

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

Michael W. Underwood, Joseph M. Vuich,
Raymond Scacchitti, Robert McNulty, John E. Dorn,
William J. Selke, Janiece R. Archer, Dennis Mushol,
Richard Aguinaga, James Sandow, Catherine A.
Sandow, Marie Johnston, and 337 other Named
Plaintiffs listed in Exhibit 23,
Plaintiffs,

vs.

CITY OF CHICAGO, a Municipal
Corporation,
Defendant,

And

Trustees of the **Policemen's Annuity and
Benefit Fund** of Chicago;
Trustees of the **Firemen's Annuity and Benefit
Fund** of Chicago;
Trustees of the **Municipal Employees' Annuity
and Benefit Fund** of Chicago; and
Trustees of the Laborers' & Retirement Board
Employees' Annuity & Benefit Fund of Chicago
Defendants.

**Class Action
And
Derivative
COMPLAINT**

JURY TRIAL DEMANDED

Case No. 2013 CH 17450
Calendar No. 5

Judge: Hon. Neil H. Cohen
Previous Nos. in Cook County
Circuit Court
01 CH 4962
87 CH 10134

**Sixth AMENDED CLASS ACTION COMPLAINT
By Participants in the City of Chicago's Annuitant Medical Benefits Plan
For Declaratory and Other Relief
Against the City of Chicago and
The Trustees of the Police, Fire, Municipal Employees and Laborers
Annuity and Benefit Funds**

1. This Amended Complaint seeks permanent protection for annuitants of the City of Chicago, participants in the four City of Chicago Annuity and Benefit Funds (for Police, Firemen, Municipal Employees and Laborers), and the City of Chicago Annuitant Medical Benefits Plan, in this continuing litigation originally initiated by the City on October 19, 1987.

2. Plaintiffs, for themselves and for the classes they seek to represent, assert that the City annuitants are entitled to protect the terms and benefits of their City Annuitant Medical Benefit Plan, permanently for each one on the best terms in effect during his or her participation in their respective Annuity & Benefit Fund, under the Illinois Constitution, as well as principles of contract and estoppel; that they are entitled to enforce the benefits of the City of Chicago Annuitant Medical Benefits Plan, for their lives, against the City and the Trustees of their respective retirement systems. Alternatively, they are entitled to enforce their Funds' obligations to provide and subsidize annuitant healthcare coverage, per their respective Pension Code statutes, and per the benefits actually provided to each Fund's participants.

3. As will be explained herein, each Fund is obligated by their statute to provide and subsidize a healthcare plan for their annuitants, and each previously fulfilled that by contracting the City as the insurer to provide that coverage, subsidized by each Fund. And, the City intentionally and contractually agreed to act as the insurer, providing annuitant healthcare coverage as a benefit of annuitants' participation in their respective Fund. And, the Illinois Constitution's Article XIII, Section 5, protects those benefits from being impaired or diminished, by either the City or their Fund, below their best level for any annuitant during the annuitant's participation (i.e., from date of hire) in his/her Fund.

4. With respect to the claims asserted herein by the participants, the participants sue as plaintiffs, seeking relief against the City as a defendant (for its actions and announced intention to reduce the healthcare benefits provided to class members), and seeking a declaration that the Funds, as additional defendants, remain obligated to obtain coverage for participants hired before June 30, 2013, and must bring current and continue their current subsidy for class members for life without reduction.

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

6. Participants seek to enforce this entitlement by a number of claims:

- i. First, that the City of Chicago Annuitant Medical Benefit Plan (as enacted by the City and was in effect on August 23, 1989, and subsequent dates pertaining to particular subclasses), is a **benefit of participation** in the City's annuity and benefit plans, and thus protected by 1970 Illinois Constitution Article XIII, §5, against being diminished or impaired by reducing either the benefit or its funding appropriation;
- ii. Second, to the extent that the court views the claims as limited to the Pension Code provisions, that the Funds were and remain obligated to provide healthcare coverage for their annuitants for life, and that they did so by enforceably contracting the City to provide the City of Chicago Annuitant Medical Benefits Plan, and that that promise, as well as the Funds' subsidies, are enforceable against both the City and the Funds for annuitants' lifetimes;
- iii. Third, that under principles of **contract**, the City intentionally (by its agreement with the Funds and its enactment of annual ordinances explicitly appropriating for annuitant healthcare coverage, and other writings) made the annuitant healthcare benefits **a term of participants' employment**, Constitutionally and contractually binding the City, such that it may not accept the benefits of the participants work but then renege on its agreement or diminish its provided benefits.
- iv. Fourth, that, under principles of **estoppel**, the City is estopped to deny its obligation to provide the promised benefit, because, by its authorized representatives, authorized to represent the City of Chicago Annuitant Health Benefits Plan as a lifetime benefit, it has induced participants to provide services in exchange for repeated representations that the City's Annuitant Medical Benefits Plan is a permanent benefit for life (especially for the annuitants first hired before April 1, 1986, whose City employment did not earn them qualifying quarters for coverage under the federal Medicare program), such that the City cannot accept their services over the promised period, then renege on its commitment;

- v. Fifth, that the Funds are an **instrumentality of the City**, such that the City is obligated to provide the permanent coverage permanently subsidized by the Funds.
- vi. Plaintiffs also assert, as a derivative claim by Funds' participants/annuitants, the Funds' claims (as Count VIII), derivatively to pursue the requested tax levy against the City.
- vii. The Plaintiffs also adopt and derivatively assert the Funds' claims against the City as asserted in their Korshak complaints against the City that are attached as **Exhibit 3** to this Amended Complaint.

7. Finally, to the extent that the City is actually nonetheless legally permitted to increase annuitant healthcare rates and/or reduce its appropriation for annuitant healthcare, the rates charged by the City are miscalculated and excessive and should be enjoined except as audited and corrected.

8. **Summary of the Facts and legal bases for Constitutional protection.** From the early 1980s, to a period beyond August 23, 1989, the City of Chicago provided a healthcare benefit to its annuitants (annuitants of the City of Chicago's Police, Fire, Municipal Officers and Employees, or Laborers' Fund); i.e., as participants in one of the four Funds.

9. The City provided the benefit itself, as the self-insured provider of this benefit plan, engaging BlueCross or other administrators on an Administrative Services Only ("ASO") basis. Thus, the City actually provided the healthcare benefit; rather than merely subsidize it.

10. The terms of the City of Chicago Annuitant Health Benefits Plan are set out in the Plan Handbook. **Exhibit 6.**

11. Eligibility is described as follows:

ELIGIBILITY

You will be eligible for coverage if you are:

- An Annuitant of the City of Chicago. "annuitant" means a former employee who is receiving an age

and service annuity from one of four retirement funds,

- The spouse of a deceased Annuitant if you are receiving spousal annuity payments, or
- A dependent of a deceased Annuitant if you are receiving annuity payments. (Plan Handbook at 2).

12. Accordingly, the City of Chicago Annuitant Health Benefit Plan has been, at all relevant times, a benefit of participants' participation in their respective Funds.

13. Thus, 1970 Illinois Constitution, Article XIII §5 prohibits that benefit, the City of Chicago Annuitant Health Benefit Plan, from being diminished or impaired.

14. Per the Illinois Supreme Court's decision in *Kanerva v. Weems*, 2014 IL 115811, the protected benefits are not just what is required by Pension Code provisions. If a public employer provides a benefit for which eligibility is a person's annuitant status, that benefit is protected permanently for that participant, by the Illinois Constitution's Article XIII §5.

15. Per our Supreme Court, an Illinois public employer's obligation to contribute to the costs of annuitant healthcare benefits is permanent, deriving from their status as participants in the unit's retirement systems:

¶40 Although some of the benefits are governed by a group health insurance statute and others are covered by the Pension Code, eligibility for all of the benefits is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems. Giving the language of *article XIII, section 5*, its plain and ordinary meaning, all of these benefits, including subsidized health care, must be considered to be benefits of membership in a pension or retirement system of the State and, therefore, within that provision's protections. (*Kanerva* at ¶ 40.)

16. The benefit's protection is also not limited to the requirements of the Pension Code. If eligibility is limited to participants in a government retirement system, it is protected:

Whether a benefit qualifies for protection under *article XIII, section 5*, turns simply on whether it is derived from membership in one of the State's public

pension systems. If it qualifies as a benefit of membership, it is protected. If it does not, it is not. (*Id.* at ¶ 54.)

17. And the court's determinations of what is protected are to be liberally interpreted in favor of the pensioners:

¶55 Finally, we point out again a fundamental principle noted at the outset of our discussion. Under settled Illinois law, where there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner. This rule of construction applies with equal force to our interpretation of the pension protection provisions set forth in *article XIII, section 5*. Accordingly, to the extent that there may be any remaining doubt regarding the meaning or effect of those provisions, we are obliged to resolve that doubt in favor of the members of the State's public retirement systems. (*Id.* at ¶ 55.)

18. As in *Kanerva*, dealing with retiree health benefits provided to *state* retirees, the healthcare benefit was provided legally, per City Ordinance, if not by a Pension Code provision:

¶35 The question of whether the pension protection clause applies to an Illinois public employer's obligation to contribute to the cost of health care benefits for employees covered by one of the state retirement systems presents an issue of first impression in this court.² Resolution of this issue requires that we determine the scope of the protections afforded by *article XIII, section 5*, which presents a question of constitutional interpretation. (*Id.* at ¶ 35.)

19. As of October 19, 1987 through August 23, 1989, the benefit was knowingly provided by the City pursuant to an agreement with the Funds, for which it charged all participants a premium equal to the amount of the Police and Fire Fund statutory subsidies. Consequently, for Police and Fire retirees, the annuitant was charged nothing for his or her premium; Municipal and Laborers annuitants' coverage was provided *for all annuitants*, with coverage charged at the same rates as Police and Fire, and subsidized by the Municipal and Laborers Funds \$25 per month for annuitants over 65 with 15 years' service.

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

(i) Declare that *all* participants are entitled to permanent coverage under the plan in effect on the day they joined the system, with any improvements as were added thereafter.

(a) For the participants by a person who retired prior to 8/23/1989:

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

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

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

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

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

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

21. **Plaintiffs, Class Members believe that there is no material dispute as to the following facts:**¹

Parties:

22. **Plaintiffs.** Each of the Named Plaintiffs listed in **Exhibit 23** hereto is a participant in one of the four City of Chicago Annuity and Benefit Funds, having the indicated hire and retirement date.

23. The CITY OF CHICAGO (the "City") is a municipal corporation organized in accordance with Section 1-1-1 of the Illinois Municipal Code, 65 ILCS ¶1-1-1; and a Home Rule Unit, as defined by 1970 Illinois Constitution, Art.VII, §6, with full powers to engage in the actions described herein, including acting as a self-insured provider of healthcare benefits to its annuitants. The City is sued as a defendant.

24. **The Pension Funds.** The POLICEMEN'S ANNUITY & BENEFIT FUND OF THE CITY OF CHICAGO (the "Police Fund"), the FIREMEN'S ANNUITY, BENEFIT FUND OF THE CITY OF CHICAGO, (the "Firemen's Fund" or the "Fire Fund"), the MUNICIPAL EMPLOYEES, OFFICERS AND OFFICIAL ANNUITY AND BENEFIT FUND (the "Municipal Fund"), and the LABORERS' AND RETIREMENT BOARD EMPLOYEES' AND BENEFIT FUND OF CHICAGO (the "Laborers Fund") were each created and operate under,

¹ **References and Authorities Cited.** Unless otherwise described:

1) All statutory references are to either the provisions of Illinois law in effect during the period October 1, 1987 through August 23, 1989, including generally, provisions of the Illinois Municipal Code, Ill.Rev.Stat. Ch. 24 ("Municipal Code §____") or to the Illinois Pension Code, Ill.Rev.Stat. Ch. 108-1/2 ("Pension Code §____")(1986), or to their subsequent provisions under the Pension Code under the current ILCS format 40 ILCS 5/.

respectively, Articles 5, 6, 8 and 11 of the Illinois Pension Code. Previously contained in Ill.Rev.Stat. Ch. 108-1/2, the "Pension Code's current provisions are contained in 40 ILCS 5/Arts. 5, 6, 8 and 11).

25. For the period since 1983 (for the Police and Firemen's Funds) and 1985 (for the Municipal and Laborers Funds), the statutes impose a primary obligation to provide a health insurance plan for their annuitants. And, until January 1, 2014, they fulfilled their statutory obligations to provide health insurance for their annuitants, by enforceably contracting with the City to provide such coverage under the City of Chicago Annuitant Health Benefit Plan. Moreover, all four Funds provided health insurance coverage, directly or through the City's plan, for all of their respective annuitants, regardless of age, years of service, or Medicare-qualifying status. Thus, annuitant healthcare coverage has been provided all four Funds' annuitants as a benefit of participation in their Fund, and thus is a benefit protected by the Illinois Constitution, Article XIII, Section 5, against being diminished or impaired.

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

27. **City Officials.** By their offices with the City, (i) the City Comptroller is a member of the Board of Trustees of the Firemen's and Municipal Fund and his designee sits as a member of the Laborers' Fund. Pension Code §§6-174, 8-192 and 11-181; (ii) The City Treasurer, City Clerk and City Fire Marshall are also ex officio members of the Firemen's Fund Board (§6-174); (iii) the City Treasurer also sits on the Police Fund's Board (§5-178) and Municipal Fund's Board (§8-192). Each Board has one annuitant member (5-178, 6-174, 8-192,

11-181). The rest of each Board is either appointed by the Mayor or elected by the active employees who participate in the Fund.

28. **The City's Annuitant Medical Benefits Program.** Beginning approximately 1964 and continuing through at least 2013, the City has exercised its legal authority to provide a medical benefits program covering both employees and annuitants (the City of Chicago Annuitant Health Benefit Plan) in which participation is explicitly provided for City Funds annuitants, their spouses and dependents.

29. **The City as the Insurer.** Since the mid-1970's, the City provided this benefit provided *by the City itself*; as the insurer and actual provider of the City of Chicago's Annuitant Healthcare Plan, a benefit of annuitants' participation in the City's four relevant Annuity and Benefit Funds, administered on a self-funded (*i.e.*, the City pays these claims itself rather than obtaining "insurance" coverage from an outside third party provider), "claims made" basis ; *i.e.*, paying claims as they come in.

30. The City engages private carriers (HCSC/Blue Cross and others) solely to administer the City's Annuitant Health Benefits Plan. (often referred to as "ASO" for "Administrative Services Only".)

31. **Annuitant Participation.** Based on the most recent reconciliation report for the period ended 6/30/2013, the participants in the Plan (that is, annuitants who were then enrolled in the City's Annuitant Health Benefits Plan² total approximately 23,800; including annuitants of all four Annuity & Benefit Funds, plus survivors and dependents who participate in the City's Annuitant Medical Plan for their primary medical coverage.; Policemen's Fund participants in

² The number of "Class members" is a much greater number, because many of them are still working for the City, so are not yet annuitants. That said, the number of participants in the Annuitant Health Benefits Plan probably does not vary that much, owing to natural attrition.

the Annuitant Health Plan: 8,965, Firemen's Fund: 3,023, Municipal Employees' Fund: 9,245 and Laborers' Fund: 2,584.

32. Although many of these annuitants are over age 65, some very old, with serious medical problems, many are people who began working for the City before April 1, 1986 (thus cannot qualify for the federal Medicare program at all from their City employment, regardless of age or length of service), many are still well below age 65.³ Due to age and existing medical conditions, some (probably most of them) would be unable to obtain their own medical coverage at an affordable cost or to qualify for alternative medical coverage at all. Based on their initial hire date, many of them cannot qualify for Medicare coverage from their City employment; some are without sufficient qualifying employment quarters at all and can obtain Medicare coverage only by paying additional premiums with substantial penalties.⁴

33. **The City Has Historically Provided Healthcare Plans For Annuitants, both as a term of their City employment, and as a Benefit of Participation in the City's Four Annuity and Benefit Funds.** Since the mid-1970's, when the City health benefits plan became self-funded, the City has provided an annuitant/retiree health benefit plan paying all or a significant portion of the costs of the annuitants' medical benefits. Indeed, the City has actually and intentionally assumed the role, and intentionally acted as the contracted-by-the-Funds self-insured carrier for the annuitants' health care plans for all four relevant Funds.

³ There are still active employees who began their City work in 1986 before reaching age 34 have still not reached age 65, even if they obtained qualifying quarters from other employment.

⁴ Persons purchasing Medicare Part A must pay a 10% penalty for twice the number of years they were on the retiree plan after age 65, plus a permanent Penalty on their Part B premium of ten percent *multiplied* by the number of years between age 65 and their purchase. Thus a 75-year old will incur Medicare premiums of approximately \$800 per month, plus the cost of Part D program for prescriptions, plus of course the substantial out of pocket costs.

34. The Group Health Benefits for City Annuitants, the City of Chicago Annuitant Medical Benefits Plan, was created by an agreement with the Funds, incorporated into the statutes, and have thereafter been a benefit of participation in the City’s Annuity & Benefit Funds since at least 1980, subsidized by the Funds since 1983. The City of Chicago’s Annuitant Medical Benefits Plan in existence from 1982 through at least 1989, was the statutory result of a “handshake” agreement between the City’s Byrne administration, the Police and Fire Unions and/or Funds trustees, under which the City agreed to provide healthcare coverage to annuitants at a fixed-rate monthly premium(\$55 for non-Medicare qualified, \$21 for Medicare-qualified persons) that was to be subsidized by the Police and Fire Funds’ payment of the annuitant’s monthly premium, that was financed by a special tax levy for the Funds. This was understood and intended to be both a benefit of a person’s employment by the City and participation in the annuitant’s respective annuity and benefit fund. (**Exhibit 18**, McDonough declaration and Testimony at 30ff)

35. **Background of the Annuitant Benefit sought to be protected: The City of Chicago Annuitant Health Benefits Plan.** The City has provided healthcare benefits to its annuitants since the 1960s. Since at least 1980, the City provided it as the “City of Chicago Annuitant Medical Benefits Plan”⁵, explicitly for annuitants of its four annuity and benefit Funds⁶; i.e., for Police, Fire, Municipal Officers and Employees, and Laborers Fund participants. According to the City’s original complaint that launched this litigation:

⁵ **Exhibit 6**, “Your City of Chicago Annuitant Medical Benefits Plan” Handbook.

⁶ For clarity, the term “**Plan**” means the City of Chicago Annuitant Medical Benefits Plan. The term “**Fund**” refers differently to one or more of the four Annuity and Benefit Funds created in Cities over 500,000, under the Illinois Pension Code: 40 ILCS Article 5: 5/5-101 (Police), Article 6: 5/6-101 (Firemen’s), Article 8: 5/8-101 (Municipal Officers and Employees), and

“7. From 1980 through the present, the City has paid the health insurance coverage for annuitants of the Policemen's, Firemen's, Municipal Employees, and, Laborers' Annuity and Pension Funds and their dependents by allowing these annuitants and their dependents to use the City's own Health Care Plan.” (**Exhibit 2**, See Count II, City Complaint in *City v Korshak*, ¶7, p. 7)

36. As the City recognizes⁷, it has never merely “subsidized” the Plan; it is, and has always been self-insured, the *actual provider* of the benefit:

“8. The City is a self-insurer of its Health Care Plan.” (**Exhibit 2**, ¶8)

37. Additionally, it was important for the City to provide lifetime healthcare coverage for annuitants because its employees did not qualify for coverage under the federal Medicare program, because local government agencies employees hired before April 1, 1986 do/did not accrue qualifying quarters for the federal Medicare program⁸, and the demographic of nonMedicare seniors (some retirees as young as 50; others required by mandatory age-63 retirement, others over 65) were essentially uninsurable by most insurers⁹.

Article 11: 5/11-101 (Laborers and Retirement Board Employees). The term “Funds” refers to them as a group.

⁷ **Exhibit 22**, December 23, 2015 testimony of City Budget Director Alexandra Holt (36:13 and 37:2) and Benefits Manager Nancy Carrier (77:17 and 77:22).

⁸ A substantial portion of City retirees do not qualify for Medicare coverage, either (a) because they retire before age 65 and do not yet qualify by age, or (b) cannot qualify regardless of their age and service because they are/were local government employees who were originally hired and began their work prior to April 1, 1986 (federal Combined Omnibus Budget Reconciliation Act of 1985 ("COBRA," PL 99-272 § 13205(a)) and their work does not constitute qualifying quarters under the federal Medicare plan regardless of their age or length of service.

⁹ Korshak trial Testimony by PABF Executive Director Waters, at ROP **Exhibit 27**, 47-48 and 63- 64

38. Most of the Class is the last group of City employees whose City work does not qualify them for federal Medicare coverage, and for which they can purchase only with substantial penalties.

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

40. Based on information provided by the Funds, current annuitants who began their City work prior to April 1, 1986, total approximately 16,372 individuals:

Hired Before 4/1/1986

Fund	Under 65	Over 65
Police	973	2,296
Fire	343	2,604
Municipal	1,456	5,628
Laborers	995	2,077
Totals	3,767	12,605

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

42. Additionally, many of the current retirees were hired before August 23, 1989, many of whom have still not retired, but are all entitled to the benefit of their earned City of Chicago Annuitant Health Benefit Plan.

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

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

45. Unique Position of these retirees, and their substantial numbers. Consequently, the class member annuitants who began their service for the City prior to April 1, 1986 are the last class of City workers who will not be protected by the Medicare program. Although the number of these participants is currently known only to the City and the Funds, it certainly numbers a substantial portion of the class, since even with only twenty years of service, the earliest of the Medicare-qualified by government work would not have begun retiring before 2006, and many have not yet retired.

46. During the early period, the City provided this retiree healthcare coverage as the self-insured provider without charge to annuitants.

47. **1982 Creating a statutory funding subsidy vehicle.** When health costs rose, the City and the Police and Fire Funds, created a vehicle by which the Funds could subsidize some of these costs, by enacting legislation obligating the Funds to provide healthcare coverage for their annuitants, and subsidize the providers, funded by a separate tax, outside the City's general corporate tax levy.

48. **The 1983 Pension Code Amendments require the Funds to provide health care coverage for their annuitants and create the Statutory Subsidy: Police and Firemen's Funds.** Since January 12, 1983 and continuing through 8/22/1989 (the date of enactment of P.A.86-273) Pension Code Sections 5-167.5, 6-164.2, respectively, required the Police and

Firemen's Funds' Boards to each contract for group health insurance and required the City to pay for a portion of its cost, for electing annuitants, out of the City's levy for its contribution to the Police Fund.

* * *

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

* * *

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

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

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

49. Creating this structure, the City and the Police and Fire Funds' trustees, caused the 1983 Pension Code amendments to be enacted¹⁰, which created a way to "offset" some of the City's healthcare costs without a City Budget increase, by obligating the Funds' trustees to obtain health coverage for their annuitants, and requiring them to pay a subsidy to the "provider", set intentionally in the amount that the City charged for coverage, with the subsidy funded by the Funds' corresponding financing provision (§5-168 for the Police Fund, §6-165 for the Firemen's Fund).

¹⁰ **Exhibit 8A**, 1983 Pension Code amendments creating §§ 5-167.5 and 6-164.2; both added by P.A. 82-1044, § 1, eff. Jan. 12, 1983.

50. The result of this was that the Police and Firemen's Funds fulfilled their "provide" obligation by engaging the City to insure annuitants under the City's Annuitant Health Benefits Plan; i.e., obtaining annuitant healthcare coverage by the City's providing the benefit at a fixed rate premium (\$55 per month for NonMedicare \$21 for Medicare participants) and the Funds subsidizing it for their annuitants by paying the annuitant's premium. Indeed, the Police Fund explicitly appointed the City the Administrator of its annuitant health plan.¹¹

51. Thus, the benefit was that Police and Fire annuitants paid nothing out of pocket for their own coverage, only the cost of spouse and dependent coverage. And, Fund participants were routinely and repeatedly informed, both in writing and in regular pre-retirement seminars conducted by the City over the following years, at least through 1987, with presentations by authorized City and Fund speakers, representing that this was their lifetime benefit; i.e., that the City charged a premium and their Fund paid it. (*See e.g.*, **Exhibit 7**, Policemen's Fund "Your Service Retirement Benefits" effective January 1, 1986¹², at 10:

Deductions

As a general rule, the City Plan, the hospitalization you had as an active member of the Police Department, may be continued only at the time you apply for annuity. (1) **The hospitalization premium for the retired employee is paid by the Retirement Board.** The premium for any eligible dependent would be automatically be deducted from your annuity checks, beginning with your first check. (Emphasis added.)

52. And, the arrangement was that the City paid the excess costs above the Pension Funds' subsidies:

¹¹ **Exhibit 24**, "Defendants' Exhibit 19" PABF Minutes June 27, 1985.

¹² It is likely that Firemen's' Fund annuitants were similarly informed.

10. The city has, from 1980 through June 1987, provided approximately \$58.8 million on behalf of the pension funds for their annuitants over and above the premiums paid by those funds for the annuitants' health insurance costs. (**Exhibit 2**, Count II, City's Korshak Complaint at ¶10, at p. 7).

This construct was also described in the testimony from then Policemen's' Fund Board member James McDonough (*See Exhibit 18*, at 30 ff, describing the structure and how it was created.).

53. Subsequently, the 1985 Amendments were added to enable the same construct for Municipal and Laborers Funds participants, with the subsidies for the Municipal and Laborers Plan set at \$25 per annuitant per month, regardless of Medicare status, similarly financed.

54. Consequently, from at least 1980 through 1987, there was a contractual agreement between the City and the Funds, the annuitants being third-party beneficiaries, under which the Funds fulfilled their statutory obligations to provide annuitant healthcare coverage by contracting for the City to provide the coverage, charging a premium of either \$55 or \$21 monthly (depending on the annuitant's Medicare status), and the annuitant's premium was paid by his Fund; either fully (Police and Fire), or \$25 per month (Municipal and Laborers).

55. This agreement was described in the Funds' Verified Korshak counterclaims (**Exhibit 3**); as described by the Police Fund,

17. The City's actions described above gave rise to an implied contract between the Fund, the annuitants and the City under which the City agreed to include the annuitants in the Plan's coverage and to pay the cost of the annuitants' medical benefits coverage to the extent that it exceeds the rates established for the medical benefits coverage effective April 1, 1982.¹³

¹³ Police Funds' refiled counterclaims at para. 17 Identical assertions in Firemen's', Municipal and Laborers' Fund Verified Counterclaims. **Exhibit 3**.

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

57. This is precisely what the Funds alleged in their 1987 Korshak counterclaims (**Exhibit 3**, hereto).

58. **The 1985 Pension Code Amendments Add the Municipal and Laborers' Funds.** During 1984, legislation was added to the Illinois Pension Code, P.A. 84-23, establishing similar Group Health Care Plan obligations under the Pension Code for Municipal and Laborers Funds to provide and subsidize healthcare coverage for their annuitants.

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

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

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

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

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

Different from the earlier provisions for Police and Firemen, the 1984 legislation creating Pension Code Sections 8-164.1 and 11-160.1 characterizes the group hospital and medical care benefits provided for Municipal and Laborers' Funds participants as not being pension or retirement benefits under Section 5 of Article XIII of the Illinois Constitution of 1970.

61. Legal issue of the legality of creating a non-protected benefit of participation. Per the decisions of our Supreme Court and this court, the statutory language provisions purporting to characterize annuitant healthcare benefits as *not* protected by Art. XIII, Sec.5's protection against diminution or impairment, are unenforceable. *Kanerva v. Weems*, 2014 IL 115811 (July 3, 2014) at ¶ 37-41, 54 and 55 and *Underwood v. City of Chicago*, December 3, 2015 ruling by Hon. Neil H. Cohen, at 8-9. **Exhibit 20.**

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

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

Under Age 65 – Single	\$ 55.00
Under Age 65 – Family of Two	110.00
Under Age 65 – Family of Three or more	150.00
Medicare Eligible – Single	21.00

Medicare Eligible – Two	42.00
One Over Age 65, One Under Age 65	76.00

64. These rates for the Funds' annuitants' medical benefits coverage remained unchanged to a date beyond August 23, 1989 and were intentionally drafted to fulfill the assurance that the Police and Firemen annuitants' healthcare coverage was equal to the amount of the statutory subsidy, so that annuitants' own coverage was free to them; their only cost being for spouse or dependent coverage.

65. Thus, from April 1, 1982 through August 23, 1989, annuitants received their healthcare coverage (priced at the same amount as the Police and Fire annuitants' Fund subsidy) as a benefit of participation in their Funds, who obtained that coverage from the City, who acted as the self-insured provider of the plan, and paid all of the "insurer's" costs of the Funds' annuitants medical benefits program to the extent that they have exceeded the premium rates.

66. **Communication of Coverage to Annuitants.** In approximately 1984, the City prepared a booklet advising individual annuitants of their rights, benefits and the terms of the City's annuitant medical care plan. This document was distributed to employees at or about the time of their retirement and was also submitted to existing annuitant participants as part of the re-enrollment process. **THE CITY OF CHICAGO ANNUITANT MEDICAL BENEFITS PLAN (Exhibit 6).** Titled as the "Annuitant" Plan, this Plan was and is a benefit of annuitants' participation in their respective Fund, protected by the 1970 Illinois Constitution.

67. **Participation in the Plan is explicitly provided for annuitants of the City's Funds.** Under the Plan, eligibility is determined by one's being a participant or annuitant in one of the City's four annuity and benefit funds:

ELIGIBILITY

You will be eligible for coverage if you are:

- An Annuitant of the City of Chicago. "Annuitant" means a former employee who is receiving an age and service annuity from one of four retirement funds,
- The spouse of a deceased Annuitant if you are receiving spousal annuity payments, or
- A dependent of a deceased Annuitant if you are receiving annuity payments. (Plan Handbook, at 2)

Exhibit 6.

68. Pre-Retirement Seminars. From at least 1984 until the present, the City also presents a series of "Pre-Retirement Seminars" to employees nearing retirement. Employees near retirement were invited to attend to inform them as to the terms of various benefits upon retirement including the City's annuitant medical benefit plan. **Exhibit 27**, Testimony during Korshak trial ("ROP __"), Ogonowski at 60 ff; DX 24, 26, ROP 184ff; Peter JanderSits at ROP 164ff; Charles Wilhelm at ROP 177 and **Exhibit 25**; Bernard Patrick Sweeney at ROP 134ff; Robert James Shackleton at ROP 206ff; and Maryann Hester, a Public Stenographer "I always take notes", ROP at 218 and 220.

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

70. In describing these provisions, referring City employees and their attendees were told that they would be able to participate in the health plan for life, that their own coverage was to be for life at no cost; and that they would only have to pay for additional coverage for spouse and dependents. **Exhibit 27**, *Jandersits at 40, 42, ROP 164; Wilhelm at 55, ROP 177; Ogonowski at 61, ROP 184; Sweeney at 72, ROP 194; Mrs. Hester at 95-96, ROP 218, 220.

71. Legal Actions by Statements authorized by each City Administration. These were authorized presentations and statements, knowingly approved by the City administrations

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

72. These “pre-retirement seminars” were repeatedly conducted by City officials over a number of years, such that the rendition was done with each City Administration’s full knowledge and authorization; at least apparent, more probably actual, authority to so speak.

73. Actions by Retirees. Employees thus worked, retired and made plans for their lives and their families, reasonably relying on the representations made to them in these seminars, *e.g.*, **Exhibit 27**, Jandersits at 40, ROP 165. It was thus the common understanding among City employees that the City would provide medical coverage for life upon retirement, (*Id.*, Wilhelm at 55-6, ROP 180-1; Scacchitti at 68, ROP 193; Hince at 85, ROP 210) and that was a significant factor for many individuals in choosing to work for the City, rather than work for a private sector employee, *e.g.*, *Id.*, Gayne at 44-5, ROP 169-70.

74. Many individual employees retired in reasonable reliance on the fact that this coverage existed and would continue for life (**Exhibit 27**, Korshak record: Carlisle Moore, Fire Stip. #1; Feinberg, Fire Stip. #3), and did not seek medical coverage elsewhere.

75. Many employees made retirement plans in reliance on that promise. **Exhibit 27**, Korshak record: Sweeney at 72-3, ROP 197-98; Zalley (Fire Stip. #5).

76. Some people purchased property elsewhere in reliance on the continued existence of medical coverage upon the terms described. **Exhibit 27**, Korshak record: Shackleton at 82-3, ROP 207-8.

77. Most of the pre-8/23/1989 retiree class member annuitants who survive, are now over age 74; some are in ill health (*e.g.*, **Exhibit 27**, Scacchitti at 66ff, ROP 191) or have family members whose condition is such that they would have great difficulty qualifying for separate individual medical coverage either at affordable cost or at all, (*e.g.*, *Id.*, Wilhelm at 56, ROP 181; Ralicki, Fire Stip. #2).

78. The usual practice in the Chicago area during the pre-8/23/1989 class period was that large public sector employers paid the entire cost for retiree medical coverage premiums, **Exhibit 27**, Arenz at 19, ROP 144, and did not retroactively change healthcare benefits for retirees. *Id.*, Arenz at 23, 28, ROP 148, 153.

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

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

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

81. At all times relevant, it was known by City Administrations and Councils that annuitant healthcare costs were included in the appropriation. **Exhibit 27**, Korshak trial testimony by City Chief Operating Officer Gilliam, ROP 236-253, and Kubasiak ROP 313-319, Fattore at ROP 398ff, 400-403.

82. 1985 Appropriation Language. In the 1985 City Budget, line item .042 explicitly included annuitants, indicating that annuitant healthcare coverage was approved by the City of Chicago as a benefit of being a participant in one of the four Funds:

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

83. The 1985 language was inserted by the City Council's Budget Committee to clarify the annuitant medical coverage under line item .042. (**Exhibit 27**, Korshak record: Kubasiak testimony at 89.)

84. Manner of Budgeting. Each year beginning at least 1980, the line item .042 budget appropriation was accomplished by taking the previous year's actual expenditure (to the extent already spent, plus estimated cost through the end of the current year) and increase it by an amount reflecting anticipated healthcare inflation or cost increase for the coming budget year. (**Exhibit 27**, Korshak record: Gilliam at 8-9ff, 39-40, ROP 237-8, 268-9.)

85. The previous year's expenditure included expenditures paid by the City for annuitant medical claims without any dispute as to their authorization under the annual appropriation. **Exhibit 27**, Gilliam at 10-11, ROP 239-40.

86. Thus, the appropriated dollars for each budget year included annuitant medical expenses. This was known to the City's Budget Office (**Exhibit 27**, Gilliam at 10-11, 18, ROP 239-40, 247; Fattore at 179, ROP 408) and Council members knowingly enacted ordinances each

year ensuring that the annuitants were covered under the City's plan (*Id.*, Gilliam at 18-19, ROP 247-8).

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

Year	Dept. Request	Mayor's Recom.	Appropriation	Actual Expenditures
1979	[open]	[open]	[open]	\$37,002,963
1980	[open]	\$48,000,000	[open]	\$46,742,071
1981	\$56,906,000	\$56,906,000	\$56,225.00	\$64,569,800
1982	\$66,200,000	\$66,200,000	\$65,870,000	\$75,100,196
1983	\$75,250,000	\$75,250,000	\$74,650,000	\$86,289,215
1984	\$88,500,000	\$88,500,000	\$87,200,000	\$84,465,869
1985	\$89,288,200	\$89,288,200	\$89,438,000	\$91,506,685
1986	\$97,942,000	\$97,942,000	\$97,942,000	\$83,705,038
1987	\$107,158,500	\$107,158,500	\$107,158,000	

Source: DX37-43.

88. Calculation and Deletion of 1988 Annuitant Healthcare Appropriation. For 1988's requested appropriation, the City Risk Management Department calculated the cost of annuitant healthcare to be approximately \$18 million and the Budget Department eliminated it from the budget request at Ms. Gilliam's direction. **Exhibit 27**, Gilliam at 37, ROP 266; Fattore at 184-187, ROP 413-16.

89. Communication of Plan to Annuitants: Regarding Termination of Coverage.

During the period preceding August 22, 1989, the City of Chicago's Annuitant Medical Benefits

Plan provides as follows regarding "Termination of Coverage:"

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

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

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

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

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

Source: DX33, City X3.

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

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

92. During 1984, the costs of medical coverage for active employees and annuitants began to exceed the amount of premiums that were being charged. Korshak Record, Defendant **Exhibit DX33**.

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

94. No Premium Charge for Annuitant. The operation of the Plan was that Police and Fire Funds' annuitants were not required to pay anything out-of-pocket as premiums for their own coverage,¹⁴ Municipal and Laborers' Funds' annuitants had to pay either nothing or \$30.00 per month (depending on their Medicare qualification) and paid their own funds for only the additional cost of family dependent coverage.

95. City's Past Efforts to Contain Costs. Beginning in 1984, various members of the City administration began to focus on containing healthcare costs. **Exhibit 27**, Korshak Record: Gilliam at 20, 31, ROP 247, 260; Carmody Memo 04/15/83 DX9, DX11 and 12.

96. Re-Enrollment. One effort to contain costs was to require re-enrollment of plan participants both active and retired. By this all plan participants were required to produce evidence of their continued qualifications to participate in the City's medical plan. **Exhibit 27**, Korshak Record: Gilliam at 40, ROP 269; DX17.

97. The City actively solicited annuitants to re-enroll in the plan. **Exhibit 27**, Korshak Record: Gilliam at 40, ROP 269; DX18.

¹⁴ In fact, annuitants do pay a portion of each claim as with usual insured plans. **Exhibit 27**, Picur at 142-3, ROP 371-2; Williams at 154-64, ROP 383-93. The City's plan requires the insured to "coinsure" (i.e., pay a percentage of each claim after the first X hundred dollars), 20% of the following X thousand dollars insuring that individuals do share in the actual out-of-pocket costs of their medical care.

98. During enrollment, the City did not suggest that annuitants seek or investigate the desirability of obtaining coverage elsewhere. **Exhibit 27**, Korshak Record: Gilliam at 40-41, ROP 269-70.

99. Nor did the City ever advise the annuitants that their plan had been or would be considered terminated, by this re-enrollment requirement. **Exhibit 27**, Korshak Record: Gilliam at 79, 81, ROP 308, 310. Moreover, although there is some assertion that this re-enrollment actually constituted a "termination" of the old plan and institution of a new plan, *Id.*, Gilliam at 80-81, ROP 309-10, the City's termination of its annuitant healthcare plan could have been achieved only by terminating both the active and annuitant plan together, *Id.*, Arenz at 27, ROP 152, which was not done.

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

101. 1984 "Trial Balloon" to Raise Costs of Coverage. A proposal was also submitted under which the premiums would be increased for participation under the City's plan. **Exhibit 27**, Korshak Record: Gilliam at 20, ROP 247; DX15.

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

103. This proposed rate change was communicated to representatives of the four pension funds. However, the response of the funds and their participants was so strong and negative that the effort was abandoned. **Exhibit 27**, Gilliam at 52-53, ROP 281-82.

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

105. **Caught converting Funds' tax receipts, the City concocts a "game plan" to offset that liability by threatening to cut off annuitant healthcare benefits.** That arrangement continued until early 1987, when the City was found liable for (the Byrne administration's) converting pension fund tax levies, in *Ryan v Chicago*, 148 Ill.App.3d 638 (1st Dist. 1986) (participant derivative action filed for benefit of the Funds) and 274 Ill.App.3d 913(1st Dist. 1995) and faced a liability to the Funds in excess of \$25 Million. As part of a "game plan"¹⁵ to offset its liability for converting the Funds' assets,¹⁶ the Washington administration approached the Funds' trustees, with a concocted threat to discontinue healthcare coverage, but would drop the matter if the trustees would forego the City's *Ryan* case liability¹⁷.

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

¹⁵ Testimony by City Comptroller Ronald Picur, **Exhibit 9**, 44:5-8 ("That was the game plan").

¹⁶ **Exhibit 1**, Police Fund Trustees' Minutes of May 11, 1987, meeting with City.

¹⁷ **Exhibit 1**, Police Fund Trustees' Minutes of May 11, 1987, meeting with City.

pension fund tax monies used by it during the period 1979 through 1983 and would have to restore similar earnings made in subsequent years. **Exhibit 27**, Korshak record: Testimony by City Comptroller Ronald Picur at 143-4, ROP 372-3.

107. The City's Reaction. Among City officials, the expectation was that this "Ryan" liability would total approximately \$20 million. **Exhibit 27**, Korshak Record Testimony by City COO Sharon Gilliam at 76, ROP 305.

108. In the spring of 1987, a meeting was held among certain members of the City administration to develop a strategic plan for handling the City's financial problems, medical costs, and the Ryan case. **Exhibit 27**, Gilliam at 19ff, ROP 248; Picur at 118-9, ROP 347-8.

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

110. At that meeting, a strategic "game" plan was developed to counteract the effect of the *Ryan* decision. **Exhibit 27**, Picur at 144, ROP 373; DX28 at p. 2 Margin Notes by Gilliam.

111. At that meeting, the Legal Department advised the others of the argument that the appropriations in the line item ".042" for healthcare would be asserted as not permitting payments to annuitants. **Exhibit 27**, Picur at 119, ROP 348.

112. A plan was developed to approach the pension funds, advise them that the City would sue the pension funds to recover the monies spent on annuitant healthcare going back at least to 1980 unless the pension funds agreed to give up their claim to recovery under the Ryan case. **Exhibit 27**, Picur at 143-4, ROP 372-3.

113. Ronald Picur. While this was being planned, then-City Comptroller Ronald D. Picur continued to sit as a trustee of the Firemen's Annuity and Benefit Fund, the Municipal

Fund and the Laborers' Fund without advising the other trustees of the City's intentions. **Exhibit 27, Picur** at 120, ROP 349.

114. Subsequently, on or about May 8, 1987, the City's Corporation Counsel contacted each of the pension funds, advised them of the *Ryan* judgment's \$25 million potential, and the City's belief that the medical payments (in similar \$25 million amount) had been illegally paid and would have to be recovered from each pension fund unless they agreed to waive the *Ryan* claim. Each fund rejected the offer. (**Exhibit 1** hereto)

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

116. The City actually did seek to assert these issues as an offset in the *Ryan* case, but was denied by the presiding judge in that case. *Ryan v. Chicago*, ruling by Chancery Judge David Shields, 1987.

117. Suit Filed by the City. On October 19, 1987, the City then also filed suit seeking to terminate the coverage, force the pension funds to take over the annuitant medical cost obligation and reimburse the City for the \$58,000,000.00 it had spent on annuitant medical coverage through September, 1987. (**Exhibit 2** hereto)

118. **City launches *City v. Korshak* lawsuit, challenging its healthcare obligation.** When the trustees rejected the City's backdoor deal, the City filed the original *Korshak*¹⁸ complaint on October 19, 1987 (*City v. Korshak, et al., (Trustees) and Ryan, et al.*

¹⁸ Named for Marshall Korshak, the first named defendant Fund trustee.

(*Participants*)), Circuit Court of Cook County, No. 87 CH 10134)¹⁹ seeking (i) a declaration that it was not obligated to provide retiree healthcare, to enable it to terminate its Annuitant Healthcare coverage for participants in the City's four Annuity and Benefit Plans, and (ii) recover monies expended under the Plan in prior years.

119. Participants' Intervention and Class Certification. Martin Ryan and the other individual plaintiffs in the Ryan case sought and were granted leave to intervene for annuitants' interest, represented by Krislov. *Korshak*, May 5, 1988 Order.

120. The intervenors were certified as an annuitant retiree class, with undersigned counsel as class counsel.

121. The pension funds each moved to dismiss the City's claim and filed counterclaims of their own against the City to continue the coverage unchanged or at least provided a reasonable period in which the plans could obtain alternative medical coverage. (**Exhibit 3** hereto.)

122. The trustees/board members of the four affected annuity and benefit funds (the "Funds"), and the annuitant healthcare plan participants (eventually certified to proceed for the then-existing annuitant/participant classes) counterclaimed against the City²⁰, asserting that the City had made retiree healthcare a term of employment, and under principles of contract and estoppel, the City was obligated to continue annuitant healthcare coverage under the terms of the Annuitant Healthcare Plan as in effect on October 19, 1987, and the Funds were obligated to continue their subsidies, both for participants' lifetimes.

¹⁹ **Exhibit 2**, *City v. Korshak*, original City Complaint, Oct.19, 1987.

²⁰ **Exhibit 3**, *Korshak Funds Counterclaims*, and **Exhibit 4**, *Participants' Counterclaim*

123. **Circuit Court dismisses City’s claims, but upholds claims for participants to proceed.** This Circuit Court (Hon. Albert Green) dismissed the City’s claims entirely,²¹ but upheld the claims asserted by both the Funds’ and Participants’ counterclaims against the City, that the City had voluntarily agreed to be the insurer, provide the annuitant medical benefits coverage, and represented to City employees that this was a lifetime benefit, provided by the City and subsidized by the Funds.

124. **The Korshak trial and first Settlement.** These claims proceeded to trial before Judge Green, in June 1988 (the complete Transcript is **Exhibit 27** hereto) on the trustees’ and participants' claims that existing annuitants are entitled to permanent coverage under the City Plan as it existed on October 1, 1987.

125. In that trial, the Participants asserted the following claims:

- (a) Contract. The city bound itself contractually to cover the then-existing annuitants’ healthcare for life charging premiums equal to the statutory supplement paid by the pension funds; the premiums were subsidized by the Funds--the annuitants’ entire premium for Police and Fire annuitants, \$25 per month for Municipal and Laborers.
- (b) Detrimental Reliance/Estoppel. The city, through its authorized officials, affirmatively induced the annuitants to act to their detriment, in joining and continuing their coverage the City's annuitant healthcare plan, in reliance upon the City's assurance of lifetime medical care coverage, and the City is now estopped from terminating or reducing those benefits.
- (c) Illinois Constitution. The Annuitant Healthcare Plan, as in effect on October 1, 1987 through August 23, 1989, was a benefit of participation in an Illinois statutory pension or retirement system, so 1970 Illinois Constitution, Art. 13, Section 5, prohibits the city's attempt to eliminate or reduce Lifetime fixed rate subsidized Medical Care as a retirement benefit.

²¹ **Exhibit 5**, May 16, 1988 Decision by Hon. Albert Green, *City v. Korshak*.

- (i) The City of Chicago Retirement Medical Plan is a pension and retirement benefit of City of Chicago employment.
- (ii) A participant's right to coverage under the plan vests, and cannot be reduced after his entry into the system.
- (iii) A participant's right to coverage under the City's Retiree Healthcare Plan vests no later than his retirement, and the terms of the benefits cannot be reduced thereafter.
- (d) Illinois Constitution, Special Legislation. The statutory provisions (P.A. 86-273 and P.A. 90-32/June 27, 1997) as they purport to change the terms or protection of class members' healthcare coverage are invalid special legislation because they apply only from employment by a named municipality. (1970 Ill. Const. Art. IV, Sec. 13).

126. Plaintiffs incorporate by reference, the record of that trial, transcript attached hereto as **Exhibit 27**.

127. During the trial, a number of facts were established, mostly by the defendants' own testimony:

- i. Each of the four Funds acknowledged that their Statute requires them to both arrange and subsidize coverage for their annuitants²², that it would be nearly impossible to place this group of persons into a traditional health plan ²³, that most of the annuitants are not Medicare qualified because they were hired prior to April 1, 1986²⁴.
- ii. While the Municipal and Laborers statutes obligated those Funds to provide coverage for those over age 65 and with 15 years service, the Fund contracted

²² Korshak Trial Testimony of Police Fund Executive Director James P. Waters, Jr. at 47 (**Exhibit 27**, ROP 69-70): "the statute requires you to arrange coverage. A. That is correct" and "Do you believe that the pension fund has satisfied the requirements of the statute in obtaining and arranging for coverage through the City? A. Yes". (Each of the other Funds executive directors testified that their answers would be the same). *Id.* at ROP 96, 108, 118.

²³ *Id.* at 36, ROP 58.

²⁴ *Id.* at 41, ROP 63-64

plan provided coverage for *all* Municipal and Laborers annuitants, differing only in that those with lesser age and service were not subsidized.²⁵

- iii. Blue Cross Senior Account Executive Edward Arenz, acknowledged that those hired prior to April 1, 1986 are not covered by Medicare. **Exhibit 27**, ROP 373.
- iv. City Comptroller Picur admitted that the decision to cut off retiree healthcare was part of the Administration’s “game plan” to offset the City’s *Ryan v. Chicago* liability for converting Pension tax levies.
- v. City Comptroller Picur, City Chief Operating Officer Gilliam, City Risk Manager Williams, General Services Finance Director Fattore, and the former Chief Administrative Officer of the City Council Committee on Finance Daniel Kubasiak, all acknowledged that the City Administrations and a majority of the and Council had knowingly understood and intentionally provided the coverage’s annual appropriation ordinance knowingly (and for some years explicitly) intended to include the costs for the City’s acting as insurer for a single plan that included both actives and retirees.²⁶
- viii. Since the City is a self-insurer, “premium is the wrong term to use” for the rates charged annuitants. **Exhibit 27**, Chief Operating Officer Gilliam, ROP at 279.

127a. The Funds trustees acknowledged their statutory obligation to provide coverage for their annuitants. In that litigation, the Funds trustees explicitly acknowledged their statutory obligations to provide and subsidize coverage for their annuitants. The following positions and testimony in the *City v. Korshak* trial (Exhibit 27), in which the Funds argued and explicitly recognized the Funds’ (their own) obligations under their statutes to provide and subsidize healthcare coverage for their annuitants, bind them and preclude their denying their obligations to provide and subsidize coverage for their annuitants. For examples:

²⁵ *Id.*, MEABF ROP 119, LABF ROP 78.

²⁶ **Exhibit 27**, Picur at ROP 346, Gilliam at ROP 239-40ff; Williams at ROP 382; Kubasiak at ROP 331; and Fattore at ROP 400-403.

1. Opening Argument of Kevin Forde (PABF attorney, and Lead Counsel for all Funds), 4th AC, Exhibit 27 at ROP 3:

This is the Fund's only obligation to make these payments toward the premiums as well as to arrange for the insurance.

and

2. Testimony by PABF Executive Director James Waters, *Id.* at ROP 36-37

Q. **Mr.** Waters, is there a statute relating to health care for the fund annuitants?

A. Yes, there is.

Q. Do you know when it took effect?

A. For the police fund it took effect on January 12, 1983.

Q. Could you tell us your understanding of the terms of that statute?

A. **As I understand it, the statute calls for the Policemen's Annuity and Benefit Fund to arrange for hospitalization of coverage for its annuitants and to contribute a specified amount towards the cost of that insurance.**

3. On Cross Examination by City Attorney Beckett, *Id.* at ROP 52:

Q. You also testified that your understanding, I will take that exhibit back, for a moment, but **your understanding of Section 5-167.5 of the Policemen's Annuity Fund Act required several things of the Pension Fund?**

A. **That is correct.**

Q. One of those things was that you could take \$55 a month per annuitant to pay for this premium?

A. Well, we were directed to take up to \$55 for a retired annuitant, retired employee.

Q. And if they were on Medicare, it was only \$217

A. That is correct.

Q. **And it is also directed the Fund to enter into a contract of insurance?**

A. **we were to arrange insurance for the annuitant.**

Q. And it is your testimony that the funds in fact did that in 1985 when it passed that resolution that you testified about, right?

A. Correct.

4. And *Id.* at ROP 68-69:

Q.

...

Referring you back to that statute you have discussed in the 1983 statute governing annuitant's health benefit and how the Pension Fund relates to that, **you said it was your understanding that the Fund was to obtain some kind of insurance coverage for the annuitants?**

A. To arrange coverage.

Q. And you do know that the statute required you to arrange coverage with insurance carrier, don't you?

A. That is correct.

5. And *Id.* at ROP 69-70:

Q. Mr. Waters, you do believe that the Pension Fund has satisfied the requirements of the statute in obtaining and arranging for coverage through the City, correct?

A. Yes.

MS. BECKETT: No further questions

6. For the Firemen's Fund, Norman Holland, *Id.* at ROP 108:

Q. I believe the record is clear, but it might be from statements made by me rather than testimony. Isn't it true, Mr. Holland, why don't you tell us with respect to the state statute that Mr. Waters has described, is there a similar provision to the firefighters?

A. We have the identical provision in our state statute that was signed on the same date.

7. Thomas Stack, Executive Director for Municipal Employee Annuity and Benefit Fund, *Id.* at ROP 118:

Q. You have heard the testimony before of Mr. Waters and Mr. Holland and Mr. Capasso. The testimony that you were to give regarding Municipal workers except for the contractual obligations contained in the Firemen's Fund be similar to those individuals and except for where the statute provisions are different?

A. Yes.

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

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

130. **The First Korshak Settlement.** After the trial was concluded, but before Judge Green rendered his verdict, the City and Trustees entered into a 10-year settlement²⁷ (obligating the City to continue providing the Annuitant Medical Benefits Plan and pay at least 50% of annuitant healthcare costs through 12/31/1997, allocating costs among the City, the Funds and participants over the settlement period, and explicitly preserving participants' right to revive these claims if no permanent annuitant healthcare solution was reached by the end of the settlement period). Approved by the Circuit Court over the participant class' objections, and affirmed by the Illinois Appellate Court, *City v. Korshak*, 206 Ill.App.3d 968 (1st Dist.1991), PLA Den., Cert. Den., the ten-year interim settlement proceeded according to its terms.

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

²⁷ **Exhibit 10**, *City v. Korshak*, December 15, 1989 Settlement between City and Funds.

132. Pursuant to the Settlement Agreement, in the event no “permanent resolution” of the retiree healthcare issue was reached by the end of the settlement period, the participants, at the end of 1997, were restored to whatever rights they held at the beginning of the case.

133. No permanent resolution of the retiree healthcare issue was reached by the end of 1997. Consequently, the litigation revived once again thereafter, culminating in a series of Settlements which though reaching the end of their terms on June 30, 2013 for the 2003 Settlement, all explicitly preserve Class members’ rights to assert:

“any claims with regard to the provision of annuitant healthcare benefits, other than claims arising under the prior settlement of this Action or under the 1989, 1997, or 2002 amendments to the Pension Code, or for damages relating to the amounts of premiums or other payments that they have paid relating to healthcare under any prior health care plans implemented by the City, including this Settlement Agreement.” (2003 Settlement Agreement, Sec. IV.J) **Exhibit 13**.

134. The Interim Settlements and their explicit preservation of participants’ rights to assert their entitlement to lifetime protection of their benefits. Participants’ claims for coverage during the periods thereafter through June 30, 2013 were thus resolved by interim settlements, all of them explicitly preserving participants’ rights to assert their claims to permanent retiree healthcare thereafter. **Exhibit 13**, Korshak 2003 Settlement at Section IV. J., and *see Ryan v. City and Korshak*, Ill. App. Court Nos. 1-98-3465 and 1-98-3667, June 15, 2000 Rule 23 Order, reversing the Circuit Court’s refusal to hear the Participants’ claims, as revived following the 1997 end of the first settlement.

135. **The First Settlement Period Ends, without a “permanent resolution”;** **Revival battle, and the 2003 Settlement.** At the conclusion of the ten-year settlement, 12/31/1997, the participants moved to revive the litigation, were initially denied by Judge

Green²⁸, who was then reversed by the Illinois Appellate Court²⁹, reviving the litigation, under Docket No. 01 CH 4962, which eventually was resolved in 2003 by another ten-year agreement, this time approved by all parties and the court, settling the dispute for the period through June 30, 2013; again with rights of participants to thereafter reassert their rights/entitlement to healthcare coverage in their retirement. **Exhibit 13**, Korshak 2003 Settlement.

136. **Discovery of Excess Premium Charges results in Audit and Reconciliation Agreement and Order.** During the course of this 2003 settlement, it was also discovered that the basis on which the City set the premiums, based on “Segal” estimates, resulted in charges to annuitants that exceeded their settlement percentages of their healthcare costs. The City and Class Counsel entered into an Audit and Reconciliation Agreement, which produced refunds to annuitants totaling over \$51 million over the 2003-6/30/2013 Settlement period.

Back to the Present

137. As the 2003 Settlement neared its 6/30/2013 end, class counsel requested the City to fulfill its Settlement contractual obligation to negotiate in good faith towards another, permanent, settlement.

138. **Instead of complying with its obligation to negotiate, the City on May 15, 2013 issued a letter to participants/annuitants in which it declared its intention to unilaterally extend the annuitant healthcare benefits, but to reduce, beginning January 1, 2014, and to eliminate all of the City’s retiree healthcare plans by January 1, 2017. Exhibit 21**, City Letter dated May 15, 2013 notifying all retiree healthcare participants that it intends to:

²⁸ **Exhibit 5**, Decision by Judge Green, May 16, 1998.

²⁹ **Exhibit 12**, Korshak revival, Rule 23 Order, June, 15, 2000 *City v. Korshak*, Case No. 98-3465 & 98-3667

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

Id.

139. Having explicitly unilaterally extended the benefits of participation in the City of Chicago Annuitant Health Benefits Plan, the City obligated itself to the then-current participants, to continue those benefits without reduction or impairment; per the Illinois Constitution's Pension Protection Clause.

140. **The City's May 15, 2013 Declaration.** Instead of negotiating in good faith, as required by the Settlement Agreement, the City instead unilaterally issued a May 15, 2013, letter to annuitants declaring it would extend the benefits of the settlement through the end of 2013, then "phase out" annuitant healthcare coverage over the next three years, ending it altogether by January 1, 2017.³⁰

141. **Exercising Participants' rights to revive their claims.** Participant Class Counsel moved again to revive the litigation in the *City v. Korshak* case, but was denied by Hon. Neil H. Cohen (the judge then assigned to that calendar), ruling that assertion of the Participants' retained rights would have to be done in a new action.

142. However, when undersigned counsel filed the new original Complaint in this case, in order to assert Participants' retained rights to permanent healthcare in their retirements,

³⁰ **Exhibit 21**, City Letter May 15, 2013.

the City, now a defendant³¹, removed this case to the United States District Court (N.D. Ill.). District Judge Holderman's dismissal of the complaint³² (in his view that healthcare benefits were *not* protected by the Illinois Constitution) was, following the Illinois Supreme Court's *Kanerva v. Weems* decision declaring that retiree healthcare benefits are protected by Illinois Constitution Art. XIII, §5, reversed, vacated and remanded with directions to remand the case to this court³³.

143. Remanded back to this court, both the City and the Funds moved to dismiss the complaint, despite Judge Green's previously upholding most of the same claims in 1988, some actually asserted by the Funds; who were now seeking dismissal of the same claims they had asserted in the past.

144. Regardless, on December 3, 2015, Circuit Judge Hon. Neil H. Cohen upheld Count I (Constitutional Protection) of the First Amended Complaint, but dismissed Count 2 (Contract) and Count 3 (Estoppel), with leave to amend. (**Exhibit 20**, Decision by Hon. Neil Cohen, December 3, 2015).

145. The Funds Subsidies after June 30, 2013. The Funds' pre-existing statutory authority to subsidize retiree healthcare was extended by P.A.98-43, signed into law June 28, 2013, extending the current statutory authorization of the subsidies at their current levels "until the earlier of January 1, 2017, or such date as the City terminates its retiree healthcare plans."

³¹ Plaintiffs, having chosen a forum, are ordinarily barred from removing a case. Had participants been permitted to revive their claims in the Korshak case, the matter would have remained in this court, and avoided the two years litigation in federal court that resolved nothing other than remanding back to this court.

³² *Underwood v. City of Chicago*, 2013 U.S. Dist. LEXIS 174455 (N.D. Ill. Dec. 13, 2013).

³³ *Underwood v. City of Chicago*, 779 F.3d 461 (7th Cir. Ill. 2015)

146. **The Funds stop paying subsidies and disavow their obligation to provide healthcare plans for their annuitants.** The Funds' trustees declared that they would not continue subsidies beyond any time period provided in the applicable statute, and still refuse to bring current and continue their required statutory subsidies, as benefits of participation protected solely by Ill. Const. Art. XIII, Section 5; and indeed, conflicting with their positions in the Korshak litigation, all four Funds (Police, Fire, Municipal and Laborers, now disavow any obligation to provide healthcare coverage to their annuitants, ceased paying their statutory subsidies after December 31, 2016, and have declared their refusal to resume paying the statutory subsidies unless and until directed by the court.

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

148. **The City's Post-2013 Unilateral Reduction and Termination of the Benefit.**

149. Beginning with the 2014 Appropriation, the City unilaterally reduced the annuitants' healthcare benefit from \$102 million annual appropriation to zero, terminating it entirely at December 31, 2016.

150. The New 2014-2016 "Rates" are flawed; both in the manner of their calculation and from the City's unilateral diminution in the benefit provided.

151. The "new rates" imposed by the City for the post- 6/30/2013 Settlement period were unlawful on at least three grounds. They are not entitled to enforcement, first, since they were calculated by a flawed method that systematically overcharges annuitants, and also results from the City's unilateral diminution in its annuitant healthcare benefit. Additionally, there are

two unilateral diminishment actions by the City: (i) increasing the premiums by an estimated costs factor that has been overstated in every previous year going back to its 2003 inception³⁴ and (ii) reducing its appropriation for the benefit, viewed either individually or in the aggregate, from the \$102,326,353 aggregate appropriation and expenditure in in 2013, to \$80,609,808 in 2014, reduced to \$62,912,845 in 2015, reducing it by a further 50% or \$31 million in just the 2016 appropriation alone³⁵; (a total diminution of \$ 100 million through 2015; \$130,755,496 million by the end of 2016; all of which diminutions result in corresponding increases in premiums to annuitants.

152. As a result, annuitants have seen their annuitant healthcare premiums increased by the City as much as 300% or more, over just the period since 2013. Indeed, some annuitants are faced with health insurance premiums that exceed the amount of their annuities. Many face premiums exceeding 30% of their entire gross annuity. Some, especially the nonMedicare qualified who have families, spouse and dependents, face premiums exceeding \$25,000 per year.

153. Nor are the “cost saving” alternatives offered by the City equivalent by any means. Participants who wish to save money, are offered a selection from plans that either (a) exclude from the covered network the (NorthShore, Northwestern, University of Chicago, Advocate, and Rush) institutions and physicians who make up the overwhelming percentage of

³⁴ See **Exhibit 7**, Motion for Audit of 2013-2d half, documenting how City’s use of estimated premiums has resulted in post-audit refunds, when compared to actual experience for each year, totaling more than \$50 million over the last ten-year settlement period.

³⁵ **Exhibit 25**, comparison of City Appropriations for Annuity Healthcare 2012-2016. Source: City’s 2016 and 2014 Budget Books, portions showing \$31 million cut from city’s line item 0052 expenditures for Hospital and Medical Care to Eligible Annuitants and their Dependents for 2016; following \$21.7 million reduction in 2014, and \$17.7 million reduction in 2015, for a cumulative reduction of \$69,625,443, to date which has been entirely borne by annuitants. Confirmed by testimony of City Budget Director Holt, **Exhibit 22**, 19:13-30:24, and City Benefits Manager Currier, *Id.*, 80:15-20.

healthcare providers in the region, or (b) carry vastly increased out-of-pocket costs for participants, or (c) both. **Exhibit 22**, December 23, 2015 testimony of Nancy Currier, at 65:4-9, and 121:10 ff.

154. **The City's flawed calculation of premiums.**

155. During the course of the 2003-2013 Settlement, it was discovered that the Segal projections, on which the City based its settlement period "rates" for retiree healthcare were substantially more than actually experienced during the settlement period.

156. Accordingly, an audit and reconciliation process was ordered, in order to conform rates charged to annuitants with the actual experienced costs of annuitant healthcare. Over the ten-year period of the settlement, the audit and reconciliation process identified overcharges to participants in each and every year. Total overcharges to participants during the 2003-6/30/2013 exceeded \$51 million, which were refunded as part of the audit and reconciliation process.

157. Since the June 30 2013 stated termination of the 2003 Settlement, the City, despite its unilateral extension of the Settlement's benefits, refused to audit and reconcile the rates charged to actual experience; refused for the last half of 2013 until ordered by the Illinois Appellate Court ³⁶ subsequently agreed to audit and reconcile the subsequent years 2014-2016, but subsequently claimed the court lacked jurisdiction, and refuses to submit the post-2013 to the audit and reconciliation procedures in the Audit and Reconciliation Order, declared it would not audit or reconcile the rates to actual charges for 2014, 2015 or 2016,³⁷ but thereafter withdrew its refusal, and claims it is doing it "voluntarily".

³⁶ *City v. Korshak*, 2016 IL App (1st) 152183-U (September 15, 2016).

³⁷ **Exhibit 26**, Chart of City Rate Changes for 2016.

158. Moreover, the process by which the City continues to calculate annuitant healthcare rates is based on the same estimating source and method.³⁸ Participants assert that the rates charged for 2014, 2015 and 2016 are excessive, even before considering the City's unilateral reduction of its appropriation for annuitant healthcare.

The City's erroneous and UnEqual recognition of its obligations.

159. In the City's May 15, 2013 letter, it acknowledges its obligation, and agrees to continue retiree healthcare for the Korshak and Window Retirees Subclasses:

2. After January 1, 2014, the City will provide a healthcare plan with a continued contribution from the City of up to 55% of the cost for that plan for their lifetimes to the City retirees who are members of the Korshak and "Window" Sub-Classes, meaning those City annuitants who retired prior to August 23, 1989. In short, the City will continue to substantially subsidize these retirees' healthcare plan as it does today.

160. Nonetheless, and despite of that assurance, the City is actually diminishing the benefit for those subclasses, as well, raising their premiums, albeit in lesser amounts.

161. Contrary to the City's previous commitment to contribute "*at least*" 55% of the costs of retiree healthcare for those classes, the City surreptitiously changed its commitment to a much diminished "*up to*" 55%. Thus, even if the rates were correctly calculated, the City was now "capping", rather than "flooring" its commitment to these two classes. Indeed, their rates are in fact being increased.

162. Within this case, plaintiffs challenged the City's revisionist "up to" commitment, and the City has, after briefing, committed itself permanently to paying 55% of the Korshak and

³⁸ Testimony of Nancy Carrier, **Exhibit 22** at 80-82.

Windows retirees defined costs, and to charge nonMedicare retirees within this group the same rates as Medicare qualified retirees.

163. Regardless that this might be an acceptable compromise for the City's actual obligation to the fixed rate plan, it does not relieve the Funds of their statutory obligations to subsidize the premium cost.

164. The Funds have not been paying any of their required statutory subsidies since the end of 2016.

165. **Inducement, Reasonable Reliance, Harm, Inadequate Remedy at Law.** As described above, the City's and Funds' actions have knowingly induced the City's employees to work their entire careers, reasonably relying on the existence of the City of Chicago Annuitant Medical Benefits Plan, and its protection for life, in their retirement, such that the City cannot in good conscience accept the participants' conferred consideration without fulfilling its own promised obligation to them.

166. As evidenced only in part by their attached submissions, the participants are suffering irreparable injury, in having to either pay exorbitant premiums, forego the City plan altogether, or choose other plans inferior in their costs or available providers, or both.

Facts Subsequent to the Filing of the Second Amended Complaint

167. On Plaintiffs' Second Amended Complaint, the City and Funds moved to dismiss the Complaint.

168. On December 5, 2015, the Circuit Court, Hon. Neil Cohen, ruled that the 1983 and 1985 Pension Code Amendments obligated the Police and Fire Funds to "contract" for group health care coverage for their annuitants, and the Municipal and Laborers Funds to "approve" a

group health insurance plan, and for all four Funds to subsidize the monthly premiums for their annuitants. (December 3, 2015 Order at 10; **Exhibit 20** hereto.)

169. Subsequently, on the City's motion for "Clarification" and the Firemen's and Municipal Funds' motion for Clarification or Reconsideration, this court (again Hon. Neil Cohen) "clarified", ruling that the City does not have, any obligation under the 1983 or 1985 amendments to subsidize or provide healthcare for the Funds' annuitants, stating "that obligation is placed on the Funds", March 4, 2016 Order at 5. The court did also rule that "the City does have an 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." *Id.*

170. In addressing the Plaintiffs' subsequent Third Amended Complaint, Judge Cohen ruled July 21, 2016 reaffirming his declaration that the Pension Code 1983 and 1985 Amendments require the Funds to provide (Police and Fire Funds) or approve (Municipal and Laborers) and subsidize (all four) group health plans for their annuitants, and for the City to finance those subsidies by a special tax levy. July 21, 2016 Order at 2, 8; holding that the provisions protected those employees who had retired by August 23, 1989 (the Korshak and Window retirees), declaring that those hired after 8/23/1989 were time-barred, but could not determine whether claims by those (Called Subclass 3) hired by, but who retired after 8/23/1989 were barred by limitations (July 21, 2016 Order).

171. Plaintiffs appealed. No defendant cross appealed. On August 3, 2017, the Appellate Court "affirm[ed] all but the trial court's ruling that the members of subclass four have no claim whatsoever under count I. Instead, we hold that any retiree that began participating in the system before the 2003 settlement was executed has a claim for relief based on the 1983 and

1985 amendments by operation of the pension protection clause.” *Underwood v. City of Chicago*, 2017 IL App (1st) 162356, ¶ 67.

172. Accordingly, all retirees who began participating in the City’s retirement system before the 2003 Settlement was “executed” have a claim for relief based on the 1983 and 1985 amendments to the Pension Code.

173. The Appellate Court’s varying use of the term “executed” (at ¶¶ 35, 40, 61, 64 and 66), “went into effect” or “effective” (at ¶¶ 48), and “operative” (at ¶¶ 32 62) can only mean the date that the 2003 Class Action Settlement Agreement became effective July 31, 2003 (**Exhibit 13A**). (While the term “executed” sometimes refers to the signing of a document, the context here necessarily must apply to one date, the date the Agreement became effective, because the signing by any party other than the approving judge would have no legal effect on anyone.)

CLASS ALLEGATIONS

174. **The case is entirely appropriate and best addressed as a class action because the benefits of each and every class member is ascertainable as a matter of law, based on the objective facts of the person's (i) date of hire, (ii) date of retirement, and (iii) Fund in which he or she is a participant, and each subclass category's entitlement does not conflict with any other subclass' entitlement.**

175. **Class/Subclass Definitions.** The overall Class would be defined as:

All participants in one of the City's four annuity and benefit funds, first hired by the City of Chicago prior to either (i) June 30, 2013 (the 2003 Settlement Class) or (ii) July 31, 2003 (the effective date of the 2003 Settlement).

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

SubClass 1) **the Korshak 12/31/1987 retiree subclass:** annuitants who retired by 12/31/1987 (the "Korshak" sub class) (this was the initial class certified in the 1987 Korshak Settlement)).

SubClass 2) **the "Window" or "Jacobson" subclass:** annuitants who retired after 12/31/1987, but before 8/23/1989 (the class that retired after the Korshak class date, but prior to the enactment of P.A.86-273 incorporating language of the Korshak settlement)).

SubClass 3) **the 8/23/1989 Participant subclass:** persons, regardless of retirement date, who began their participation in one of the Funds (initial hiring date) before 8/23/1989 (thus entitled to benefits of participation no less than when they entered the system); with a **subclass 3a**-those hired prior to April 1, 1986 (whose City employment thus did not constitute

qualifying quarters for the federal Medicare program);
and

SubClass 4) **the Post-8/23/1989 Participant subclass:** persons who began their participation after 8/23/1989 (participants who were hired after P.A.86-273's enactment).

Class 5) all other persons who became participants in one of the four City Annuity and Benefit Funds prior to July 31, 2003 (the date of final approval of the 2003 Settlement, or became a "Future Annuitant" of one of the Funds (i.e., first hired by June 30, 2013).

177. **Proposed Class Counsel.** For purposes of the Original litigation, continuing through all of the Settlements, undersigned counsel Krislov has been the court-certified class counsel for the first two subclasses, and the 2003 Settlement Classes. Going forward, the Krislov firm has been engaged by participants in all four Fund categories and in all time categories; and the Krislov firm asserts that it is uniquely experienced, adequate, and appropriate class counsel for the court to certify for all four participant classes.

178. **The Overall Class of persons who became participants in one of the City Funds by June 30, 2013. Per the terms of the 2003 Settlement, the class would include everyone who was or became a "future annuitant" by the Settlement's original June 30, 2013 termination date.**

- i Subclass 1-**The "Korshak" subclass-Persons who were retirees on 12/31/1987.** The claims for these participants are the same ones that have been certified to proceed as a class action with respect to the 1987 participants (the "Korshak" subclass). For these participants, they are entitled to lifetime enforcement of the City's agreement to pay 55% of their healthcare costs, plus the statutory subsidy from their Fund.
- ii. Subclass 2-**The "Window" or Jacobson subclass-Persons who became Retirees during the 1/1/1988-8/23/1989 "window".** As part of the 2003 Settlement, the action was also class certified for the additional or expanded group to include the participants via a person

who retired after 1987, but prior to August 23, 1989, who share the Korshak class' claim to common law vesting (entitlement to permanence for the benefits as they existed on one's retirement date), plus statutory and constitutional protections against diminution of benefits which have already begun at a certain level. (This group, who had filed a parallel case in federal court, led by the Retired Chicago Police Assn. and participant plaintiffs led by first named plaintiff Jacobson, are commonly referred to as the "window" retirees; persons who retired during the 1/1/88-8/23/89 "window" period, after the Korshak class date and before 86-273 was enacted.). Similar to the Korshak subclass, this subclass is entitled to permanent enforcement of the City's 55% commitment, subject to annual audit and reconciliation, plus their Fund statutory subsidy.

- iii. Subclass 3-**Pre-8/23/1989 Hirees' subclass.** The third group of class members, who share common legal issues, are those who "vested" in their retirement benefits by their joining one of the relevant Funds on or before August 23, 1989, regardless of their retirement date. (This group might be called the "Pre-8/23/89 Hiree Vesters"). Their entitlement is based primarily on their claim to the 1970 Constitution, Art. XIII, Section 5's protection against diminution or impairment of their benefits of participation in one of the four Funds determined at their entry into the system, i.e., their hire date. *Buddell v. Bd. of Trustees, State Universities Retirement System*, 118 Ill.2d 99, 103 (1987).
- iv. **Subclass 3a-Pre-4/1/1986 hires.** This subclass of Subclass 3 has unique hardship status, because, under federal law, their work for the City, no matter how long, does not earn qualifying employment quarters to qualify the person for coverage under the federal Medicare program.³⁹ Although some of these persons may earn the required quarters by other employment, most of these subclass members (especially Municipal and Laborers participants) simply do not qualify for Medicare coverage, and thus will face the largest premiums imaginable in their retirement and separately pay for Medicare coverage that most people get free. Because of the long duration of City employment, it is believed that a substantial portion of this subclass is still yet to retire.

³⁹ Local government employees who were originally hired and began their work prior to April 1, 1986 (federal Combined Omnibus Budget Reconciliation Act of 1985 ("COBRA," PL 99-272 § 13205(a)) cannot qualify for healthcare coverage under the Medicare plan by their government employment, regardless of their age or length of service.

- v. **Subclass 4-Post 8/23/1989 Hires.** The last subclass are those individuals who began their participation (by initial hired date) after the passage of P.A.86-273, which added the questionable language to the statute purporting to label the retiree healthcare benefits as not protected by Art. XIII, Section 5, whose claim to permanence of their benefits will turn on the purely legal issue whether the legislature can legally create a benefit of participation that is not protected by Article XIII Section 5.
- vi. Subclass 5-All persons who became participants (i.e., hire date) before August 27, 2003 (the date the 2003 settlement went into effect) 2017 IL App (1st) 162356 ¶48.
- vii. Subclass 5A-All persons who became “Future Annuitants” by June 30, 2013.

179. All five participant groups, as classes or subclasses, readily qualify for class certification as to their issues of entitlement and to a fixed-rate subsidized retiree healthcare program against the City and their respective Fund, and no participants’ entitlement conflicts with any others.

180. **Numerosity.** Each proposed class and subclass numbers in the hundreds or thousands, so joinder of all members of each class or subclass is impracticable.

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

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

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

COUNTS AND CAUSES OF ACTION

184. The Funds as Necessary Parties and as Defendants. The Funds are defendants and necessary parties in any event because, since 1983 for Police and Firemen's' funds, 1985 for Municipal and Laborers Funds, their applicable statute requires them to obtain healthcare coverage for their annuitant participants, spouses and dependents, plus their applicable statute requires them (a)to provide and approve healthcare plans for their annuitants, and (b) to subsidize the rates charged their participants at a set rate, that Article XIII Section 13 prohibits from being diminished or impaired. The Funds' current disavowal of their obligations, and intentional refusal to provide and subsidize is a willful violation of their statutory and fiduciary duties, for both the Funds and their trustees, individually, potentially subjecting them to personal liability.

185. **The City's obligation has at least three sources for its obligations asserted here: i) as the provider of a protected benefit of participation, ii) as the contracted insurer, and iii) estoppel, either promissory or equitable, such as to obligate it to provide a benefit promised to its employees, because it knowingly induced them and received the benefit of their work, and should be estopped from denying its obligation to them, especially those who were first hired before April 1, 1986, because their City employment did not constitute qualifying employment quarters for the federal Medicare program.**

COUNT I

State Constitution: Diminution of Pension Benefits, Impairment of Contract

186. Plaintiffs re-allege the foregoing paragraphs 1-185.

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

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

188. Participants' healthcare coverage under the City of Chicago Annuitant Medical Benefits Plan, terms and Fund subsidy under the Illinois Pension Code, as they existed on a participant's entry into their particular retirement system (and with improvements thereafter) are benefits of membership in a pension or retirement system of a unit of Illinois local government, that are enforceable for life, by the protections of 1970 Illinois Constitution, Art. 13, §5, which prohibits them from being diminished or impaired.

189. The City's and Funds' actions, separately and together, show their acknowledgement that the City-provided annuitant healthcare plan was and is a benefit of participation protected by the Pension Protection Clause.

190. Statutory Benefit from the 1983 and 1985 Pension Code amendments. As recognized by this court, and affirmed by the Illinois Appellate Court, the Illinois Pension Code 1983 and 1985 Amendments obligate all four Funds and their trustees to (a) provide a healthcare plan for their annuitants and (b) to subsidize annuitants' premium costs by at least the amount stated in their applicable statute.

191. Nonetheless, the Funds have, since 2013 not fulfilled their obligation to provide a healthcare plan for their retirees, and since January 1, 2017 to the present, failed to pay the statutory subsidies.

192. The failure to provide a Plan for annuitants is especially and uniquely harmful and damaging for class members in the subclass 3A, because their City work did not provide them with qualifying quarters

193. **Illegal diminution or impairment of Benefits of Participation in a local government pension or retirement system.** The defendants' actions and declared rights to reduce, or failure to provide and subsidize that benefit constitute unlawful impairment of the participants' contractual rights under Art. 13 §5 of the 1970 Illinois Constitution.

194. **Illegal Impairment of contract.** The defendants' actions and declared rights to reduce that benefit also constitute unlawful impairment of Contract, under Art. I §16 of the 1970 Illinois Constitution.

COUNT II
Common Law Breach of Contract

195. Plaintiffs re-allege paragraphs 1 through 194.

196. The City has breached its contractual agreement to provide health insurance coverage for the annuitants of the funds.

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

198. Also, independent of the Art. XIII, §5 of the 1970 Illinois Constitution, under common law principles of contract, the plaintiffs and pre-8/23/1989 retirement or hire date class members have a contractual right to the plan in effect during the period October 1, 1987 to August 23, 1989, at the \$55/21 fixed-rate-for-life healthcare premiums, subsidized by their respective Funds (the entire annuitant premium for Police and Fire annuitants, the \$25 or higher subsidy paid at any time for Municipal or Laborer annuitants) without reduction.

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

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

COUNT III
Common Law Estoppel

201. Participants re-allege paragraphs 1 through 200.

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

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

204. The Funds are estopped from refusing to provide coverage for all of their annuitants and subsidizing those for whom they are statutorily entitled.

COUNT IV
U.S.C. § 1983
For Record Purposes Only-No Answer is Required.

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

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

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

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

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

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

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

COUNT V
Impairment of Contract – Federal and State Constitution
No Answer is Required with regard to Federal Constitution Contract Clause Violation

212. Plaintiffs re-allege the foregoing paragraphs.

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

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

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

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

"No State shall... pass any... Law impairing the Obligation of
Contracts...."

(United States Constitution, Art. I, Section 10).

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

218. Korshak and Window Retirees. With respect to the class members who retired before August 23, 1989, the statutory recharacterization of group health benefits for Fund

participants, and each healthcare premium charged in excess of the fixed-for-life subsidized rate alleged herein are thus impairments of a contractual right in violation of the United States Constitution.

COUNT VI
Denial of Equal Protection
Illegal Discrimination between 8/23/1989 “Retirees” and those “Hired” By the Same Date

219. Plaintiffs re-allege the foregoing paragraphs.

220. The City’s differing treatment of *pre-8/23/1989 retirees* (rightfully recognizing their lifetime entitlement) from pre-8/23/1989 Fund participants (i.e., denying protection for participants based on their pre-8/23/1989 hiring by the City), constitutes , since entitlement to protection of benefits of participation is based on *hire date, not date of retirement*, the City’s denial of equal protection to pre-8/23/1989 *hirees* is a denial of the Illinois Constitution’s Article I, §2 Equal Protection Clause:

Section 2. Due Process and Equal Protection.

No person shall be deprived of life, liberty or property without due process of law nor **be denied the equal protection of the laws.**

COUNT VII
Invalid Special or Local Legislation.

221. Plaintiffs re-allege the foregoing paragraphs.

222. 1970 Illinois Constitution Article IV, Section 13 prohibits special or local legislation:

Section 13. Special Legislation.

The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

223. The provisions of P.A. 86-273, 90-32, 93-42, and 98-43, insofar as they purport to condition healthcare entitlement in a Fund for a City of over 500,000 to annuitants who participate in any of the Funds “by reason of” or “as a direct result of” “employment by the City of Chicago”, are invalid special or local legislation, triggering the reinstatement of their predecessor valid provisions.

COUNT VIII

**Direct Claim Against Funds their trustees to provide coverage and subsidies
And
Derivative Claim for Funds to enforce contract for Coverage by City as Insurer.**

224. Plaintiffs’ claim against the Funds and their trustees, to provide their statute-required coverage and subsidies, and as a derivative Count to, to enforce their contract with the City as insurer, and pursue the statutory required tax levy against the City.

224a. The Funds have, since at least 2017, disavowed their statutory obligations to provide healthcare coverage for their annuitants. Demand on them to do so would be futile.

225. On June 6, 2018 the Plaintiff demanded each Funds’ action to pursue the City to provide a subsidy and demanded:

Participant Demand for Action: Anticipating that you have not received the above requested tax levy for part or all of the period (1983 to the present), this is also a participant demand that the Fund and its Trustees pursue the City for the amount of the subsidy for each year for which the Fund has not received it.

Please advise us immediately if you decide that the Fund does not intend to pursue the City for these amounts. Regardless, your failing to respond within thirty days will be regarded as rejecting our demand. **Exhibit 30**, June 6, 2018 Demand Letter to Funds’ Trustees.

226. To date, the Funds have failed to respond to this demand or pursue the statutory

required tax levy as upheld by the Appellate Court's Mandate.

227. Additionally, the Funds have omitted their obligated Payment of the Subsidy to Annuitants, since **December 31**, 2016.

COUNTS IX-XII
Plaintiffs Adopt and Allege and Incorporate by Reference the Funds Allegations
Against the City as Stated in Exhibit 3

228. Plaintiffs, as intended beneficiaries of their Funds, adopt, and incorporate by reference, the four Funds' trustees' allegations and claims against the City as asserted in their *Korshak* complaints against the City that are attached to Complaint as **Exhibits 3** for:

- i. Term and Condition of Employment
- ii. Implied Contract;
- iii. Breach of Contract;

CONCLUSION

224. For the above reasons, participants in each class are protected by the Illinois Constitution, principles of contract and estoppel, are entitled to judgment declaring their rights to a lifetime healthcare coverage under either (a) the best terms in effect during their participation in one of the City's four Annuity and Benefit Plans against both the City of Chicago and the Trustees of their respective Annuity and Benefit Funds or alternatively, (b) the specific statutory obligations of each Fund to provide healthcare coverage for their annuitants, and to subsidize that coverage per its applicable statute.

PRAYER FOR RELIEF

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

- A. Certify the case as a class action for Participants in the City of Chicago Police Fire, Municipal and Laborers Annuity and Benefit Funds, who began their participation or became a “Future Annuitant” (hire date) by June 30, 2013, or July 31, 2003, with the following proposed subclasses:
 - i. Class 1-Korshak subclass-12/31/1987 annuitant participants,
 - ii. Class 2-Window subclass-retired Post-Korshak, but pre-8/23/1989,
 - iii. Class 3-Pre-8/23/1989 Hirees,
 - iv. SubClass 3A- Pre-4/1/1986 Hirees;
 - v. Class 4-Participants–First hired date after 8/23/1989;

Or alternative Class–Participants hired by July 31, 2003.

all represented by undersigned Counsel;
- B. Declare the pre 8/23,1989 retiree participants’ entitlement to resumption of the fixed-rate subsidized \$55/\$21 monthly premium retiree healthcare plan, fully subsidized by the Funds;
- C. Declare that PA 86-273 and PA 90-32 are (i) invalid to the extent the statutes purport to either create a class of non-protected benefits of membership or (ii) invalid as applied to the class to convert existing protected benefits into non-protected benefits;
- D. Declare that the 1989 and later statutory annuitant healthcare statutory amendments are invalid, for (i) unconstitutionally stripping the benefits of the protections of Article XIII, Section 5, (ii) invalidly diminishing their benefits by their time limitations, and (iii) invalidly limiting their benefits to persons who are annuitants “by reason of employment by the City of Chicago”.
- E. Issue a preliminary, and eventually a permanent injunction prohibiting the City and Funds from reducing the group health benefits provided to class members from the level any of them have been provided as a participant, from when plaintiffs and the class members began their participation in the Plan to the present;

- F. Issue a preliminary and permanent injunction ordering the City and the Funds to bring current the statutory subsidies for all participants, from 1/1/2017 to the present, and continue them for all class members for their lifetimes.
- G. Declare the Funds' statutory obligations to "provide" or "approve" healthcare plans for their annuitants;
- H. Award Plaintiffs' Attorneys fees and costs, in appropriate amounts from any recovery for and against defendants herein (*See Exhibit 29*, Attorneys' Lien Assertion and receipts).
- I. Any and all other relief the Court deems just and proper.

Dated: January 28, 2019

By: /s/ Clinton A. Krislov
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- EXHIBIT 8 A-E Progression of Pension Code Group Healthcare Statutes
- EXHIBIT 9 Testimony by Ronald Picur
- EXHIBIT 10 Korshak December 15, 1989 settlement between City and Funds
- EXHIBIT 11 Korshak Memorandum approving City-Funds Settlement over objection of participants
- EXHIBIT 12 Illinois Appellate Court June 15, 2000 order restoring case to active calendar
- EXHIBIT 13 Korshak 2003 Settlement
- EXHIBIT 13A Korshak July 2, 2003 Opinion and Memorandum of Law - Approval Class Action Settlement
- EXHIBIT 14 Agreed Audit and Reconciliation Agreement order
- EXHIBIT 15 Korshak Pre-Retirement Seminars 1987
- EXHIBIT 16 Example of City Appropriation for Annuitant Healthcare
- EXHIBIT 17 Barbara Malloy testimony
- EXHIBIT 18 McDonough Declaration and Testimony
- EXHIBIT 19 Kordeck Declaration and Testimony
- EXHIBIT 20 December 3, 2015 Memorandum and Opinion by Hon. Neil H. Cohen
- EXHIBIT 21 May 13, 2013 City Letter regarding plan to phase out annuitant healthcare coverage
- EXHIBIT 22 Transcript of December 23, 2015 Hearing on Plaintiffs' Motion for Preliminary Injunction
- EXHIBIT 23 List of Named Plaintiffs
- EXHIBIT 24 Minutes of Proceedings, PABF, June 27, 1985

- EXHIBIT 25 Comparison of City Appropriations and Expenditures for Annuitant
Healthcare 2012 -2016
- EXHIBIT 26 Chart of City Rate Changes for 2016
- EXHIBIT 27 *City v. Korshak* Trial Transcript (“ROP” Citations)
- EXHIBIT 28 MEABF Notices to Annuitants of Healthcare Benefits to Non-Medicare
Annuitants
- EXHIBIT 29 Attorneys Lien Assertion and Receipts
- EXHIBIT 30 Funds’ Responses to Plaintiffs’ Counsel’s June 6, 2018 FOIA Requests