EXHIBIT 11

original

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

CITY OF CHICAGO, a municipal corporation, Plaintiff-Counterdefendant, vs. MARSHALL KORSHAK, et al. Defendant-Counterplaintiff.	)	No. 87 CH 10134
MARTIN RYAN, WALTER RUCHINSKI, BERNARD McKAY, JOSEPH COGLIANESE, LOUIS EISEN, BERNARD HOGAN, PATRICIA DARCY, SYLVIA WALSH and KATHERINE DOYLE, Intervenors.	)	

OPINION AND MEMORANDUM OF LAW

On November 27, 1989, this Court presided over an evidentiary hearing to consider the proposed settlement between the City of Chicago, the four Pension Funds, and the annuitants of the Funds who participate in the City of Chicago Annuitant Health Benefits Plan.

A brief history of this litigation is warranted in light of the fact that there has been a full two years since this litigation commenced, and 1 1/2 years since this Court presided over a trial of the Funds' Counterclaims.

In October of 1987, the City of Chicago ("City") advised the four Pension Funds that it would no longer include the City's retired employees in the City's health care plan or pay for the

medical services rendered to those persons. The City then filed a complaint in this Court, naming as defendants the trustees of the four Funds, in which it sought to end the annuitants' health care coverage and recover approximately $58,000,000.00 it had spent on annuitants' health care benefits since 1980. In response to the complaint, the Funds argued that they were not responsible for the past or future costs of annuitant health care, beyond the subsidies provided for in the Illinois Pension Code, because they had no authority to do so and were legally required to limit use of the assets to meet pension obligations.

The Funds each filed Counterclaims on behalf of the annuitants to attempt to prevent the City from terminating the annuitants' coverage under the City's health care plan and to force the City to continue paying for most of the cost of the coverage. The City agreed to continue annuitants health care benefits while the litigation was pending.

This Court eventually dismissed the City's complaint with prejudice, finding that the Funds had no obligation to reimburse the City for the health care benefits received by the annuitants since 1980. The claims asserted in the Funds' Counterclaims, were the subject of a bench trial before this Court in June of 1988. However, before the Court could reach its decision at the conclusion of the trial, the City and the Funds agreed to sponsor legislation amending the various pension codes and to enter into a settlement of the Court action consistent with the legislation.

TERMS OF THE SETTLEMENT

The settlement provides in general terms, that the City will pay at least 50% of the participating annuitants' health care costs through the end of 1997, the Funds will increase the subsidies, and the annuitants will pay any balance due after the funds subsidies are deducted. (Nothing in the agreement or the statute precludes the City from paying more, as it has in the past.) Because the increase in Funds' subsidies could not be effective until the Pension Code was amended to permit them to do so, the proposed settlement was essentially put on hold until the Legislature, in June of 1989, passed amendatory legislation to implement this term of the settlement. The legislation (Public Act 86-273) was signed by the Governor August 23, 1989.

The basic terms of the settlement are contained in the new legislation. They are as follows: Commencing with the date the increased annuitant payments take effect, the City is required by state law to pay at least 50% of the cost of the health care claims of the annuitants who participate in the City's health care plan. For the period January 1, 1988 until December 31, 1992, the four Funds will pay the City, on behalf of the annuitants who participate in the City plan, up to $65,00 per month for each non-Medicare annuitant and up to $35.00 per month for each Medicare-annuitant. From January 1, 1993 until December 31, 1997, the Funds' subsidies will increase by $10.00 per annuitant per month. For the first time, the widows of annuitants will receive the same subsidies as the annuitants themselves.

The legislation further provides that the City's obligations to continue coverage and to pay at least 50% of the cost of coverage will terminate at the end of 1997, but that this provision "does not affect other obligations that may be imposed by law;" that the group coverage plans described in the statute "are not and shall not be construed to be pension or retirement benefits for the purposes of" the Illinois Constitution of 1970; that the cost of claims of the annuitants will be estimated by the City on the basis of a written determination by an independent actuary to be appointed and paid by the City and the four Funds; and that the annuitant may elect to terminate coverage in a plan at any time.

In addition to the terms contained in the legislation, counsel for the Funds and the Corporation Counsel for the City committed to a letter agreement which contained other terms and conditions with the proposed settlement. In pertinent part, those additional terms and conditions are as follows:

> The City is obligated to give notice of proposed increases in rates at least 90 days prior to the effective date of such changes.
>
> The Funds have the right to retain a separate actuary to monitor the work of the independent actuary and to consult with the independent actuary concerning the payments to be charged annuitants.
>
> The City has agreed to pay all of the administrative costs proposed by Banker's Life and Home Pharmacy and 50% of the claims billed by Blue Cross (at a discounted rate) to the City.
>
> If the city offers more than one health benefits plan, an annuitant may elect to convert coverage from one City plan to

> another, during times designated by the City, which shall occur at least annually. There will be no limit on the number of times an annuitant may convert coverage. If an annuitant leaves or fails to enroll in the City plan, he or she may later enroll in a City plan under the same terms and conditions which existed prior to implementation of this agreement.

The Court had the benefit of hearing the testimony of witnesses opposing the proposed settlement hereinabove set out and was further aided by the post-trial memorandum filed by the City and the Funds, the Funds' memorandum was a joint memorandum;a memorandum filed by the Participant Class opposing the proposed settlement. The Participant Class also renewed their motion for summary judgment, and their motion for permanent injunction against the City's changing the terms of health care benefits provided to existing annuitant participants in the City's annuitant health care plan.

Further the Court reviewed all of its original notes and the testimony taken during the bench trial conducted by this Court in June of 1988.

The Participant Class in opposing the proposed settlement states that the settlement is unfair because:

> A: The participants are entitled to the status quo coverage under principles of contract, detrimental reliance, promissory estoppel and the Illinois Constitution.
>
> B: The participants are being denied, their coverage in retaliation for the Courts stopping the City's illegal use of Pension Fund tax levies.
>
> C: The settlement subjects the class to extreme hardship while it relieves the City of costs which are a minimal portion its annual budget (less than 1 or 1/2%).

They contend that the proponents of the settlement fail to meet their burden of proof to show that the settlement is fair; that the facts show that the settlement is unfair and should be rejected; that the annuitants relied upon the City's promise and the City should be estopped from changing the terms of coverage; that the annuitants and their families will be unable to obtain coverage elsewhere; that the City's whole basis for this litigation is bad faith; and that the annuitants presented a strong likelihood of success on the merits.

The Court has taken into consideration all of the testimony of the opponents and has reviewed very carefully the brief in opposition to the proposed settlement.

The Court finds the brief filed by the Pension Funds to be extremely persuasive and most exact in its factual presentation.

The procedural and substantive standards governing class action settlement hearings are well established. This Court must evaluate the fairness of the settlement in light of the benefits provided thereunder and the risks of further litigation. In addition, the Court should satisfy itself that the settlement was reached after arm's length negotiations between counsel authorized to act on behalf of the respective parties and that the Class was adequately notified of the proposed settlement and the opportunity to object. People ex rel. Wilcox v. Equity Funding Life Ins. Co., 61 Ill.2d 303, 335 N.E.2d 448 (1975); Gowdey v. Commonwealth Edison Co., 37 Ill.App.3d 140, 345 N.E.2d 785 (1st Dist. 1976). See also, City of Detroit v. Grinnell

Corp., 495 F.2d 448 (2d Cir. 1974); Weinberger v. Kendrick,, 698 F.2d 61 (2d Cir. 1982), cert. denied, 464 U.S. 818 (1983).

Only a small percentage of class members have indicated their objection to the agreement. By their silence, the vast majority of the class members have indicated their approval of the terms of the settlement. The settlement clearly satisfies all prerequisites for judicial approval, and is in the best interests of class members. The settlement should be approved by this Court.

GENERAL CONSIDERATIONS AND BACKGROUND

As a general rule, the law favors and encourages the settlement of class action suits. Weinberger v. Kendrick, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied, 464 U.S. 818 (1983); West Virginia v. Chas. Pfizer & Co., 440 F.2d 1079, 1085 (2d Cir.), cert. denied, 404 U.S. 871 (1971). Before approving a class action settlement, the Court must find the proposal to be "fair, adequate and reasonable." People ex rel. Wilcox v. Equity Funding Life Ins. Co., 61 Ill.2d 303, 335 N.E.2d 448, 456 (1975); Weinberger, supra, 698 F.2d at 73. The assessment of those factors rests within the discretion of the trial court. Gowdey v. Commonwealth Edison Co., 37 Ill.App.3d 140, 345 N.E.2d 785, 793 (1st Dist. 1976). This is because the trial judge has been exposed to the "strategies, positions and proofs" of the litigation and is well "aware of the expense and possible legal bars to success." Ace Heating & Plumbing Co. v. Crane Co., 453 F.2d 30, 34 (3d Cir. 1971). A trial court "should not disapprove a settlement nor should its approval be overturned on review

unless, taken as a whole, the settlement appears on its face so unfair as to preclude judicial approval." Gowdey, supra, 345 N.E.2d at 793.

The determination of whether a settlement is fair, reasonable and adequate requires the examination of an amalgam of factors, the principle factor is a balancing or comparison of "the terms of the compromise with the likely rewards of litigation." Wilcox, supra, 335 N.E.2d at 456, quoting Protective Committee for Independent Stockholders of TMT Trailer Ferry Inc. v. Anderson, 380 U.S. 414, 424-25 (1968).

Criteria for evaluating the fairness of a proposed class action settlement were set forth by the Second Circuit in City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974). Although these criteria are obviously not binding on this Court, they provide a convenient framework within which to examine the relevant factors. They are:

(1) the complexity, expense and likely duration of the litigation;

(2) the reaction of the class to the settlement;

(3) the stage of the proceedings and the amount of discovery completed;

(4) the risks of establishing liability;

(5) the risks of establishing damages;

(6) the risks of maintaining the class action through the trial;

(7) the ability of the defendants to withstand a greater judgment;

(8) the range of reasonableness of the settlement fund in light of the possible recovery; and

(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the atendant risks of litigation.

Grinnell, 495 F.2d at 463 (citations omitted).

In assessing the fairness of a settlement under the Grinnell criteria, a court's function is not "to reopen and enter into negotiations with the litigants in the hope of improving the terms of the settlement." Levin v. Mississippi River Corp., 59 F.R.D. 353, 361 (S.D.N.Y.), aff'd., 486 F.2d 1398 (2d Cir. 1973), cert. denied, 414 U.S. 1112 (1974). Rather, the court should examine the settlement terms, the process by which the settlement was reached and the judgment of counsel to determine whether the settlement falls within the broad range which may be categorized as "reasonable". Weinberger, supra; Grinnell, supra; Cannon v. Texas Gulf Sulphur Co, 55 F.R.D. 309 (S.D.N.Y. 1971). Each of these factors will be examined in the context of the instant settlement.

1. Complexity, Expense and Duration of Litigation

There can be little argument with the fact that this case presents the kind of dispute where a fair and reasonable settlement would be beneficial to all parties concerned and to the public interest, and as a consequence the policy of the law to encourage settlements should be extended to it.

Approval of the agreement will obligate the City to pay at least 50% of the total cost of the annuitants' health benefits until December 31, 1997. As noted above, nothing precludes the City from paying more, as it has in the past. If the agreement is not approved, the litigation will return to the posture it was

in in June of 1988, when the parties reached a settlement in principle. Post-trial briefs will be submitted and this Court will issue its judgment on the merits of the Funds' Counterclaims. Appeals are sure to follow, both from dismissal of the City's Complaint and from this Court's judgment as to the Counterclaims. During the lengthy appeal process, the annuitants' health benefits will continue to be in limbo -- both as to coverage and who pays the cost of coverage. The agreement is clearly in the best interest of both the class members and the public.

2. Reaction of the Class to the Settlement

In cases of this nature, which are highly visible and where there are numerous members of the class, objections are to be expected. Even significant oppositition to the settlements from class members "cannot serve as an automatic bar to a settlement that a (trial) judge, after weighing all the strengths and weaknesses of a case and the risks of litigation, determines to be manifestly reasonable." TBK Partners, L.T.D. v. Western Union Corp., 675 F.2d 456, 462 (2d Cir. 1982). The court must independently assess the adequacy of the settlement, even in the absence of any objections. In re Traffic Executive Association - Eastern Railroads, 627 F.2d 631, 634 (2d Cir. 1980).

When objections are presented, however, they must be weighed according to their substantive merit.

The Notice of Class Certification, which was sent to approximately 16,000 persons in early November, 1989, informed the class members that any notice of intent to appear at the fairness hearing had to be filed in writing with the Court by November 21, 1989, and that copies of such notices should be mailed to one of the attorneys for the parties. Counsel for the Funds were made aware of only one notice of intent to appear at the November 27th hearing. Counsel have received a number of letters indicating annuitants' approval of the terms of the settlement and a number of letters indicating opposition to it. Counsel for the opponents presented in excess of 500 preprinted form letters opposing the proposed settlement. The Court has considered these objections in making its decision. Although a number of class members apparently oppose the settlement because it will result in some paying increased premiums for coverage, in the past these rates have reflected the political processes and nothing in the agreement prevents the City from paying much more than 50%.

In addition to the notice of class certification, which was mailed to all class members in early November, the annuintants have also received a letter from the City advising them of the cost to them of continued coverage in the City health benefits plan, assuming this proposed settlement is approved. Not surprisingly, many annuitants have indicated these new rates are too high or that they cannot afford them.

Since 1982, when the last rate increase occurred, most retired employees of the City have been paying nothing for their health benefits. The $55 (for non-Medicare) or $21 (for Medicare-eligible annuintants) contributed by the Police and Fire Funds, was equal to the amount of "premium" charged by the City. By contrast, under the 1990 rates just announced by the City, a singly annuitant not covered by Medicare will be paying $105 per month. Although this is a substantial increase, the important fact is that the actual cost of annuitant's coverage is $340. If the City were successful in this litigation, these annuitants could required to pay $285 per month (after deducting the Funds' $55 contribution) or $3,420 per year out of their own pockets. Annuitants in other rate classifications could required to pay even more to maintain coverage.

The raison d'etre of a settlement is to eliminate the risk of not prevailing on the merits. The Fund submit that under the circumstances presented here, the proposed settlement, which obligates the City to continue coverage and to pay at least 50% of the annuitants' health care costs until the end of 1997, is in the best interests of all parties.

The substantial benefits conferred upon the annuitants under the proposed settlement must be viewed in light of the risk that the annuitants would not prevail on the merits of the litigation. The Funds submit that this "balancing test" compels the conclusion that the proposed settlement is in the best interests of all parties and should be approved by this Court.

3. The Stage of Proceeding and Discovery

The purpose of considering the "state of proceeding and the discovery taken" is to ensure that the class members have had access to sufficient material to evaluate their case and to assess the adequacy of the settlement proposal in light of an informed judgment of the strengths and weaknesses of their position.

The proposed settlement here was reached after discovery was completed and after a full trial on the merits of the Funds' Counterclaims.

This case has thus advanced to the eve of a judgment on the merits, in contrast to most other cases where settlements have been approved. Here, this Court has had the benefit of presiding over a full trial on the merits of the claims raised by the Funds on behalf of the annuitant-class members and is thus uniquely qualified to evaluate the reasonableness of the settlement.

4-5. The Risks of Establishing Liability and Damages

In assessing the fairness, reasonableness and adequacy of the settlement, the Court must balance the amount of the proposed settlement and the immediacy of a prospective recovery for class members against the continuing risks of litigation. The risks in this case involve primarily the establishment of the City's liability for the cost of its retired employees' health benefits. This proposed settlement eliminates the risk that the Funds and their annuitants will not be successful in establishing that liability. A secondary benefit of the settlement is elimination

of the delay and expense which will be incurred if the proposed agreement is not approved. For the past two full years, the annuitants have been aware of the City's position that it was legally entitled to terminate both the annuitants' participation in the City's health benefits plan and its payment of any of the bills for those benefits. Bringing an end to this uncertainty is another benefit of the proposed agreement.

6. The Risks of Maintaining the Class Action Through the Trial

Because this is not the typical class action, this factor is generally irrelevant.

7. The Ability of the Defendant to Withstand a Greater Judgment

This factor requires the Court to consider whether the City would be financially able to satisfy a judgment in excess of the settlement amount. This factor is not particularly relevant in the instant cause because there is no "settlement amount" as such. Nonetheless, it is relevant to point out that this settlement will cost the City an estimated $261 million (actual cost of $25.3 million in 1988, $35.7 million in 1989, and another eight years at an estimated minimum of $25 million per year).

8-9. The Range of Reasonableness of the Settlement in Light of the Possible Recovery and All the Attendant Risks of Litigation

The determination of a "reasonable" settlement is not susceptible of a mathematical equation yielding a particularized sum. Rather, as Judge Friendly has explained, "(i)n any case, there is a range of reasonableness with respect to a settlement." Newman v. Stein, 464 F.2d 689, 693 (2d Cir.), cert. denied, 409 U.S. 1039 (1972). See denied, Zerkle v. Clevand-Cliffs Iron, Inc., 52 F.R.D. 15, 159 (S.D.N.Y. 1871); Glicken v. Bradford, 35 F.R.D. 144, 152 (S.D.N.Y. 1964).

The Second Circuit has held that a settlement can be approved even though the benefits amount to a small percentage of the recovery sought. City of Detroit v. Grinnell Corp.,495 F.2d 448, 455 (2d Cir. 1974): "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." In a footnote, the Court buttressed its conclusion: "In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundreth or even a thousandth part of a single percent of the potential recovery." Id. at 455 n.2.

Here, by contrast to the usual class action settlement, the Funds and annuitants have not sued for money damages and are not settling for some percentage of their actual damages. Instead, the proposed agreement eliminates the risk that the annuitants would have to pay the entire bill for their health benefits and the further and more serious risk that they may not be able to obtain coverage at any price. The agreement eliminates these risks by committing the City to pay at least 50% of the cost of

the annuitants' health benefits through the end of 1997. At the conclusion of that period, if no "permanent solution" has been found, the parties will return to the legal postures they were in in June of 1988, before this compromise was negotiated.

On balance, no one can reasonably state that the porposed settlement is anything but fair, adequate and reasonable. It is in the best interests of the class that the settlement receive this Court's final approval.

The Court finds that the settlement was achieved only after arduous arm's length negotiations.

To avoid the burden of unduly extended inquiry into the claims asserted and benefits resulting from the settlement, the federal courts often have focused on the "negotiating process by which the settlement was reached...." Weinberger v. Kendrick, 698 F.2d 61, 74 (2d Cir. 1982), cert. denied, 464 U.S. 818 (1983). The courts have thus insisted that a settlement be the result of "arm's length negotiations" effected by counsel possessed of the "experience and ability...necessary to effective representation of the class' interest." Weinberger, supra, 698 F.2d at 74 (citation omitted).

In evaluating the negotiations, the trial court is permitted to rely on the judgment of counsel. Weinberger, supra, 698 F.2d at 74; West Virginia v. Chas. Pfizer & Co., 314 F.Supp. 710, 741 (S.D.N.Y. 1970), aff'd, 440 F.2d 1079 (2d Cir.), cert. denied, 404 U.S. 871 (1971). In fact, the opinion of counsel is entitled to considerable weight by the court. Cannon v. Texas Gulf Sulphur Co., 55 F.R.D. 308 (S.D.N.Y. 1971); Josephson v.

Campbell,. (1967-69 Tr. Binder) Fed. Sec. L. Rep (CCH), 92, 347 at p. 96, 658 (S.D.N.Y. 1969). In Lyons v. Marrud, (1972 Transfer Binder) Fed. Sec. L. Rep. (CCH) 93, 525 (S.D.N.Y. 1972), the court noted that:

> Experienced and competent counsel have assessed these problems and the probability of success on the merits. They have concluded that compromise is well advised and necessary. The parties' decision regarding the respective merits of their positions has an important bearing on this case.

Id. at p. 92, 520,. Indeed, in the absence of fraud, collusion or the like, the Court should be hesitant to substitute its own judgment for that of counsel. Weinberger, supra, 698 F.2d AT 74.

This court has had the opportunity to acquaint itself fully with the facts and law of this case and has been apprised of the procedural aspects of this ligitation to date. Similarly, the Court is aware that this has been a hard-fought case and that competent and experienced counsel represent both the City and the Funds, the parties who negotiated the settlement.

This is an unusual case in a number of respects, including the fact that the Funds, who were permitted by this Court to act on behalf of the annuitants throughout the discovery and trial phases of this litigation, negotiated and support the proposed settlement. By contrast, counsel for the class, which was certified on the eve of the settlement hearing, opposes the settlement on various grounds. Consequently, this Court must consider the City's and Funds' reasons for supporting the settlement and class counsel's reasons for opposing it.

There can be no hint of collusion in conjunction with either the vigorously contested litigation or the hard bargaining that preceded the agreement. Many of the details in the negotiations surrounding the settlement were hotly disputed. Thus, the settlement was produced by "arm's length" bargaining after energetically contested litigation and in the context of numerous contested issues of fact and law, many of which have not yet been decided.

The Court finds that the notice given the annuitants meets the requirements of due process and Section 2-806 of the Illinois Code of Civil Procedure.

Each of the approximately 16,000 annuitants and widows of annuitants who participate in the City health benefits plan was given notice of the proposed settlement and fairness hearing, by first class mail, in accordance with this Court's Order of October 30, 1989. This notice clearly meets the due process requirements of Section 2-806 of the Illinois code of Civil Procedure, which calls for such "notice as the Court may direct."

The notice informed the class members of their right to appear at the fairness hearing and to enter appearances through their own counsel, if desired.

The notice fully and explicitly explained the litigation, the proposed settlement and the rights and options of the class members. The notice complies with the requirements of due process and is similar to the procedures approved in other cases. See, e.g., Weinberger, supra, 698 F. 2d at 71-72; Grunin v.

International House of Pancakes, 513 F.2d 114, 121 (8th Cir.), cert. denied, 423 U.S. 864 (1975).

IV.

THE SETTLEMENT HEARING

The purpose of a settlement hearing is to enable the trial court to assess the adequacy of the proposed settlement. As expressed by one Federal appeals court: "While we do not expect the district judges to convert settlement hearings into mini-trials on the merits, we do expect them to explore the facts sufficiently to make intelligent determinations of adequacy and fairness." Malchman v. Davis, 706 F.2D 426, 433 (2d Cir. 1983). And, as the court stated in Newman v. Stein, 464 F. 2d 689, 692 (2d Cir.), cert. denied, 409 U.S. 1039 (1972), "the court must not turn the settlement hearing into a trial or a rehearsal of the trial."

At the hearing, Donald Franklin, Deputy Comptroller, was called by the City as a witness. Mr. Franklin testified that one of his duties is to supervise the City's insurance and benefits program. Franklin described what has happened with the City's expenditures for annuitant health care over the past decade, during which period the total cost of annuitant health care has skyrocketed from $6.3 million in 1980 to an estimated $46.6 million in 1989. In 1980, the City was spending $1.9 Million for annuitant health care and in 1989 its projected expenditure for annuitant health care is $35.7 million, an increase of 1800%.

Stated in percentages, in 1980 the City was paying 31% of the total while the annuitants were paying 69%. By 1989, these percentages had reversed, with the City paying 77.5% of the total cost while the Funds paid 9% and the annuitants 13.5%.

Franklin also explained that almost 36% of the affected annuitants will pay nothing for their coverage in 1990 because they are medicare eligible and the $70 cost is covered by the Funds' $35 subsidy and the City's payment of the other 50% of the cost. Another 19% of the annuitants (two Medicare-eligible individuals) will pay only $14 per month more than at present. On cross examination, Franklin acknowledged that the rates for each category were not required to be set in this fashion. In fact, the agreeement gives the City discretion to categorize the annuitants in any logical fashion and to allocate the costs thereof in any reasonable fashion.

Ten annuitant witnesses testified, explaining their opposition to the settlement. Eight of the ten witnesses wre retired policemen (or their widows). One Municipal Fund annuittant and one retired laborer also testified. The Court listened attentively, with compassion and understood their objections.

A number of the police annuitants testified that they had attended a pre-retirement seminar at which they had been advised that their health care would be paid for by the City "for life." Based on these representations, which some of the witnesses believed created a contractual obligation on the part of the City, the annuitants testified that the proposed settlement is

unfair. This Court must consider the merits of this alleged contractual obligation and the annuitants' likelihood of establishing the City's liability on this basis if the case were to be adjuciated to a final judgment.

A few of the witnesses testified to their belief that under the proposed agreement they would have no coverage at all after 1997. As noted above, this is simply incorrect. The City and the Funds have agreed that at the conclusion of the 10 years covered by the settlement the parties will return to the same positions they were in before the proposed settlement was negotiated. In the words of the stipulation between the City and the Funds, which was read into the record before this Court on November 27, 1989:

> On January 1, 1998, the parties will be in the same legal positions they were in as of June of 1988. To the extent the City had any obligation in June of 1988, they will have that same obligation or obligations on January 1, 1998.

Consequently, the annuitants have not "given up" anything through this settlement. (Other than the claimed right to have the City pay more than 50% of the costs between March of 1990 and December of 1997.) On January 1, 1998, if some "permanent solution" has not been achieved, the annuitants will be permitted to reargue

the claims which were asserted in the Funds' Counterclaims as well as the Intervenors' initial pleading.

This confusion as to what will happen after 1997 was reflected as well in the annuitants' general lack of knowledge as to the underlying litigation. For example, one annuitant testified that he was unaware that in 1987 the City announced it was going to drop all annuitants from the health care plan and that he was generally unfamiliar with the terms of the settlement or the underlying litigation. A second annuitant similarly did not recall that in June of 1988 the City took the position that it did not have to pay anything for annuitant health care. Another annuitant testified that he did not know what happens if the Court rejects the settlement and stated it would be "financial ruin" for him if the annuitants lost the case on the merits. In evaluating the opinions of such individuals as to the fairness of the settlement, this Court should take into consideration their misunderstanding of the complexity of the underlying litigation and the legal issues involved therein.

Finally, most ot the annuitant witnesses testified that the proposed settlement was unfair because it simply cost too much. The Funds and the Court are sympathetic with the plight of annuitants who will find it a real hardship to pay the increased rates which have been set by the City. Nonetheless, the dollars involved are only peripherally relevant to this Court's determination of the fairness of the settlement. The major premise of the settlement is that the City will pay at least 50% of the cost of the annuitants' health care with the Funds'

subsidies defraying a portion of the annuitants' share of the cost. There is no real dispute as to the amount of the actual cost of annuitant health care at the present time; the issue instead is who pays for it and whether the 50/50 sharing arrangement set forth in the proposed settlement is in the best interests of the annuitants generally. The Funds believe that only one conclusion can be drawn, and the Court agrees: In light of the risk that the City might prevail in its position that it has no legal obligation to provide or pay for annuitant health care, this proposed settlement is eminently fair and reasonable and should be approved by this Court.

CONCLUSION

AND

ORDER

The Court taking all of the evidence in its totality and having reviewed all of the briefs finds that the proposed settlement is clearly in the interest of the Class and the Parties and that all criteria covering the approval of class action settlements have been satisfied.

Further, the Court having found the proposed settlement to be fair, it need not address the Participant Class' motion for summary judgment and its motion for a permanent injunction.

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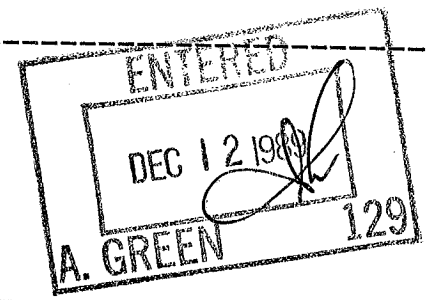

JUDGE