

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

CITY OF CHICAGO a Municipal Corporation, )  
Plaintiff-Counterdefendant,) )  
vs. )No. 01 CH 4962  
MARSHALL KORSHAK, et al., )  
Defendant-Counterplaintiff,) )  
-and- )  
MARTIN RYAN, et al., )  
Intervening Plaintiffs,) )  
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 392 OTHER NAMED PLAINTIFFS LISTED )  
in EXHIBIT 1, )  
Plaintiffs,) )  
-v- )No.  
CITY OF CHICAGO, a Municipal Corporation, )2013 CH 17450  
Defendant,)Previous Nos.:  
-and- )No. 01 CH 4962  
 )No. 87 CH 10134  
 )  
TRUSTEES OF THE POLICEMEN'S ANNUITY )  
AND BENEFIT FUND OF CHICAGO; )  
TRUSTEES OF THE FIREMEN'S ANNUITY )  
and BENEFIT FUND OF CHICAGO; )  
TRUSTEES OF THE MUNICIPAL EMPLOYEES' )  
ANNUITY AND BENEFIT FUND OF CHICAGO; )  
and TRUSTEES OF THE LABORERS' & )  
RETIREMENT BOARD EMPLOYEES' ANNUITY )  
BENEFIT FUND OF CHICAGO, )  
Defendants.)

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 October 22, 2019, in Room 2308, Richard J. Daley Center, Chicago, Illinois, commencing at 11:00 a.m.

## A P P E A R A N C E S

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17  
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19  
20  
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22  
23  
24

1 THE COURT: This is Underwood versus  
2 City of Chicago.  
3 And I think I have a motion for  
4 Korshak, although it's filed under Underwood.  
5 So for the plaintiffs.  
6 MR. KRISLOV: Actually, for the  
7 participants, Your Honor, Clint Krislov and Ken  
8 Goldstein.  
9 THE COURT: And for the City of  
10 Chicago.  
11 MR. PRENDERGAST: Good morning, Your  
12 Honor. Richard Prendergast.  
13 MS. NABER: And Jennifer Naber.  
14 THE COURT: For the Funds.  
15 MR. DONHAM: Good morning, Your Honor  
16 Cary Donham for the Laborers' Fund.  
17 MR. KUGLER: Good morning. Justin  
18 Kugler on behalf of the Police Fund.  
19 MR. DEADY: Good morning, Your Honor.  
20 Pat Deady on behalf of the Firefighter Intervenor.  
21 MS. BOECKMAN: Good morning, Your  
22 Honor. Sarah Boeckman and Ed Burke on behalf of the  
23 Municipal Funds and Firemen's Fund.  
24 MR. BURKE: Good morning, Judge.

1 THE COURT: All right. I have two  
2 matters up. I have the motion for final judgment  
3 order and I have a motion for interest on  
4 back-payment subsidies.  
5 Is that right?  
6 MR. KRISLOV: The other things that  
7 are up this morning, Your Honor, are a report on the  
8 subsidies from the Funds.  
9 And to bring you up to date on the --  
10 on where we are on the audit and reconciliation fees,  
11 I wish to point out that there are a number of  
12 participants who are here, although their numbers  
13 have -- their numbers are declining, as Chuck  
14 Lomanto, who has been here repeatedly, died a week or  
15 so ago.  
16 And then between the rates, which are  
17 now up to nearly \$3,000 a month for individual, 5,000  
18 for a couple, and 7,000 for a family, people are  
19 either being forced off the program because of --  
20 it's beyond their ability to pay, or they're dying  
21 off.  
22 And with all due respect, Your Honor,  
23 we had your assurance years ago that this would --  
24 that they would not be left like this, but they have

1 been.  
 2 THE COURT: Anything else,  
 3 Mr. Krislov?  
 4 MR. KRISLOV: No. We can proceed  
 5 to --  
 6 THE COURT: So let me ask you a  
 7 question.  
 8 MR. KRISLOV: Yes.  
 9 THE COURT: You filed a motion before  
 10 the appellate court to have me thrown off this case.  
 11 You also filed a motion asking that all orders that  
 12 I've entered since 2017 be voided.  
 13 MR. KRISLOV: Yes.  
 14 THE COURT: How do I jibe your request  
 15 for these motions with your request to have all  
 16 orders I've entered to be voided to have me -- I  
 17 think you used the word recused, or I don't know what  
 18 verb --  
 19 MR. KRISLOV: The matter reassigned.  
 20 THE COURT: I'm sorry?  
 21 MR. KRISLOV: Vacating --  
 22 THE COURT: Reassigned.  
 23 MR. KRISLOV: -- your prior --  
 24 THE COURT: Doesn't that immobilize me

1 until that's resolved?  
 2 MR. KRISLOV: If you feel that does --  
 3 THE COURT: No, no. It's what you  
 4 feel. You asked the appellate court to have this  
 5 case reassigned from me for reasons of my  
 6 stubbornness and disagreement with you over certain  
 7 decisions having to do with the class-action case, as  
 8 I understand it, as has been attached, I think, to  
 9 Mr. Donham's submission. That's your request, not  
 10 mine.  
 11 You also asked that all orders that  
 12 I've entered be voided for reasons that I don't  
 13 understand. But it's not important that I understand  
 14 it.  
 15 That seems to me, why should I  
 16 entertain any of your motions now if the motion that  
 17 you filed before the appellate court is granted? It  
 18 will void any action I do here. I don't wish to  
 19 waste my time or waste your time.  
 20 Isn't the right way to handle this to  
 21 wait and see what the appellate court does with your  
 22 motion and then proceed accordingly?  
 23 MR. KRISLOV: You could do that. You  
 24 could --

1 THE COURT: No, what do you want? But  
 2 I will suggest to you that filing motions, one could  
 3 argue that you've waived any argument that I should  
 4 be thrown off the case. It's sort of like you want  
 5 to have your cake and eat it too, and get two bites  
 6 at the apple.  
 7 What do you want?  
 8 MR. KRISLOV: Your Honor, I want to  
 9 get coverage --  
 10 THE COURT: No, no --  
 11 MR. KRISLOV: -- for these people that  
 12 are not medically --  
 13 THE COURT: Come on. What do you want  
 14 to do with regard to the motion that you filed to  
 15 have me thrown off the case?  
 16 MR. KRISLOV: I want to have that  
 17 proceed.  
 18 THE COURT: All right. Then this  
 19 case -- all your motions will be held in abeyance  
 20 until that's decided.  
 21 MR. KRISLOV: And what are we going to  
 22 do about the audit and reconciliation fees?  
 23 THE COURT: Everything will be held in  
 24 abeyance until -- I'm immobilized by your motion.

1 MR. KRISLOV: Your honor, you're not  
 2 immobilized --  
 3 THE COURT: Yes, I am. If this were a  
 4 motion to recuse me because of prejudice, the law  
 5 says I would be immobilized. There's nothing I could  
 6 do until a hearing was held on whether I'm prejudiced  
 7 or not. That's what the law says.  
 8 This is the same thing. You're  
 9 arguing that -- that I was obdurate and didn't follow  
 10 the law as you understand it. It was -- you've gone  
 11 beyond saying this is a mere disagreement between two  
 12 people.  
 13 You have claimed lawlessness on my  
 14 part, and stubbornness on my part, to the point that  
 15 I violated my oath of office. You're entitled to  
 16 your opinion, and you're entitled to make your  
 17 position known.  
 18 But it seems to me that if you're  
 19 right, and I don't think that you are, but you're  
 20 entitled to make your play. And if you're right,  
 21 then anything I'm doing now is a waste of my time and  
 22 yours. If you're wrong, then I'll be happy to go  
 23 forward. But while you have this motion -- one  
 24 second, Ken.

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1 While you have this motion in play,  
2 while you've made this motion, this move to have me  
3 thrown off the case because -- and to have everything  
4 that I've done voided, it seems to me that you've  
5 made your play on it. You've made your motion, and  
6 it has to be considered.  
7 Now, what do you think the timeline is  
8 for the appellate court to deal with this?  
9 MR. KRISLOV: Don't know. We'll ask  
10 them to bring it to a head.  
11 If you're going to freeze the case --  
12 THE COURT: You froze the case.  
13 MR. KRISLOV: No, Your Honor. You had  
14 frozen the case.  
15 THE COURT: Once again.  
16 MR. KRISLOV: Whatever -- whoever --  
17 THE COURT: You're the one who filed  
18 the motion.  
19 MR. KRISLOV: You're the one that's  
20 freezing the case, and that's --  
21 THE COURT: You put me in a position  
22 where I can't do anything without facing the  
23 possibility that it's going to be a worthless act,  
24 and it's going to be voided.

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1 MR. KRISLOV: Your Honor, it may be.  
2 THE COURT: That's because of you.  
3 That's your position.  
4 You're entitled to do that. Don't  
5 make a mistake of thinking that I take it personally  
6 or care. You're entitled to do it.  
7 But while you do it, it freezes  
8 everything. It's just like when I'm being asked to  
9 recuse myself for prejudice. You're entitled to make  
10 that motion, and that's great.  
11 But I'm not going to -- everything  
12 else is a waste of time. It stops me. It  
13 immobilizes me. I'm between a rock and a hard place  
14 because of what you filed. You're entitled to file  
15 it, but one should understand, there are  
16 consequences.  
17 This is the consequence.  
18 MR. KRISLOV: The -- I think that the  
19 class cert -- I think that that issue was before the  
20 appellate court on the class, and the motion for them  
21 to take a class certification.  
22 And so while we agree that that should  
23 happen, nonetheless, all the stuff that's on appeal  
24 may render most of your prior decisions moot. But

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1 the fact is, the case goes on in spite of it.  
2 THE COURT: No, this is much different  
3 than that. This is an argument by you that I don't  
4 follow the law and that I'm stubborn in my attachment  
5 to not following the law because I don't agree with  
6 you, and for other reasons that I'm sure that you  
7 will announce to the appellate court.  
8 This is something more than that.  
9 This is an argument that this Court should not be in  
10 charge of this case. That goes to the -- to the core  
11 of fairness. You're claiming I can't be fair.  
12 You're entitled to your opinion.  
13 You're entitled to prosecute your case about that. I  
14 think its a direct analogous situation to when a  
15 motion is filed and I have to recuse myself because  
16 of prejudice.  
17 In those situations, according to the  
18 law, I'm frozen. There's nothing I can do until a  
19 hearing is held on that issue.  
20 That's what you said before the  
21 appellate court. You've chosen the forum. That's  
22 fine. You're entitled to do that too, I think.  
23 But until that's resolved, I think I'm  
24 barred from actually doing anything further.

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1 MR. KRISLOV: Okay. May we at least  
2 have the report from the Funds on the subsidies?  
3 THE COURT: No, I'm done until this is  
4 resolved.  
5 MR. KRISLOV: Your Honor, this just  
6 continues --  
7 THE COURT: I'm done until it's --  
8 MR. KRISLOV: -- to indulge the  
9 defendants.  
10 THE COURT: -- resolved, because of  
11 your motion.  
12 MR. KRISLOV: Your Honor, I'm entitled  
13 to make a motion, I'm entitled to make a motion --  
14 THE COURT: Sure you are. I said that  
15 five times.  
16 MR. KRISLOV: I'm entitled to make a  
17 motion before the appellate court.  
18 THE COURT: Yes, you are.  
19 MR. KRISLOV: If you decide to freeze  
20 the case because of that, that's your decision.  
21 THE COURT: Okay.  
22 MR. KRISLOV: I disagree with you, but  
23 that's your decision.  
24 THE COURT: Well, I think it's the

4 (Pages 10 to 13)

1 natural probable consequences of your motion. And  
2 you can disagree all you want, but you should have  
3 thought ahead.

4 If you wanted me to go forward with  
5 the case, you should have thought about that.

6 MR. KRISLOV: Your Honor --

7 THE COURT: But by making your move,  
8 you put me in a position where anything I do will be  
9 subject to being voided, according to you.

10 And that's fine. You're entitled to  
11 make that motion, but it freezes me. We're frozen.  
12 Congratulations.

13 I'll put it over for three months.

14 MR. KRISLOV: Put it over for a year  
15 or two.

16 THE COURT: If you want.

17 MR. KRISLOV: Put it over indefinitely  
18 on that basis.

19 THE COURT: Now, I have to give it a  
20 date of at least six months.

21 MR. KRISLOV: Well, I'd like as short  
22 a date as possible, because, you know, we won't be  
23 able to outlast this war of attrition which you have  
24 indulged my opponents in, and the retirees --

1 THE COURT: This is not a war of  
2 attrition, Mr. Krislov.

3 MR. KRISLOV: This is a war of  
4 attrition, Your Honor.

5 THE COURT: Well, once again, we  
6 disagree about that.

7 There's nothing I can do about that as  
8 long as you've made that motion.

9 MR. KRISLOV: So do we have to  
10 withdraw the motion before the appellate court in  
11 order --

12 THE COURT: No, you --

13 MR. KRISLOV: You're putting me in  
14 an --

15 THE COURT: -- don't withdraw the  
16 motion.

17 MR. KRISLOV: -- impossible situation.  
18 We have a right to ask the appellate court to do  
19 something.

20 THE COURT: Yes, do you.

21 MR. KRISLOV: And that does not bind  
22 you to say we're freezing it, period. I take  
23 offense --

24 THE COURT: Yes, it does.

1 MR. KRISLOV: No, it doesn't.

2 If my opponents would provide some  
3 law, that would be --

4 THE COURT: It's not coming from your  
5 opponents. It's coming from me.

6 MR. KRISLOV: Okay. Then we disagree  
7 if there's --

8 THE COURT: And I gave you the perfect  
9 analogy about recusal for prejudice, which is what  
10 you're claiming. I'm obdurate, I'm stubborn, I won't  
11 follow the law as you claim it is; and because of  
12 that, you want me off the case.

13 Okay. You're entitled to ask for the  
14 nuclear option. I disagree with you. Even if you're  
15 right, I disagree with that as a relief. But you're  
16 entitled to do that.

17 It just freezes me. There's not much  
18 I can do. That's something that you should have  
19 thought about as the natural probable consequence of  
20 your motion, which you're entitled to do.

21 MR. KRISLOV: That's your decision,  
22 Your Honor --

23 THE COURT: It is. This case will be  
24 put over for three months for an appellate check

1 date.

2 MR. KRISLOV: To understand, are you  
3 saying I have to withdraw my motion in order to  
4 proceed?

5 THE COURT: No. No. For the sixth  
6 time, you should go forward with your motion if  
7 that's -- I assume that you felt the motion was well  
8 founded. I assume that. I assume you just didn't  
9 throw it in as a haphazard motion in order to chill  
10 this Court or do anything to the parties on either  
11 side, including your clients.

12 I assume it wasn't a whim or  
13 capricious on your part. I assume it comported with  
14 Rule 137. You're entitled to do it.

15 Do it, and I'll be here to hear what  
16 the appellate court says when they rule, and I'll put  
17 it over for three months.

18 January check date. What date is best  
19 for everybody?

20 MR. PRENDERGAST: I have a trial  
21 starting in either mid- or late January.

22 THE COURT: In Chicago?

23 MR. PRENDERGAST: In Chicago. So if  
24 we can have a date earlier.

1 THE COURT: It's just a check date.  
 2 MR. KRISLOV: What date is the  
 3 usual --  
 4 THE COURT: There is no usual. I'm  
 5 trying to make it amenable to your schedules.  
 6 MR. KRISLOV: How about January 5th?  
 7 I don't know if we'll still be open, but January 5th.  
 8 THE COURT: January 5th is a Sunday.  
 9 We won't be open on Sunday.  
 10 MR. KRISLOV: The 6th, Monday. I  
 11 thought I saw it on the first column. Sorry.  
 12 MS. NABER: May we have it the next  
 13 day, Your Honor?  
 14 THE COURT: Sure. January 7th.  
 15 MR. PRENDERGAST: At what time?  
 16 THE COURT: 10:30.  
 17 MR. PRENDERGAST: Your Honor?  
 18 THE COURT: Yeah.  
 19 MR. PRENDERGAST: I appreciate this is  
 20 pretty much between and you Mr. Krislov, but could I  
 21 address this issue for a moment?  
 22 THE COURT: Really, no. There's  
 23 nothing -- this is all sua sponte. I have no idea  
 24 what the City or the Funds' position is on this.

1 Largely, it doesn't matter.  
 2 MR. PRENDERGAST: Actually, I had a  
 3 suggested solution, and I'll share it with  
 4 Mr. Krislov.  
 5 THE COURT: Well, that may be. But it  
 6 seems to me that even hearing your response is  
 7 something that I'm frozen from doing.  
 8 MR. PRENDERGAST: I understand, Your  
 9 Honor.  
 10 THE COURT: So that's my opinion and  
 11 my ruling. January 7th.  
 12 MR. PRENDERGAST: Thank you.  
 13 MR. KRISLOV: Thank you, Your Honor.  
 14 THE COURT: All right. Court's in  
 15 recess.  
 16 (Proceedings concluded at 11:20 a.m.,  
 17 October 22, 2019.)  
 18  
 19  
 20  
 21  
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 24

## REPORTER'S CERTIFICATE

1  
 2  
 3 I, JERRI ESTELLE, CSR, RPR, doing  
 4 business in the City of Chicago, State of Illinois,  
 5 do hereby certify that I reported in computerized  
 6 shorthand the foregoing proceedings as appears from  
 7 my stenographic notes.

8 I further certify that the foregoing  
 9 is a true and accurate transcription of my shorthand  
 10 notes and contains all the testimony had at said  
 11 proceedings.

12 IN WITNESS WHEREOF, I hereunto set my  
 13 hand as Certified Shorthand Reporter in and for the  
 14 State of Illinois on October 23, 2019.

15  
 16 *Jerri Estelle*  
 17 Jerri Estelle, CSR, RPR  
 18 License Number: 084-003284  
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