coverage exceed 10% of the annuitant's monthly annuity.

(4) Non-Medicare Plan annuitants who are enrolled in the basic city plan as of July 1, 1998 may remain in the basic city plan, if they so choose, on the condition that they are not entitled to the caps on rates set forth in paragraphs (1) through (3), and their premium rate shall be the rate determined in accordance with subsections (c) and (g).

(5) Medicare Plan annuitants who are currently enrolled in the basic city plan for Medicare eligible annuitants may remain in that plan, if they so choose, through June 30, 2002. Annuitants shall not be allowed to enroll in or transfer into the basic city plan for Medicare eligible annuitants on or after July 1, 1999. The city shall continue to offer annuitants a supplemental Medicare Plan for Medicare eligible annuitants through June 30, 2002, and the city may offer additional plans to Medicare eligible annuitants in its sole discretion. All Medicare Plan annuitant monthly rates shall be determined in accordance with subsections (c) and (g).

(c) The city shall pay 50% of the aggregated costs of the claims or premiums, whichever is applicable, as determined in accordance with subsection (g), of annuitants and their dependents under all health care plans offered by the city. The city may reduce its obligation by application of price reductions obtained as a result of financial arrangements with providers or plan administrators.

From January 1, 1993 until June 30, 2002, the board shall pay to the city 50% of each of the board's annuitants who chooses to participate in any of the city's health care plans the following amounts: up to a maximum of \$75 per month for each annuitant who is not qualified to receive Medicare benefits, and up to a maximum of \$45 per month for each such annuitant who is qualified to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 11-178, [40 ILCS 5/11-178]; such amounts shall be credited to the reserve for group hospital care and group medical and surgical insurance benefits, and all payments to the city required under this subsection shall be charged against it.

(e) The city's obligations under subsections (b) and (c) shall terminate on June 30, 2002, except with regard to covered expenses incurred but not paid as of that date. This subsection shall not affect other obligations that may be imposed by law.

(f) The group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(g) For each annuitant plan offered by the city, the aggregate cost of claims, as reflected in the claim records of the plan administrator, shall be determined by the city, based upon a written determination by a qualified independent actuary to be appointed and paid by the city and the board. If the

estimated annual cost for each annuitant plan offered by the city is more than the estimated amount to be contributed by the city for that plan pursuant to subsections (b) and (c) during that year plus the estimated amounts to be paid pursuant to subsection (d) and by the other pension boards on behalf of other participating annuitants, the difference shall be paid by all annuitants participating in the plan, except as provided in subsection (b). The city, based upon the determination of the independent actuary, shall set the monthly amounts to be paid by the participating annuitants. The board may deduct the amounts to be paid by its annuitants from the participating annuitants' monthly annuities.

If it is determined from the city's annual audit, or from audited experience data, that the total amount paid by all participating annuitants was more or less than the difference between (1) the cost of providing the group health care plans, and (2) the sum of the amount to be paid by the city as determined under subsection (c) and the amounts paid by all the pension boards, then the independent actuary and the city shall account for the excess or shortfall in the next year's payments by annuitants, except as provided in subsection (b).

(h) An annuitant may elect to terminate coverage in a plan at the end of any month, which election shall terminate the annuitant's obligation to contribute toward payment of the excess described in subsection (g).

(i) The city shall advise the board of all proposed premium increases for health care at least 75 days prior to the effective date of the change, and any increase shall be prospective only.

STORY;
Code, P.A. 86-273; 90-32, @ 5.

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Section was Ill.Rev.Stat., Ch. 108 1/2, para. 11-160.1.

AMENDMENTS.

amendment by P.A. 90-32, effective June 27, 1997, added the following: (a) (1) designation; in subdivision (a) (1) deleted "on or after January 1, 1988" preceding "under Article 5"; added subdivisions (a) (2) and (3); rewrote subsections (b) and (c); in subsection (d), in the first paragraph, deleted the former first sentence regarding payments from January 1, 1988 until December 31, 1992 and substituted "June 30, 2002" for "December 31, 1997" and deleted the former second paragraph which read "For the period January 1, 1988 through the effective date of this amendatory Act of 1989, payments under this Section shall be reduced by the amounts paid by or on behalf of the annuitant's annuitants covered during that period"; in subsection (e) substituted "June 30, 2002" for "December 31, 1997"; rewrote subsection (g); in subsection (h) substituted "the end of any month" for "any time"; and added subsection (i).

SEE NOTES

CITY NOT INSURER

The Illinois Pension Code, which specifically provides that a city must contribute a specified amount for an annuitant's health care coverage, focuses on a governmental purpose and plainly does not place the city in the insurance business as contemplated by the Code. City of Chicago v. Korshack, 276 Ill. App. 597, 213 Ill. Dec. 144, 658 N.E.2d 1165 (1 Dist. 1995), appeal denied, 167

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EXHIBIT 8D

S.A. 284

**ILLINOIS PENSION CODE
GROUP HEALTH BENEFIT PROVISIONS
AS AMENDED BY P.A. 93-42
EFFECTIVE JULY 1, 2003**

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5/11-160.1. Payments to city

§ 11-160.1. Payments to city.

(a) For the purposes of this Section, "city annuitant" means a person receiving an age and service annuity, a widow's annuity, a child's annuity or a minimum annuity under this Article as a direct result of previous employment by the City of Chicago ("the city").

(b) The board shall pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts:

(1) From July 1, 2003 through June 30, 2008, \$85 per month for each such annuitant who is not eligible to receive Medicare benefits and \$55 per month for each such annuitant who is eligible to receive Medicare benefits.

(2) From July 1, 2008 through June 30, 2013, \$95 per month for each such annuitant who is not eligible to receive Medicare benefits and \$65 per month for each such annuitant who is eligible to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 11-169; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(c) The city health care plans referred to in this Section and the board's payments to the city under this Section are not and shall not be construed to be pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

Laws 1963, p. 161, § 11-160.1, added by P.A. 84-159, § 1, eff. Aug. 16, 1985. Amended by P.A. 86-273, § 1, eff. Aug. 23, 1989; P.A. 90-32, § 5, eff. June 27, 1997; P.A. 92-599, § 10, eff. June 28, 2002; P.A. 93-12, § 5, eff. July 1, 2003.
Formerly Ill.Rev.Stat.1991, ch. 108, § 11-160.1.

5-5-167.5. Payments to city annuitants.

(a) For the purposes of this Section, "city annuitant" means a person receiving an age and service annuity, a

widow's annuity, a child's annuity, or a minimum annuity under this Article as a direct result of previous employment by the City of Chicago ("the city").

(b) The board shall pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts:

(1) From July 1, 2003 through June 30, 2008, \$85 per month for each such annuitant who is not eligible to receive Medicare benefits and \$55 per month for each such annuitant who is eligible to receive Medicare benefits.

(2) From July 1, 2008 through June 30, 2013, \$95 per month for each such annuitant who is not eligible to receive Medicare benefits and \$65 per month for each such annuitant who is eligible to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 5-168; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(c) The city health care plans referred to in this Section and the board's payments to the city under this Section are not and shall not be construed to be pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

Laws 1963, p. 161, § 5-167.5, added by P.A. 82-1044, § 1, eff. Jan. 12, 1983. Amended by P.A. 86-273, § 1, eff. Aug. 23, 1989; P.A. 90-82, § 5, eff. June 27, 1997; P.A. 92-599, § 10, eff. June 28, 2002; P.A. 93-42, § 5, eff. July 1, 2003.

Formerly Ill. Rev. Stat. 1991, ch. 108 1/2, § 5-167.5.

5/6-164.2. Payments to city

§ 6-164.2. Payments to city.

(a) For the purposes of this Section, "city annuitant" means a person receiving an age and service annuity, a widow's annuity, a child's annuity, or a minimum annuity under this Article as a direct result of previous employment by the City of Chicago ("the city").

(b) The board shall pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts:

(1) From July 1, 2003 through June 30, 2008, \$85 per month for each such annuitant who is not eligible to receive Medicare benefits and \$55 per month for each such annuitant who is eligible to receive Medicare benefits.

(2) From July 1, 2008 through June 30, 2013, \$95 per month for each such annuitant who is not eligible to receive Medicare benefits and \$65 per month for each such annuitant who is eligible to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 6-165; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(c) The city health care plans referred to in this Section and the board's payments to the city under this Section are not and shall not be construed to be pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

Laws 1963, p. 161, § 6-164.2, added by P.A. 82-1044, § 1, eff. Jan. 12, 1988. Amended by P.A. 86-273, § 1, eff. Aug. 23, 1989; P.A. 90-32, § 5, eff. June 27, 1997; P.A. 92-599, § 10, eff. June 28, 2002; P.A. 93-42, § 5, eff. July 1, 2003.
Formerly Ill. Rev. Stat. 1991, ch. 108 1/2, § 6-164.2.

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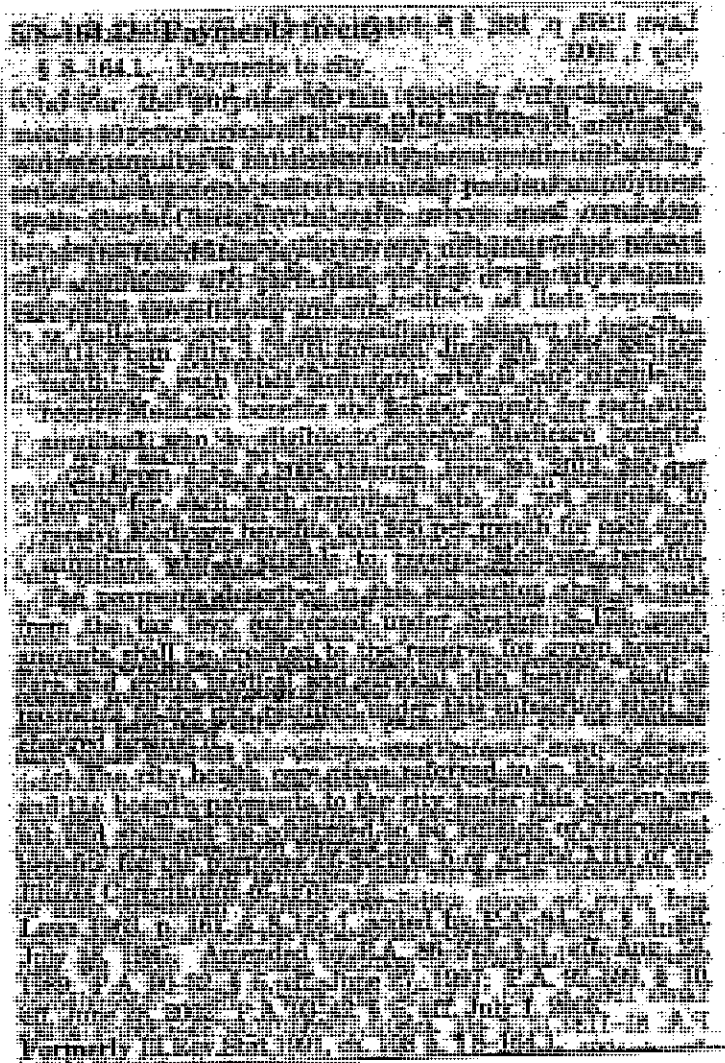


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EXHIBIT 8E

S.A. 290

40 ILCS 5/5-167.5) (from Ch. 108 1/2, par. 5-167.5)

Sec. 5-167.5. Payments to city.

(a) For the purposes of this Section, "city annuitant" means a person receiving an age and service annuity, a widow's annuity, a child's annuity, or a minimum annuity under this Article as a direct result of previous employment by the City of Chicago ("the city").

(b) The board shall pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts:

(1) From July 1, 2003 through June 30, 2008, \$85 per month for each such annuitant who is not eligible to receive Medicare benefits and \$55 per month for each such annuitant who is eligible to receive Medicare benefits.

(2) Beginning July 1, 2008 and until such time as the city no longer provides a health care plan for such annuitants or December 31, 2016, whichever comes first, \$95 per month for each such annuitant who is not eligible to receive Medicare benefits and \$65 per month for each such annuitant who is eligible to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 5-168; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(c) The city health care plans referred to in this Section and the board's payments to the city under this Section are not and shall not be construed to be pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(Source: P.A. 98-43, eff. 6-28-13.)

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(40 ILCS 5/6-164.2) (from Ch. 108 1/2, par. 6-164.2)

Sec. 6-164.2. Payments to city.

(a) For the purposes of this Section, "city annuitant" means a person receiving an age and service annuity, a widow's annuity, a child's annuity, or a minimum annuity under this Article as a direct result of previous employment by the City of Chicago ("the city").

(b) The board shall pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts:

(1) From July 1, 2003 through June 30, 2008, \$85 per month for each such annuitant who is not eligible to receive Medicare benefits and \$55 per month for each such annuitant who is eligible to receive Medicare benefits.

(2) Beginning July 1, 2008 and until such time as the city no longer provides a health care plan for such annuitants or December 31, 2016, whichever comes first, \$95 per month for each such annuitant who is not eligible to receive Medicare benefits and \$65 per month for each such annuitant who is eligible to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 6-165; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(c) The city health care plans referred to in this Section and the board's payments to the city under this Section are not and shall not be construed to be pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(Source: P.A. 98-43, eff. 6-28-13.)

(40 ILCS 5/8-164.1) (from Ch. 108 1/2, par. 8-164.1)

Sec. 8-164.1. Payments to city.

(a) For the purposes of this Section, "city annuitant" means a person receiving an age and service annuity, a widow's annuity, a child's annuity, or a minimum annuity under this Article as a direct result of previous employment by the City of Chicago ("the city").

(b) The board shall pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts:

(1) From July 1, 2003 through June 30, 2008, \$85 per month for each such annuitant who is not eligible to receive Medicare benefits and \$55 per month for each such annuitant who is eligible to receive Medicare benefits.

(2) Beginning July 1, 2008 and until such time as the city no longer provides a health care plan for such annuitants or December 31, 2016, whichever comes first, \$95 per month for each such annuitant who is not eligible to receive Medicare benefits and \$65 per month for each such annuitant who is eligible to receive Medicare benefits.

The payments described in this subsection shall be paid from the tax levy authorized under Section 8-173; such amounts shall be credited to the reserve for group hospital care and group medical and surgical plan benefits, and all payments to the city required under this subsection shall be charged against it.

(c) The city health care plans referred to in this Section and the board's payments to the city under this Section are not and shall not be construed to be pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

(Source: P.A. 98-43, eff. 6-28-13.)