

**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.)	Case No. 2013 CH 17450
CITY OF CHICAGO , a Municipal Corporation,)	Calendar No. 5
Defendant,)	
and)	Judge: Hon. Neil H. Cohen
Trustees of the Policemen’s Annuity and Benefit)	Previous Nos. in Cook County
Fund of Chicago;)	Circuit Court
Trustees of the Firemen’s Annuity and Benefit)	01 CH 4962
Fund of Chicago;)	87 CH 10134
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.)	

**Plaintiffs’ Motion to Compel Funds To:
1) Bring Subsidies Current And Continue, And,
2) Provide A Retiree Healthcare Plan For Their Annuitants**

Plaintiffs for themselves, and for all participants in the four City of Chicago Annuity and Benefit Plans (Police, Fire, Municipal and Laborers), hired before August 29, 2003¹, move to compel the Funds to bring their subsidies current, and deposit the subsidies to date in a segregated fund under the Court’s control, to provide for the payment of past and future statutory subsidies as directed by the Appellate Court which

¹ Plaintiff reserve and do not waive the right to expand the class definition to the class defined in the 2003 Settlement, all then-current annuitants and all those future annuitants hired before the June 30, 2013 original end date of the 2003 Agreement. (It may well be that the City’s unilateral extension of the 2003 Agreement may extend that as well, but that is an issue for the future).

the Funds have stopped paying since the end of 2016, and to fulfill their primary obligation to provide a retiree healthcare plan for their annuitants.

The Funds’ and City’s statutory obligations to provide and subsidize annuitant healthcare coverage. This court has *repeatedly* ruled that the 1983 and 1985 Pension Code provisions provide permanent (non-time-limited) benefits for participants hired prior to the 8/23/1989 amendments, such that for all pre-8/23/1989 participants, their retirement Fund trustees are obligated to contract for or provide retiree healthcare coverage for their annuitants, and to subsidize the costs at specific dollar amounts. The subsidy portion is beyond dispute following the Appeal.

For Police and Firemen’s Fund participants:

Police Fund: Pension Code §5-167.5:

5-167.5. Group health benefit

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.....

.....

(d) . (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. (1983 Pension Code provision for Police Fund Pension Code §5-167.5

The Firemens’ Fund Provision at Pension Code §6-164.2 is identical, except that tax levy reference is to Firemen’s provision 6-165.

For Municipal and Laborers Fund participants:

Pension Code §8-164.1 (for Municipal Fund):

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.

The Laborers Fund's Pension Code §11-160.1 is identical to the Municipal Funds'.

On December 3, 2015, March 3, 2016, July 21, 2016 and again on August 31, 2016, this Court repeatedly has interpreted those provisions as obligating the four Funds to provide coverage for their participants, and to subsidize it at the stated levels, under Count I as to the 1983 and 1985 Pension Code amendments, as the Funds' obligation to provide coverage and the City's obligation to finance.

- I. There is no reason to delay ordering the Funds to pay the statutory subsidies, bring the subsidies current and continue paying them.**
 - A. This court has repeatedly ruled that the Funds have the primary responsibility to Provide and Subsidize healthcare plans for their annuitants.**

Perhaps the one thing no one can dispute is this court's declaration that the Funds' obligation to pay the statutory subsidies. Per this court's December 3, 2015

Order², repeated in this court’s March 4, 2016 “Clarification” ruling³ and reaffirmed in this court’s July 21, 2016 Memorandum and Order upholding Count 1 of the Third Amended Complaint⁴, and this court’s repeated admonishments to Funds’ counsel.

²“The 1983 amendments obligated the Fire and Police Funds to contract for group health care coverage for their annuitants and to subsidize the monthly premiums for their annuitants.

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

The 1983 and 1985 amendments did not set forth any termination date for the Funds’ obligations.”

Judge Cohen, December 3, 2015 Memorandum Order, at 10.

³“The City is correct that it does not have any obligation under the 1983 or 1985 amendments to subsidize or provide healthcare for the Funds’ annuitants. *That obligation is placed on the Funds.* However, the City does have a obligation to contribute, through the collection of the special tax levy, the monies used by the Funds to subsidize/provide healthcare for the Funds’ annuitants. Therefore, both the funds and the City have certain obligations under the 1983 and 1985 amendments and both the City and the Funds are proper parties to Count I” (March 4, 2016 Memorandum and Order, at 5) (emphasis added).

⁴ Per this court’s July 21, 2016 Memorandum and Order at 8-9:

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

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

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

Indeed, on August 31, 2016, the Court repeated its holding (upon questioning by a Fund lawyer, Burke), that the Funds were obligated to act under the 1983 and 1985 statutes to provide health care for retirees who were participants (i.e., hired by August 23, 1989):

Hearing Transcript: August 31, 2016: 35:10-45:9

THE COURT: Yes, Mr. Burke.

MR. BURKE: Judge, I have -- my understanding of your rulings on 1983, 1985 statutes is that was a lifetime benefit.

What that benefit is is altogether different from the benefits that are set out in this letter of May 13, 2013, to which the funds had no business agreeing or being part of.

And the reason I raise that, Your Honor, is that there is a subsidy under the old agreement. That subsidy is gone, and, therefore, that is an enormous expense to the funds.

And I think that it's not clear that what this Court is ruling. Is it the 2000.... 1983, 1985 statutes, or is it some interpretation of this letter?

healthcare contracts the Fire and Police Funds could enter into while fulfilling its non-time limited obligation to its members.

The 1983 and 1985 amendments were in effect when the Korshak Sub-Class, the Window Sub-Class and Sub-Class 3 entered into the Funds' retirement systems. There does not appear to be any dispute between the parties that the 1983 and 1985 amendments apply to these sub-classes.

The court notes further that in its May 15, 2013 letter, (Am. Compl. Ex. 2), the City stated that it would continue to provide a healthcare plan with a continued contribution from the City for the lifetime of the annuitants who retired prior to August 23, 1989. The City again reiterated this assertion in its briefs and at oral argument on this Motion to Dismiss.

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

So that on appeal, for the record, on appeal, I would like the Court to clarify.

.....

THE COURT: Well, I ruled under the 1983 and 1985 statutes. I didn't rule based on that May 2013 letter.

And you don't need to speculate, Mr. Krislov, or be a mind reader with regard to me. That's what I said in my opinions over and over again, and I'm saying it again now.

.....

What was filed was whether there was -- what the parties' obligations were under the '83 and '85 amendments to the Pension Code and the agreements and the ones thereafter.

And I made that clear over and over and over again in many written opinions. And there's no reason for me to say otherwise now. There's nothing that you said that changes my opinion.

But you want to talk. Go ahead.

MR. KRISLOV: Here's what Mr. Burke's point raises.

You ruled that class one and class two have a permanent benefit, and it protects them from -- the benefit --

THE COURT: Because there's was no time limitation.

MR. KRISLOV: Correct. At least, no more, no less. We have a difference of opinion on that. **But Mr. Burke is saying they're stopping that subsidy at the end of the year, even for the class one and class two people.**

We don't think that they have a right to do that, and we -- this business about --

THE COURT: Well, my ruling was that it is -- and I was clear on this, and the City agrees with me, and the Funds disagree with me -- maybe they should ask me to recuse myself -- but was that it is the Funds' obligation under the '83 and '85 statute that the City has to levy taxes to support that -- I just looked at this -- at the language of the amendments and enforce it.

So that hasn't changed. And if the Funds are going to do something, then the funds are

going to do something, and I'll await any motions with regard to that.

But my order was clear with regard to that.

MR. KRISLOV: And I think Mr. Burke's statement is this they're not going to comply with that order.

THE COURT: I don't know that he said that. I didn't hear him saying that. I didn't hear him say that he was about to violate my order.

I do understand his disagreement with my order, and I can understand why he does. I don't agree that he's right, but there you go.

MR. KRISLOV: I'd like to know. If they're going to end the subsidy at the end of the year, then this makes it acute that we do need a preliminary injunction.

We restate our request previously in order to protect the participants while these matters are being sorted out.

THE COURT: Mr. Burke?

MR. BURKE: Judge, again, I just want to make it clear on the record, what is this Court's ruling if it's going to go up? What's the Court's ruling on 1983 and '85?

THE COURT: I told you --

MR. BURKE: It's --

THE COURT: -- Mr. Burke, it's in my opinion not once, not twice, but at least three times, you got to do it.

MR. BURKE: I agree.

THE COURT: All right. He agrees.

MR. BURKE: We have no problem with it.

THE COURT: He's got no problem.

MR. BURKE: My problem is how does that make sense in connection with the letter, the City's letter, not the Funds', the City's letter in 2013?

THE COURT: I don't find the City's letter -- I'm not making any ruling upon the legal obligation -- the legal affect of that letter because no one has asked me --

MR. BURKE: That's what I want. That's all I asked.

THE COURT: -- and the record is clear.

There you go, Mr. Krislov, are you pleased?

MR. KRISLOV: I'm happy.

THE COURT: He's happy. Okay. What else do you want from me?

Ex. 4, Hearing Transcript: August 31, 2016: 35:10-45:9 (emphasis added).

Per the Appellate Court, affirming and held:

[31] ... Before those amendments were enacted, the parties agreed upon and the General Assembly adopted healthcare benefit plans in 1983 and 1985 that contained no such limitations. The benefits conferred under those amendments are unconditional healthcare benefits commensurate with the benefits provided by the statute covering the retirees in Kanerva—and they cannot be diminished.

...

Under the 1983 and 1985 amendments, employees were given an open-ended, unconditioned fixed-rate subsidy for their healthcare coverage, and those benefits, like the ones offered in Kanerva, are protected. When the 1987 litigation was settled (put on hold), no one ever anticipated, and there is no legal basis to conclude, that once the settlement expired, the City's obligations would be terminated as a matter of law.

[34] In the 1989 settlement, the parties agreed to "negotiate in good faith toward achieving a permanent resolution of this dispute" until the end of the settlement period and that "[f]ailing agreement, the parties shall be restored to the same legal status which existed as of October 19, 1987 ***." When no permanent solution was reached by 1997 and the City tried to terminate the plan unilaterally again, the case ended up before this court where we held that "under the express terms of the settlement agreement, the [retirees] are entitled to reargue the claims originally asserted" in the 1987 case. *Ryan v. City of Chicago*, 313 Ill. App. 3d 1096 (Rule 23 Order June 15, 2000).

[35] It was not until the 2003 settlement was executed that the parties agreed that the City would have the unilateral authority to end the program entirely, *meaning that all persons that participated in the retirement system before that agreement was executed still maintained a vested right to the unconditional 1983 and 1985 amendments. Therefore, the retirees in subclass four that began to participate in the retirement system before the 2003 settlement was executed have a claim under count I based on the 1983 and 1985 amendments under the pension protection clause.*

...

[37] Even those retirees that began participating in the system after 1989 still had vested rights in the 1983 or 1985 amendments. The post-1989 participants did not start under a benefit plan that said all healthcare benefits would expire at the end of the settlement period. They started on a time-limited plan which stated that they would be reinstated to the pre-settlement status quo at the time the settlement expired. The settlements never expressed that future annuitants were to be treated differently or precluded from also reverting to the pre-settlement status quo. When the 2003 settlement expired in 2013, the rights of employees whose participation started before the 2003 settlement was executed merely reverted to the status existing when the Korshak case was filed in 1987. *So, being back at that point, the City is obligated to those retirees under the 1983 and 1985 amendments.*

Underwood v. City of Chicago, 2017 IL App (1st) 162356, ¶¶ 31-37. (Emphasis added).

But, even since remand, the Funds still thumb their nose at their obligations to provide coverage and subsidize it. Most recently, Funds counsel Boeckman made it clear that the Funds will not fulfill even their obligation unless ordered by this court.

Even at the most recent hearing in this case, while recognizing that “our participants are owed a back payment and a monthly subsidy consistent with the appellate court order”, now claim that “the appellate court order does not say that it’s a Fund obligation. It does not talk about it being a Fund payment.” (Fund Attorney Sarah Boeckman, April 30, 2018 hearing at 89:21-90:4.) See similar statements by Ms. Boeckman November 8, 2017 hearing transcript at 43-45, noting as well that they have not received and “will not be getting any extra money from the City in order to pay this subsidy.”

Nor apparently have the trustees any intention to pursue the City for the subsidies, past or future, unless ordered by this court.

None of the defendant Funds or City has appealed, or asked to appeal those rulings. Indeed, the Appellate Court decision affirmed on all issues excepting only to expand the class. *Underwood v. City of Chicago*, 2017 IL App (1st) 162356.

Accordingly, the Funds' obligation to pay the subsidies for the annuitants is law of the case and needs to be enforced. There is simply no reason to permit the Funds to refuse to fulfill their obligations to the annuitants. The Funds are required to provide the statutory subsidy, and the City is obligated to finance it.

The City and Funds are working in conjunction, and the Funds are instrumentalities of the City, they both should be enjoined from terminating the current BCBS Plan required to comply with their statutory obligations as this Court reads them.

Plaintiffs request "coercive" relief to compel the Funds to do that which it was ordered by this Court, as detailed below. *Weglarz v. Bruck*, 128 Ill.App.3d 1, 7-8 (1st Dist. 1984); Johnston & Bry, *An Overview of Illinois Contempt Law*, 29 J. Marshall L.Rev. 223 (1993) (relief from a Motion to Show Cause is generally divided into either coercive or punitive following the dichotomy of civil or criminal contempt and being either direct or indirect).

Here, the Funds disobedience of Court orders which is a "common basis for a court's finding of indirect civil contempt." *Id.* As required, the order violated is clear and specific. *Id.* at 232, Fn. 81; citing *In Re Betts*, 97 F.2d 983 (7th Cir. 1983) (federal contempt conviction requires an order made with specificity, where there is a violation that is willful) and see, *In re Marriage of Logston*, 103 Ill. 2d 266 (1984), "When a party is found in civil contempt of court, such as for failure to pay money, the contempt order is coercive in nature. The court seeks only to secure obedience to its prior order."

In short, this court should order the Funds to bring, and keep, the subsidies current. To the extent they try to lay this obligation off onto the City, the City should be

ordered to pay the \$10.2 million into a “Protest Fund” under this court’s control, and keep paying in at least \$600,000 more each month while this matter pend.

II. There is no reason to delay ordering that the subsidies be brought current and continue.

A. The Unpaid Subsidy Amount to Date is Approximately \$10.2 Million for the Period of January 2017 through May 2018, and increases by another \$600,000 each month.

There is no reason to continue permitting the Funds to evade their obligations to pay the subsidies, so that annuitants have the minimum financial support that this court has declared they are entitled to. Based on the statutory rates⁵, each annuitant is already owed \$357 (\$21 x 17 months), \$425 (\$25 x 17) to \$935 (\$55 x 17), depending on their category of Fund and Medicare qualification.

The aggregate fund sought initially is estimated at a minimum \$10.2 million, based upon the 22,000 Annuitants, at an average of the \$55, \$21 and \$25 monthly subsidy covering the time period from January 1, 2017 (when the Funds stopped paying the subsidy) (plus interest due). (\$30 per month x 20,000 x 17 months from January 2017 through May 2018.)

Past monthly payments are due the retirees, and going forward permanently, for all Annuitants hired by July 31, 2003. The City and Funds should be required by the Court to bring the proper subsidy payments current, and to continue monthly basis.

⁵ The 1983 statute (for Police and Fire Annuitants) requires a monthly subsidy of \$55 for those not Medicare qualified, and \$21 for those who are Medicare qualified. For Municipal and Laborers annuitants, the 1985 statute requires the Funds to pay subsidies at a flat rate of \$25 per month.

B. The Subsidy Obligation past due is ever increasing, by approximately \$600,000 per month While Litigation continues.

The Funds, along with the City, have stated their dispute of their obligations to provide a Plan, in all likelihood further delaying payment of any subsidy to the Retirees both for 2017 to the present period, as well as each month the City and Funds extend this litigation. However, the City and Funds do not dispute their obligation to pay the subsidies, including the past due for the expanded group produced by this litigation.

Its now clear that the City and Funds are required to make the subsidy payments at the amounts stated in the 1983 and 1985 amendments of \$55 (Police and Fire Non-Medicare) and \$21 (Police and Fire Medicare) and \$25 (Municipal and Labors). Any further delay in getting these payments to the Retirees is beyond unfortunate; yet still, the Funds should be required to pay the money forthwith into a Segregated fund, under the Court's jurisdiction. These payments are necessary to preserve the monies for refund, and prevent the risk of City of Fund non-payment, insolvency, or other delay in payment.

III. Illinois law Supports Creation of a Common Fund Protest Fund for Recoveries and also to Protect Attorneys' Fees for The Work that Provided Them.

Creation of a common fund will protect payment of the subsidy and attorneys' fees for the work that produced the recovery and is well accepted under Illinois law.⁶

The common fund doctrine permits a party who creates, preserves, or increases the value of a fund in which others have an ownership interest to be reimbursed from that fund for litigation expenses incurred, including counsel fees. It is now well established that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." The underlying justification for reimbursing attorneys from a common fund, ... is that, unless the costs of litigation are spread to the beneficiaries of the fund, they will be unjustly enriched by the attorney's efforts.

⁶ Plaintiffs have lodged their Attorney Lien upon the City and Funds.

Scholtens v. Schneider, 173 Ill. 2d 375, 385 (1996) (citations omitted).

It is anticipated that the City and Funds will object to payment of attorneys' fees, asserting the Pension Code anti-alienation provisions.⁷ But our Supreme Court holds the Common Fund doctrine comes ahead of such anti-alienation provisions, declaring that ERISA does not preclude the Common Fund doctrine which "is outside the scope of ERISA's preemption provision (29 U.S.C. § 1144(a) (1982)), *Scholtens v. Schneider*, 173 Ill. 2d at 397.⁸ In the same way, the Common Fund doctrine here comes ahead of the

⁷ *Municipal* - 40 ILCS 5/8-244 (from Ch. 108 1/2, par. 8-244), Sec. 8-244. Annuities, etc., exempt.

(a) All annuities, refunds, pensions, and disability benefits granted under this Article, shall be exempt from attachment or garnishment process and shall not be seized, taken, subjected to, detained, or levied upon by virtue of any judgment, or any process or proceeding whatsoever issued out of or by any court in this State, for the payment and satisfaction in whole or in part of any debt, damage, claim, demand, or judgment against any annuitant, pensioner, participant, refund applicant, or other beneficiary hereunder.

Laborers - 40 ILCS 5/11, *Police* - 40 ILCS 5/5-218, and *Fire* - 40 ILCS 5/6-213.

"The IMRF statute, like other statutes establishing public pension funds under the Code, also contains a provision broadly prohibiting alienation of benefits payable to participating employees." 40 ILCS 5/7-217 (West 1996). *Smithberg v. Illinois Municipal Retirement Fund*, 192 Ill. 2d 291, 303 (2000).

⁸ The Illinois Pension Code's anti-alienation provision was not intended to preclude retirees' potential legal fees in obtaining or protecting their benefits. In fact, notwithstanding the existence of almost identical anti-alienation language in ERISA (Employee Retirement Income Security Act), federal courts have awarded attorneys' fees to class counsel from a common fund created to pay contested ERISA pension benefits. See *Montgomery v. Aetna Plywood, Inc.*, 231 F.3d 399 (7th Cir. 2000), reversing district court's denial of a percentage portion of shares of stock recovered for the employees' ESOP); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (percentage of common fund as attorney fees was proper); *Kifafi v. Hilton Hotels Ret. Plan*, 2013 U.S. Dist. LEXIS 163458 (D.D.C. Nov. 18, 2013) (attorney's fee award of 15% of the fund following summary judgment on anti-back loading claim creating a fund worth between \$103 and \$152 million); and *Forbush v. J.C. Penney Co. Pension Plan*, 98 F.3d 817, 821 (5th Cir. 1996) (common fund fee upheld).

Fund's anti-alienation objection. *See, Bishop v. Burgard*, 198 Ill. 2d 495, 501 (2002) ("ERISA does not preempt application of Illinois common fund doctrine). In *Bishop* the Illinois Supreme Court held "the course of analysis that a claim for attorney fees based upon the doctrine is ... a "separate and distinct action," resting "upon equitable considerations of quantum meruit and the prevention of unjust enrichment"; an action "wholly independent of and unrelated to the underlying benefit plan"; a cause of action premised upon the rights of the attorney who rendered service." *Id.*

IV. The Funds' Obligation to Provide Retiree Healthcare Plans for their annuitants.

If the City is not under any obligation to provide a plan, this Court needs to order action by the Funds so that there are annuitant health plans in operation for annuitants to select this fall.

Even to be able to "provide" a plan for January 2019, the Funds must begin work on finding group plans for their annuitants now.

A. This Court's Ruling that the Funds are Required to Provide Coverage for their Participants.

The Funds are ignoring the Appellate and this Court's directive and are not providing coverage for their Participants. While this Court's declaration of the Funds' obligations under the 1983 and 1985 statutes was quite clear, it is equally clear that the Funds disavow any obligations to *provide* a healthcare Plan for their annuitants.

On September 19, 2016, Plaintiffs' counsel sent a letter (Ex.1) to the City and each of the Funds, as Notice and Request to the Funds requesting confirmation of their intent to fulfill their obligation.

Plaintiffs wrote the City and the Funds:

This letter follows the August 31, 2016 hearing, at which the Fire and Municipal Funds' lawyer complained that the judge's existing rulings now on appeal leave them obligated to provide a healthcare plan and

subsidy for some or all of their annuitants, and announced that the subsidy would end at year end for everyone. This declaration was not well taken by the Court, and contradicts the Court's rulings and statements.

This letter is notice and request to the Funds, regarding the Classes 1 ("Korshak" retirees at 12/31/1987), 2 ("Window" retirees pre-8/23/1989) and 3 (pre-8/23/1989 hired) participants, that the Funds are required to obtain plans for their participants, and to subsidize the premiums, at least for those who were participants (i.e., began working for the City) prior to the law's change on 8/23/1989.

Judge Cohen clearly views the Funds as obligated to provide health plans for all pre-8/23/1989 participants, with subsidies at the 1983/1985 levels (\$55/21 for police and fire; \$25/month for municipal and laborers).

Please confirm, that the Funds are going to fulfill this obligation, and advise of the terms of coverage, as soon as possible. If any of the Funds are not going to fulfill this obligation, we'd like to know it now, preferably prior to the end of September.

This letter is also a request to the City: As to Classes 1 and 2 (Korshak and Window, retirees by 8/23/1989), for whom you have committed the City to provide (and pay for 55% of the costs of) healthcare coverage for life, please confirm that the City will send out new 2017 rates by the end of September 2016; and provide us the basis for the City's rate calculations and projections, and the Funds' subsidy at the 1983/1985 levels. In light of the Appellate Court's recent ruling, please confirm that the City will audit and reconcile those rates as well.

Ex.1

In response, each of the City and Funds simply and directly refused, stating that they are ending all coverage and subsidies by any of them at the end of this year; a willful violation of this court's ruling. Ex. 2

Counsel for the City wrote: "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." Prendergast, September 23, 2016. Ex. 2.

Mr. Burke (for the Fire and Municipal Funds) asserted that Plaintiffs' letter was "deliberately misrepresenting court proceedings". Burke, September 20, 2016. Ex. 2.

Mr. Donham for the Laborers stated that he “looked at your letter and ... transcript. I don’t recall any ruling that the LABF was required to fund a Plan for subclass 3 at the end of 2016.” Ex. 2.

Again, by email, the Plaintiffs requested the Funds position on or about November 18, 2016. The Police, Fire, and Municipal Funds replied, again denying any action being required. *See* Ex. 3. Boeckman for the Fire and Municipal Funds wrote:

“On behalf of the Firemen’s Annuity and Benefit Fund of Chicago (the “FABF”) and the Municipal Employees’ Annuity and Benefit Fund of Chicago (the “MEABF”) (collectively the “Funds”), thank you for your November 18th email ... with respect to the coverage amounts in place pursuant to the 2003 settlement agreements. Please note that the Funds, through their respective Board of Trustees, are authorized solely “to administer” and “to carry out” the provisions of Article 6 (FABF) and Article 8 (MEABF) of the Illinois Pension Code. The Illinois legislature has from time to time enacted provisions and legislated certain limited annuitant healthcare subsidies for certain defined and limited time periods which the respective said Funds have, at all times, fully and faithfully “administered” and “carried out” consistent with the Illinois Pension Code. As you know, the Funds are not health and welfare plans and they have no powers or authority independent of relevant legislative authorizations and mandates to create, negotiate, or enter into any contract with respect to healthcare benefits. As you know, the terms of the 2003 settlement and any extension thereto, and the applicable provision of the Pension Code codifying such terms, expires on December 31, 2016. As such, the Funds lack any statutory authority to provide the subsidy amounts referred to in your November 18th email.”

Ex. 3.

Similarly, the Police Fund’s counsel stated that they were “mindful of Judge Cohen’s comments and ruling which are now subject of appeals.” Ex. 3. It is notable that the Funds have not appealed anything.

Now after appeal the the Funds join with the City to intentionally ignore their obligations.

The unique need and irreparable harm for these participants.

As we have repeatedly described to this court, the most vulnerable are the group of those who, because they began working for the City prior to April 1, 1986, none of their City work qualifies them for coverage under the federal Medicare program. The situation for these people, most of whom will never qualify for Medicare coverage, need a group plan coverage, in order to have any coverage at all. They thus uniquely need to have the Funds fulfill their statutory obligations to provide coverage, because they otherwise generally have no affordable coverage at all.

Finally, the rumors are rife that the City's "nonsponsored" Blue Cross plan, expensive as it is (\$1500 per month for an individual, \$2700 for a couple, \$3600 for a family) will not be continued in 2019. If that occurs, the Funds' obligation to provide coverage will be even more critically needed.

Conclusion

The City and Funds simply refuse to do what this Court has declared they must.

WHEREFORE, This Court should order the City and Funds to comply with their statutory obligations to bring the subsidies current by paying \$10.2 million into a segregated fund under the court's control, add \$600,000 each month while the case continues, and further order the Funds trustees to fulfill their obligations to provide healthcare plans for their annuitants.

Respectfully submitted,

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

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Certificate of Service

I, Kenneth T. Goldstein, an attorney, on oath state that on May 22, 2018 I caused the foregoing **Motion** to be served upon the Defendants listed below via Email.

s/ Kenneth T. Goldstein
Attorney for Plaintiffs, Participants

SERVICE LIST

Richard J. Prendergast
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*Counsel for The Laborers' & Retirement
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EXHIBIT 1

KRISLOV & ASSOCIATES, LTD.

Attorneys at Law

CIVIC OPERA BUILDING, SUITE 1350
20 NORTH WACKER DRIVE
CHICAGO, ILLINOIS 60606

FAX (312) 608-0207
TELEPHONE (312) 608-0500

September 19, 2016

Re: *Underwood v. City of Chicago et al*
Circuit Court Case No. 13 CH 17450

David R. Kugler
Counsel for the Policemen's Annuity and Benefit Fund of Chicago

Edward J. Burke
Sarah Boeckman
Burke, Burns & Pinelli Ltd.
Counsel for The Firemen's Annuity and Benefit Fund of Chicago and
The Municipal Employees' and Benefit Fund of Chicago

Cary Donham
John Kennedy
Taft Law
Counsel for the Municipal Employees'
Annuity and Benefit Fund of Chicago

Richard J. Prendergast
Michael T. Layden
Richard J. Prendergast, Ltd.
111 W. Washington St., Suite 1100
Chicago, Illinois 60602

Jennifer Naber
Joseph Gagliardo
Laner, Muchin
515 N. State Street, 28th Floor
Chicago, Illinois 60610
Counsel for The City of Chicago

Dear Counsel:

This letter follows the August 31, 2016 hearing, at which the Fire and Municipal Funds' lawyer complained that the judge's existing rulings now on appeal leave them obligated to provide a healthcare plan and subsidy for some or all of their annuitants, and announced that the

KRISLOV & ASSOCIATES, LTD.

subsidy would end at year end for everyone. This declaration was not well taken by the Court, and contradicts the Court's rulings and statements.

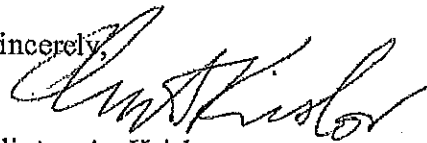
This letter is notice and request to the Funds, regarding the Classes 1 ("Korshak" retirees at 12/31/1987), 2 ("Window" retirees pre-8/23/1989) and 3 (pre-8/23/1989 hired) participants, that the Funds are required to obtain plans for their participants, and to subsidize the premiums, at least for those who were participants (i.e., began working for the City) prior to the law's change on 8/23/1989.

Judge Cohen clearly views the Funds as obligated to provide health plans for all pre-8/23/1989 participants, with subsidies at the 1983/1985 levels (\$55/21 for police and fire; \$25/month for municipal and laborers).

Please confirm, that the Funds are going to fulfill this obligation, and advise of the terms of coverage, as soon as possible. If any of the Funds are not going to fulfill this obligation, we'd like to know it now, preferably prior to the end of September.

This letter is also a request to the City: As to Classes 1 and 2 (Korshak and Window, retirees by 8/23/1989), for whom you have committed the City to provide healthcare coverage for life, please confirm that the City will send out new 2017 rates by the end of September 2016; and provide us the basis for the City's rate calculations and projections, and the Funds' subsidy at the 1983/1985 levels. In light of the Appellate Court's recent ruling, please confirm that the City will audit and reconcile those rates as well.

Sincerely,



Clinton A. Krislov
Krislov & Associates, Ltd.
Civic Opera Building, Suite 1300
20 North Wacker Drive
Chicago, Illinois 60606
Telephone: 312-606-0500
Facsimile: 312-739-1098
Email: clint@krislovlaw.com

EXHIBIT 2

RICHARD J. PRENDERGAST, LTD.

RICHARD J. PRENDERGAST
SEAN M. C. PRENDERGAST
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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.

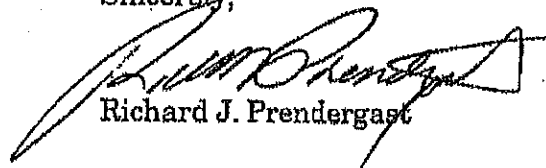
On a related subject, in order to provide City retirees with additional options beyond what is available in the marketplace (*i.e.*, the Affordable Care Act or otherwise) for their 2017 coverage, the City, on its own initiative, has coordinated with Blue Cross Blue Shield of Illinois to offer a number 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

Ken

From: Donham, Cary E. <cdonham@taftlaw.com>
Sent: Monday, September 19, 2016 5:09 PM
To: Ken; Clint
Cc: Kennedy, John; Grady, Graham C.
Subject: RE: Underwood, 13 CH 17450

Clint,

I looked at your letter and at the August 31, 2016 transcript before Judge Cohen. I don't recall any ruling that the LABF was required to fund a plan for subclass 3 at the end of 2016. If that is what you intended to convey by your letter, please provide the exact language on which you rely to assert that obligation on the LABF.

Thanks for your cooperation.

Very truly yours,

Cary Donham

Taft /

Cary E. Donham / Partner
Baker Stettinius & Hollister LLP
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601-3713
Tel: 312.527.4000 • Fax: 312.966.8474
Direct: 312.836.4038 • Cell: 312.504.1651
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From: Ken [<mailto:Ken@krislovlaw.com>]
Sent: Monday, September 19, 2016 4:31 PM
To: davidkugler@comcast.net; Edward Burke (eburke@bbp-chicago.com); Sarah A. Boeckman (sboeckman@bbp-chicago.com); Donham, Cary E.; Kennedy, John; rprendergast@rjpltd.com; mlyden@rjpltd.com; jnaber@lanermuchin.com
Cc: Clint; Ken; Michalene
Subject: Underwood, 13 CH 17450

Counsel;

Please see the attached letter.

Ken Goldstein
Krislov & Associates, Ltd.
312-606-0500

"Ken"

From: Edward Burke <eburke@bbp-chicago.com>
Sent: Tuesday, September 20, 2016 12:30 PM
To: Clint; Ken; davidkugler@comcast.net; Sarah A. Boeckman; cdonham@taftlaw.com; jkennedy@taftlaw.com; rprendergast@rjpltd.com; mlayden@rjpltd.com; jnaber@lanermuchin.com
Cc: Michalene
Subject: RE: Underwood, 13 CH 17450-Request for information as to the Funds' compliance with the court's ruling.

Thank you for requesting my "simple advice".....my "simple advice" to you is that my clients, the Firemen's Annuity Fund and the Municipal Fund have at all times complied with their relevant statutory mandates and will continue to do so. Further, my "simple advice" to you is that you refrain from deliberately misrepresenting court proceedings in that same implicates and raises questions as to your ethical behavior.....

From: Clint [mailto:Clint@krislovlaw.com]
Sent: Tuesday, September 20, 2016 11:13 AM
To: Edward Burke; Ken; davidkugler@comcast.net; Sarah A. Boeckman; cdonham@taftlaw.com; jkennedy@taftlaw.com; rprendergast@rjpltd.com; mlayden@rjpltd.com; jnaber@lanermuchin.com
Cc: Michalene
Subject: RE: Underwood, 13 CH 17450-Request for information as to the Funds' compliance with the court's ruling.

12/28/2016 5:32 PM
2016 CH 17450
8/23/1989

If ridiculous accusations aside,
I can simply advise us what your client Funds have done or are doing to ensure that they provide a healthcare plan beginning January 2017, for their retirees Class 1 and 2 (continued subsidy or not?) and Class 3 (participants/hire date 8/23/1989).
Per Judge Cohen's July 20 2016 Opinion at page 9,
your client Firemen and Municipal Funds are obliged to provide a healthcare plan for their retirees who were participants in the Funds (i.e., hire date) on 8/23/1989:
(I've cut and pasted from that order, and apologize for any errors in Adobe Acrobat's text recognition)

B. The 1983 and 1985 Amendments to the Pension Code

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

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

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

The 1983 amendments were devoid of any provision setting forth an expiration date for the benefits granted and the obligations accepted.

In 1985, the General Assembly amended the Pension Code to require the Laborers and Municipal Pension Funds to pay up to \$25 per month of the annuitant's monthly premiums,5 If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the annuitant

could elect to have the additional cost deducted from the annuitant's monthly benefit.⁶ If the annuitant did not so elect, coverage would terminate.⁷

While the 1985 amendment did not specify that the premiums would be funded by the City's tax levy, the Illinois Pension Code specifies that the tax levy finances all of the Funds' financial obligations under the Illinois Pension Code.⁸

The 1985 amendments also directed the Funds to approve a group health insurance plan for the annuitants,⁹ but provided that the approved healthcare plans were not to be construed as pension or retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution. ¹⁰ As with the 1983 amendments, absent from the 1985 amendments were any provision setting forth an expiration date for the benefits granted and the obligations accepted.

And at the described hearing transcript, even the pages you cite show that the court disagreed with your premise and understood that you/your Funds were going to comply.

Regardless, all that we are asking is what your client Funds have done or are doing to ensure that they provide a healthcare plan for their 8/23/1989-participant retirees beginning January 2017.

If the answer is "nothing"; please so state. Otherwise, please describe what your Fund clients are doing to comply with their obligations (as Judge Cohen describes them) to their 8/23/1989 participants.

As for the rest of your intemperate email; try to restrain yourself in the future.

Clint Krislov

Krislov & Associates, Ltd.

Civic Opera Building, Suite 1300

20 North Wacker Drive

Chicago, Illinois 60606

Telephone: 312-606-0500

Facsimile: 312-739-1098

Website: www.krislovlaw.com

Email: clint@krislovlaw.com

From: Edward Burke [mailto:eburke@bbp-chicago.com]

Sent: Tuesday, September 20, 2016 9:08 AM

To: Ken; davidkugler@comcast.net; Sarah A. Boeckman; cdonham@taftlaw.com; jkennedy@taftlaw.com; rprendergast@rjpltd.com; mlyayden@rjpltd.com; jnaber@lanermuchin.com

Cc: Clint; Michalene

Subject: RE: Underwood, 13 CH 17450

My dearest Clint.....The representations you assert in your September 19, 2016 correspondence attached to your email of even date are false and are known by you to be false. Please refer to transcript of proceedings dated August 31, 2016 at pages 35-40.....Typical of your ethics???.....eb

From: Ken [mailto:Ken@krislovlaw.com]

Sent: Monday, September 19, 2016 4:31 PM

To: davidkugler@comcast.net; Edward Burke; Sarah A. Boeckman; cdonham@taftlaw.com; jkennedy@taftlaw.com; rprendergast@rjpltd.com; mlyayden@rjpltd.com; jnaber@lanermuchin.com

Cc: Clint; Ken; Michalene

Subject: Underwood, 13 CH 17450

Counsel,

Please see the attached letter.

Ken Goldstein
Krislov & Associates, Ltd.
312-606-0500

()

()

EXHIBIT 3

Ken

From: Clint
Sent: Wednesday, November 23, 2016 9:31 AM
To: Ken
Subject: FW: Underwood v City and Funds-A request-meabf response

From: Sarah A. Boeckman [mailto:sboeckman@bbp-chicago.com]
Sent: Wednesday, November 23, 2016 8:00 AM
To: davidkugler@comcast.net; Naber, Jennifer
Cc: Clint; Prendergast, Richard; Ken; Michael T. Layden; Edward Burke; jkennedy@taftlaw.com; cdonham@taftlaw.com; Patton, Stephen; Michalene; Hamburger, Carol; Kenneth Hauser; Carole Brown; Michael Lappe; Brian Wright; James P. Maloney; Kurt Summers; Tuczak, Regina
Subject: RE: Underwood v City and Funds-A request-

Good Morning Clint,

On behalf of the Firemen's Annuity and Benefit Fund of Chicago (the "FABF") and the Municipal Employees' Annuity and Benefit Fund of Chicago (the "MEABF") (collectively the "Funds"), thank you for your November 18th email proposing a settlement between the City, annuitants and the Funds with respect to the coverage amounts in place pursuant to the 2003 settlement agreements. Please note that the Funds, through their respective Board of Trustees, are authorized to administer and to carry out the provisions of Article 6 (FABF) and Article 8 (MEABF) of the Illinois Pension Code. The Illinois legislature has from time to time enacted provisions and legislated certain limited annuitant healthcare subsidies for certain defined and limited time periods which the respective said Funds have, at all times, fully and faithfully administered and carried out consistent with the Illinois Pension Code. As you know, the Funds are health and welfare plans and they have no powers or authority independent of relevant legislative authorizations and mandates to create, negotiate, or enter into any contract with respect to healthcare benefits. As you know, the terms of the 2003 settlement and any extension thereto, and the applicable provision of the Pension Code codifying such terms, expires on December 31, 2016. As such, the Funds lack any statutory authority to provide the subsidy amounts referred to in your November 18th email. Your settlement proposal was forwarded to the Board of Trustees for both Funds and I was instructed to respectfully decline your proposal consistent with the response provided herein.

I hope you have an enjoyable holiday.

Thank you,
Sarah

Sarah A. Boeckman
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(312) 541-8603 (fax)
sboeckman@bbp-chicago.com

The information contained in this e-mail is from the law firm of Burke Burns & Pinelli, Ltd. and may be privileged, confidential, and protected from disclosure. If you are not the intended

From: davidkugler@comcast.net [mailto:davidkugler@comcast.net]

Sent: Sunday, November 20, 2016 4:41 PM

To: Naber, Jennifer

Cc: Krislov, Clinton; Prendergast, Richard; Ken; Michael T. Layden; Edward Burke; Sarah A. Böeckman; jkennedy@taftlaw.com; cdonham@taftlaw.com; Patton, Stephen; Michalene; Hamburger, Carol; Kenneth Hauser; Carole Brown; Michael Lappe; Brian Wright; James P. Maloney; Kurt Summers; Tuczak, Regina

Subject: Re: Underwood v City and Funds-A request-

Clint, I have read the correspondence exchanged between (1) your office and Ms.Nabor and (2) the letter you sent to retirees of the Police Fund. Without speaking for the other Funds, the Police Fund, created and empowered by legislative enactments, has and continues to be concerned about the wellbeing of those who rendered long and dedicated service to the CPD and your failure to acknowledge that in you writing to your clients ,Fund retirees, is disturbing. While the Fund , mindful of Judge Cohn's comments and rulings which are now the subject of appeals, can only act with authority given to it, I believe this Fund would want and expect me to attend any meeting with you or others to engage, if possible, in an agreeable resolution.

David R. Kugler

EXHIBIT 4

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.

APPEARANCES

KRISLOV & ASSOCIATES, LTD,
20 North Wacker Drive, Suite 1300
Chicago, Illinois 60606
(312) 606-0500

BY: Mr. Clinton A. Krislov
clint@krislovlaw.com,

Mr. Kenneth T. Goldstein
ken@krislovlaw.com
for the plaintiffs;

RICHARD J. PRENDERGAST, LTD.
111 West Washington Street, Suite 1100
Chicago, Illinois 60602
(312) 641-0881

BY: Mr. Richard J. Prendergast
rprendergast@rjpltd.com,
for the City;

DAVID R. KUGLER & ASSOCIATES, LTD.
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Chicago, Illinois 60646
(312) 263-3020

BY: Mr. David R. Kugler
davidkugler@comcast.net
for the Trustees of the Policemen's
Annuity and Benefit Fund of Chicago;
Annuity and Benefit Fund of Chicago;

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

APPEARANCES (Continued)

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BY: Mr. Edward J. Burke
eburke@bbp-chicago.com
for the Trustees of the Firemen's Annuity
and Benefit Fund of Chicago;

TAPT, STETTINIUS & HOLLISTER, LLP
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601
(312) 836-4038

BY: Mr. Cary B. Donham
cdonham@taptlaw.com,

for the Trustees of the Laborers' &
Retirement Board Employees' Annuity and
Benefit Fund of Chicago.

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

requires. No more, no less.

We obviously disagree on that point,
but that is a decision of law, which it is an
appropriate time for the appellate court to weigh in,
or, as I say at my checkup, I'd sort of like to get a
second opinion. And I think I --

THE COURT: Yeah, I know, I know you
do.

MR. KRISLOV: And I think it's an
appropriate time --

THE COURT: But with regard to
subclass three, there are issues of fact yet to be
determined.

MR. KRISLOV: Maybe so, but --

THE COURT: So it's not ripe for
review.

MR. KRISLOV: It is ripe for review
because, number one, 304(a) requires that there be a
claim that has been dismissed completely, with
prejudice. You have done that, certainly --

THE COURT: Not with regard to
subclass three.

MR. KRISLOV: It is the judgment that
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

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,

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

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.

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.

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 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 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 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 to 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

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

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

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

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)

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 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 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 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 subolass.

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 blinding
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 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'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 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

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 walver.

7 THE COURT: There's no walver.

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

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.

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

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 *Jerri Estelle*

16 Jerri Estelle, CSR, RPR

17 License Number: 084-003284
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