

EXHIBIT 22

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

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

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

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THE COURT: Well, good morning. Merry
Christmas to everyone. Happy New Year. This is
Underwood versus the City of Chicago.
Will the attorneys for the parties
please stand and acknowledge themselves for the
record.
MR. PRENDERGAST: Good morning, Your
Honor. Richard Prendergast on behalf of the City.
MR. LAYDEN: Mike Layden on behalf of
the City.
MR. BURKE: Ed Burke on behalf of the
Fire Fund and the Municipal Fund.
THE COURT: Mr. Burke.
MR. KENNEDY: John Kennedy with Cary
Donham on behalf of the Laborer's Fund.
THE COURT: Hi. How are you?
MR. KUGLER: David Kugler.
THE COURT: I see you. But for the
record, go ahead, David. Announce yourself.
MR. KUGLER: For the Police Pension
Fund, David Kugler.
MS. NABER: Jennifer Naber for the
City of Chicago.
MR. KRISLOV: Clint Krislov for the

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1 plaintiffs, many of whom are here.

2 MR. GOLDSTEIN: Ken Goldstein for the
3 plaintiffs.

4 THE COURT: Hi, Ken.

5 All right. Will everyone please be
6 seated.

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

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

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

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

8 MR. BURKE: Yes, sir.

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

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

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

24 MR. KUGLER: No.

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

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

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

8 And, Mr. Kennedy.

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

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

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

21 Mr. Burke?

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

1 litigation.

2 THE COURT: Very good. Mr. Kennedy.

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

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

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

15 Same with you, Mr. Kugler. Yes?

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

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

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

22 THE COURT: Mr. Krislov, yes.

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

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

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

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

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

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

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

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

15 And you may proceed.

16 MR. KRISLOV: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 ALEXANDRA HOLT,

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

21 DIRECT EXAMINATION

22 BY MR. KRISLOV:

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

1 revenue, correct?

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

8 Q Well, let me just read your statement.

9 A Uhm-hmm.

10 Q And the statement says:

11 [AS READ:

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

15 Right?

16 A That's correct.

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

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

22 THE COURT: Two thousand what?

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

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

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

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

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

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

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

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

19 THE COURT: All right. Very good.

20 BY MR. KRISLOV:

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

1 worth of retiree healthcare.

2 BY MR. KRISLOV:

3 Q Approximately how much --

4 A About \$60 million in 2015.

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

6 Does that jibe with your recollection?

7 A It's approximately 60 million, yes.

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

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

13 Q Me too.

14 MR. KRISLOV: May I?

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

18 MR. KRISLOV: Thank you.

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

21 MR. KRISLOV: Will do.

22 BY MR. KRISLOV:

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

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1 THE COURT: Let's go.
2 BY MR. KRISLOV:
3 Q Would you take a look at the chart, and --
4 A Uhm-hmm. Ms. Holt, from now on, we don't
5 take uh-huhs in here because the court reporter can't
6 take that down. It's either yes or no, okay?
7 THE WITNESS: Yes, sir.
8 BY MR. KRISLOV:
9 Q So what I've taken from your budget, annual
10 budget books that are issued by the City, that for --
11 THE COURT: Whoever has a cell phone,
12 turn it off.
13 THE COURT REPORTER: Your Honor, it
14 was my laptop.
15 THE COURT: Oh, then, you're going to
16 have to leave.
17 (Laughter.)
18 BY MR. KRISLOV:
19 Q For 2012 --
20 THE COURT: Before you start reading
21 from a document, you need to get it into the record.
22 MR. KRISLOV: Well, I don't think I
23 need --
24 THE COURT: Well, I'm telling you,

1 THE COURT: I'm not dealing with
2 assumptions in the issuance of an injunction. I'm
3 not dealing with "I believe" or "may." This is not
4 the way we do things under our system of justice.
5 You have to lay a foundation.
6 Let me ask you, Ms. Holt.
7 Do you know if that document in front
8 of you truly and accurately represents the figures it
9 purports to represent in the City's budget for, in
10 this case, per the last question, 2012? Yes or no?
11 THE WITNESS: No. I didn't put it
12 together, so, no, I do not know that.
13 THE COURT: All right. Next question.
14 BY MR. KRISLOV:
15 Q You would agree, though, the City spent --
16 that the City's expenditure in 2012 was about \$99
17 million for retiree healthcare?
18 A I would agree that it was about -- around
19 \$100 million, yes, I would agree with that.
20 Q And for 2013, it was \$102 million, right?
21 A I believe that to be generally correct.
22 Q And for 2014, it was reduced to 80,609,880,
23 and I have the 2015 budget overview which you can
24 refer to, and I think it will corroborate -- I think

despite what you think.
You know, show it to the witness, ask
her if she can identify it and knows what it is, and
accepts it as real and truthful. Otherwise, it's not
coming in.
MR. KRISLOV: Well, the information --
THE COURT: I don't know that. You're
not testifying.
MR. KRISLOV: I'm not testifying.
THE COURT: Ask her questions.
MR. KRISLOV: Yes, I will.
BY MR. KRISLOV:
Q Ms. Holt, would you agree -- you would
agree that the 2012 expenditure for retiree
healthcare was 99,639,866, would you not?
A Yes, I guess -- I would like to caveat
that. This is a chart that you prepared. I assume
you've taken it from the City's budget.
Q Yes.
A I would want to -- assuming that this is
where the information has come from, then the
information in the appropriation ordinance --
THE COURT: Not good enough.
THE WITNESS: -- is correct.

1 you probably know this book better than anybody else
2 in the room.
3 A Yes. Again, speaking in rounded numbers, I
4 do agree that 80 million is correct in terms of our
5 retiree healthcare expenditure in 2014.
6 Q And that would reflect a reduction of
7 21 million, as I calculated from your figures,
8 21,716,545 that the City reduced its expenditure for
9 retiree healthcare for 2014?
10 A Yes. We did reduce our expenditure between
11 '13 and '14 by approximately \$20 million.
12 Q And that was done -- who calculated -- who
13 figured how much to reduce? How did you do that?
14 A It was based on a change in the subsidy
15 level for retirees.
16 MR. PRENDERGAST: Your Honor, let me
17 interpose a general objection here to this line of
18 questioning.
19 The purpose of this hearing is to
20 determine whether or not you should freeze the 2015
21 subsidy levels and keep them for 2016, or allow the
22 2016 reductions to go into effect.
23 The questions he's asking here about
24 2012 and 2013 are not relevant to this proceeding.

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

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

7 THE COURT: Mr. Krislov?

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

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

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

14 THE COURT: Clint.

15 MR. KRISLOV: Your Honor.

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

MR. KRISLOV: I apologize, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

7 MR. KRISLOV: Yes, I have.

8 THE COURT: Yes?

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

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

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

15 THE COURT: I have.

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

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

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

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

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

7 THE COURT: No, it's not.

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

10 THE COURT: No, it's not.

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

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

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

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

20 BY MR. KRISLOV:

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

23 Would that jibe with your
24 recollection?

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

8 THE COURT: How much?

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

13 THE COURT: Understood.

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

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

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

1 A Yes, that jibes with my recollection.

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

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

7 MR. KRISLOV: 2016.

8 THE COURT: For which -- 2016.

9 BY MR. KRISLOV:

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

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

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

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

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

1 retirees.

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

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

15 BY MR. KRISLOV:

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

19 Would that --

20 A That's correct.

21 Q And that was attributed to vacancy
22 eliminations.

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

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

3 Q And how much did that save in dollars?

4 A About \$12 million.

5 Q And then retiree healthcare was 30.1
6 million.

7 That leaves other healthcare savings
8 of how much?

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

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

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

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

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

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

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

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

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

13 THE COURT: So this number just deals
14 with the folks who retired as of August 23rd of
15 1989, correct?

16 THE WITNESS: That's correct.

17 THE COURT: All right. Thank you.

18 BY MR. KRISLOV:

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

21 A I wouldn't know otherwise.

22 Q Okay. In paragraph seven, you say:

23 [AS READ:

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

1 personnel-related costs.]

2 Right?

3 A That's correct.

4 Q And then you say:
5 [CONTINUING:

6 91 percent of the City's total

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

11 Right?

12 A That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 A That's correct. I know that.

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

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

14 Q Yes or no.

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

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

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

23 Again, courtesy.

24 Please finish your answer, Ms. Holt.

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

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

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

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

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

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

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

10 A That's my understanding.

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

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

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

21 MR. KRISLOV: Okay.

22 BY MR. KRISLOV:

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

[AS READ:

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

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

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

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

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

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

If we had left the subsidy where it

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

A The corporate fund is our generating account.

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

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

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

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

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

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

A That's correct.

Q Or is it 1/10 of 1 percent?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Other options that I have, for

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

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

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

THE COURT: Denied.

BY MR. KRISLOV:

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

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

MR. KRISLOV: Okay.

One second, Your Honor.

THE COURT: Sure.

(Brief pause.)

BY MR. KRISLOV:

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

A Uhm-hmm.

Q Right?

A Yes, I did say that.

Q You are a lawyer?

A I am.

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

A I do.

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

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

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

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

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

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

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

BY MR. KRISLOV:

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

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

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

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

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

11 Q The answer that --

12 THE COURT: The answer is yes.

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

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

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

21 But you may rephrase.

22 MR. KRISLOV: Thank you.

23 BY MR. KRISLOV:

24 Q For the 2016 budget, was that reviewed

1 A I am aware of none.

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

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

7 THE WITNESS: It's my understanding --

8 THE COURT: One second.

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

13 THE COURT: That objection is
14 sustained.

15 BY MR. PRENDERGAST:

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

19 Do you have that assumption in mind?

20 A I do have that assumption in mind.

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

again?

1 A Yes, it was reviewed again.

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

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

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

9 THE COURT: Cross.

10 CROSS-EXAMINATION

11 BY MR. PRENDERGAST:

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

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

19 A I am aware that that statute expired.

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

1 just stopping subsidies altogether?

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

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

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

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

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

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

13 A That's correct.

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

16 A That's correct.

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

19 A That's correct.

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

22 A That is correct.

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

THE COURT: Redirect.
REDIRECT EXAMINATION
BY MR. KRISLOV:

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

5 A It's part of our appropriations ordinance.

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

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

10 Q And you don't need another ordinance in
11 order to have the retiree healthcare plan for that
12 year, correct?

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

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

1 A That's correct.

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

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

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

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

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

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

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

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

19 BY MR. KRISLOV:

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

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

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

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1 programs?

2 A I can't speak to that specifically.

3 Q Okay. So if the retirees have inferior
4 plans at the conclusion of your phaseout, that's
5 really not your problem?

6 THE COURT: Would you repeat it so I
7 could hear? I didn't hear the verb.

8 If the retirees what?

9 BY MR. KRISLOV:

10 Q I said if the retirees have, after the City
11 has phased this out, inferior plans to choose from,
12 that's not your problem as far as the City's
13 concerned?

14 MR. PRENDERGAST: Objection. Lack of
15 foundation.

16 THE COURT: No.

17 You can answer the question.

18 THE WITNESS: Well, I don't know if I
19 would say it's not our problem, per se. I mean,
20 obviously, all of these are very difficult decisions
21 that have to be taken seriously.

22 THE COURT: Answer the question, Ms.
23 Holt.

24 THE WITNESS: I'm sorry, Your Honor.

I don't know whether they're going to
have inferior plans or not. I can't speak to that.

THE COURT: That's not the question,
Ms. Holt. The question is --

THE WITNESS: Yes, sir.

THE COURT: -- after you decide to
phase them out, ending in 2017, it's the City's
position that they're on their own and the City's not
concerned about it, correct?

THE WITNESS: That's --

THE COURT: Yes or no.

THE WITNESS: Yes. That is correct.

THE COURT: From a financial point of
view. We're not talking about heart. We all care
about our people, but this is the City speaking.
You're an agent of the City. You just care -- you're
just talking about the financial concern of the City.

And after the total -- the termination
of the phaseout period, the City, from what you're
just saying, is only concerned with the financial
aspect, not the heart aspect, correct?

THE WITNESS: That is correct.

MR. KRISLOV: No further questions,
Your Honor.

1 THE COURT: Any redirect -- recross,
2 I'm sorry.

3 RECCROSS-EXAMINATION

4 BY MR. PRENDERGAST:

5 Q If, Ms. Holt, the City of Chicago had only
6 been concerned about the financial --

7 THE COURT: Say that again. I'm
8 hearing coughing, I didn't hear the question,
9 Richard. I'm sorry.

10 BY MR. PRENDERGAST:

11 Q If the City had only been concerned about
12 the financial aspect of the reduction of healthcare
13 costs, would that have been the only consideration,
14 and not caring one thing about the retirees, as the
15 Court notes, the heart issue, okay, then in mid 2013,
16 purely on a financial basis, what would the City have
17 done?

18 A We would have completely cut the subsidy
19 for all retirees at that point in time.

20 Q Thank you.

21 Second question. Counsel talked to
22 you about various appropriation ordinances.

23 Do you recall his questions?

24 A I do recall his questions.

1 Q Were each of those appropriation ordinances
2 time limited?

3 A Yes. Each appropriation ordinance was time
4 limited to the fiscal year for which it relates.

5 MR. PRENDERGAST: Thank you.

6 MR. KRISLOV: The only question --
7 just one question on the --

8 THE COURT: Proceed.

9 REDIRECT EXAMINATION

10 BY MR. KRISLOV:

11 Q The appropriation ordinance, each year's
12 appropriation ordinance is the amount to be spent for
13 that year, right?

14 A Yes, it's the amount to be spent for that
15 year and that year only.

16 THE COURT: Okay. You're done.

17 MR. KRISLOV: Wait. Let me -- she
18 threw in the "that year only."

19 BY MR. KRISLOV:

20 Q The ordinance doesn't say "in that year
21 only," the ordinance says for that year, right?

22 A No. It is for that year only, both based
23 on the ordinance, as well as state appropriation law,
24 as well as the accounting laws that we have to spend.

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

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

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

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

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

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

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

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

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

23 BY MR. KRISLOV:

24 Q Do you know whether the language of the

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

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

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

8 THE COURT: Let the woman finish her
9 answer, please.

10 MR. KRISLOV: Your Honor.

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

15 Go ahead. Finish, Ms. Holt.

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

BY MR. KRISLOV:

Q I'm with you on that.

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

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

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

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

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

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

24 So tell me about the City's policy

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

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

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

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

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

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

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

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

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

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

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

11 THE COURT: Thank you, Ms. Holt.

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

14 MR. KRISLOV: Yes.

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

19 THE WITNESS: Yes.

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

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

24 BY MR. KRISLOV:

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

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

5 Q And his current residence?

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

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

9 (Laughter.)

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

15 BY MR. KRISLOV:

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

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

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

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

5 A That's correct.

6 Q One has a very high deductible?

7 A Yes, that's correct.

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

10 A That's correct.

11 Q Okay. And you would not --

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

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

16 BY MR. PRENDERGAST:

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

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

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

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

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

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

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

14 MR. KRISLOV: Fair enough.

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

20 BY MR. PRENDERGAST:

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

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

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

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

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

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

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

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

1 A To my knowledge, they did not.
2 REDIRECT EXAMINATION
3 BY MR. KRISLOV:

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

7 A They were labor representatives, yes.

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

10 A That's my understanding.

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

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

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

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

21 MR. KRISLOV: She already testified --

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

1 BY MR. KRISLOV:

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

6 A I'm not aware of that.

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

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

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

16 BY MR. KRISLOV:

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

19 THE COURT: If you know.

20 THE WITNESS: I don't recall.

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

23 MR. PRENDERGAST: May I?

24 THE COURT: Sure.

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1 MR. PRENDERGAST: Thank you.

2 RECCROSS-EXAMINATION

3 BY MR. PRENDERGAST:

4 Q There were labor representatives on the
5 committee, right?

6 A That's correct.

7 Q They represented people who are currently
8 in labor unions?

9 A That's correct.

10 Q Labor unions with the employees of the
11 City, correct?

12 MR. KRISLOV: Objection. Calls for a
13 conclusion that she has no knowledge of, and she's
14 not --

15 THE COURT: Really? The purpose of
16 cross-examination in any examination is for you to
17 determine what her knowledge is.

18 If you want to testify, and you are
19 her conscience, you may so testify. That objection
20 is utterly overruled, because you don't have
21 firsthand knowledge of that.

22 So you may inquire, though.

23 Go ahead.

24 BY MR. PRENDERGAST:

1 MR. KRISLOV: Your Honor, could I have
2 everything stricken after "yes"?

3 THE COURT: No. You ask a question,
4 you get the answer.

5 MR. KRISLOV: Yeah, but, Your Honor,
6 to take issue with you on this --

7 THE COURT: Don't bother. My ruling
8 is the same. Your objection is noted for the record.
9 You may do whatever you want with it, but let's move
10 on.

11 Anything else on her firsthand
12 knowledge as to who the labor unions represented?
13 BY MR. KRISLOV:

14 Q You don't have firsthand knowledge as to
15 who the labor unions repre- --

16 THE COURT: Asked and answered. She
17 said yes, she does, and the employees of City of
18 Chicago.

19 Next question.

20 BY MR. KRISLOV:

21 Q You would agree that they do not represent,
22 because I think you said this before, they don't
23 represent --

24 THE COURT: Then why ask it again?

1 Q The labor union representatives represented
2 people who are in unions who are future retirees,
3 correct?

4 A That is correct.

5 Q And that commission report had a profound
6 impact on the pensions of future retirees, did it
7 not?

8 A I would say it had a profound impact on the
9 retiree healthcare of future retirees.

10 MR. PRENDERGAST: No further
11 questions.

12 THE COURT: Go ahead, Mr. Krislov.
13 You may attack her firsthand knowledge as to that
14 subject matter of that report only, nothing more.

15 REDIRECT EXAMINATION

16 BY MR. KRISLOV:

17 Q The fact is, you don't know who they were
18 representing on the board, do you?

19 A No. Our labor representatives represent
20 the employees of the City of Chicago. We have well
21 over 30 labor unions, all of whom represent different
22 factions of our city employees.

23 The labor representative who are on it
24 represent those employees.

1 BY MR. KRISLOV:

2 Q The people who were, then --

3 THE COURT: Asked and answered.

4 BY MR. KRISLOV:

5 Q -- retirees --

6 THE COURT: Asked and answered, Clint.

7 MR. KRISLOV: Okay, you --

8 THE COURT: I heard her testimony.

9 She did say that.

10 MR. KRISLOV: Okay. We're done.

11 THE COURT: Well, Ms. Holt, have a
12 Merry Christmas.

13 THE WITNESS: Thank you, Your Honor.
14 (Witness excused.)

15 THE COURT: Call your next witness.

16 MR. KRISLOV: Nancy Currier.

17 THE COURT: All right.

18 Ms. Court Reporter, do you need a
19 break?

20 THE COURT REPORTER: Only if you do.

21 THE COURT: I don't. I'm good.

22 Hello.

23 THE WITNESS: Hi. How are you?

24 THE COURT: I'm very good. Would you

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

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

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

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

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

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

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

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

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

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

20 BY MR. KRISLOV:

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

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

1 right?

2 THE WITNESS: Correct.

3 THE COURT: Answer accordingly.

4 THE WITNESS: Okay.

5 THE COURT: Next question.

6 MR. KRISLOV: Thank you, Your Honor.

7 BY MR. KRISLOV:

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

11 A Yes, I am.

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

14 A Yes.

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

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

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

MR. KRISLOV: Would you read the
question again?

THE COURT REPORTER: Your Honor?

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

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

THE WITNESS: Correct.

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

Do you understand me?

THE WITNESS: Yes, I do.

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

THE WITNESS: Okay.

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

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

8 A Correct.

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

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

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

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

19 A Those were done with the same methodology.

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

22 A Yes, Segal projects a cost.

23 Q And the same thing for 2016?

24 A Correct.

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

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

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

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

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[AS READ:

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

Right?

A That's correct.

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

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

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

A No. It's prospective coverage.

Q It's only prospective?

A Uhm-hmm.

Q Second:

[CONTINUING:

If during the time of absence from the

United Healthcare has dropped its PPO individual purchasable plans?

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

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

A Correct.

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

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

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

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

Q And have you checked that out?

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

Q Did you know that --

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

They have drug copayments that go into

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

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

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

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

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

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

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

A You can drop an ACA plan without penalty.

Q At any time?

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

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

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

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

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

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

A No, I'm not.

Q Not at all?

A No.

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

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

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

A This premium cost that you have to look at,

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

5 Q If you can --

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

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

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

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

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

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

18 (Document tendered.)

19 THE WITNESS: Thank you.

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

22 THE WITNESS: Yes, it is.

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

purpose of identification, yeah?

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

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

6 Either way, we have the same document.

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

Proceed.

10 BY MR. KRISLOV:

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

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

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

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

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

5 Q Okay. Are you a lawyer?

6 A No, I'm not lawyer.

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

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

15 BY MR. KRISLOV:

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

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

20 MR. KRISLOV: Correct.

21 BY MR. KRISLOV:

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

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

3 A Correct.

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

8 A Correct.

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

13 A No.

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

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

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

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

1 plan --

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

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

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

8 A Correct.

9 Q Regardless of your income?

10 A Correct.

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

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

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

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

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

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

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

5 A That's the statement, yes.

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

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

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

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

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

24 A Yes.

1 would know how many people have applied?

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

4 Q You have no idea?

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

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

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

15 Q Ballpark?

16 A (No response.)

17 Q No idea?

18 A I'd be guessing.

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

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

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

5 Q Below a certain annuity or --

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

11 So go over that.

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

16 A I don't know.

17 Q Okay.

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

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

22 A Correct.

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

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

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

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

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

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

5 A Correct.

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

8 THE COURT: City.

9 MR. LAYDEN: Yes, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. LAYDEN:

12 Q Good morning, Mrs. Currier.

13 Let's start with the means test.

14 Mr. Krislov asked you some questions about that.

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

17 A Yes.

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

20 A We mail out an application.

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

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

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

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

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

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

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

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

24 Q At what level of income does a retiree have

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

3 A Yes.

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

6 A We have a benefits --

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

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

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

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

15 Objection overruled.

16 You may go on.

17 BY MR. LAYDEN:

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

21 A Yes, we do.

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

23 A We send --

24 Q What kind of -- excuse me.

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

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

5 Q Is that of the federal poverty level.

6 A Of the federal poverty level, correct.

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

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

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

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

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

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

23 Q Yes.

24 A Yes. It's better under the federal

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1 government.

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

4 A Correct.

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

7 A I think the judge took it back.

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

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

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

14 (Document tendered.)

15 BY MR. LAYDEN:

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

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

20 Do you see that?

21 A Yes.

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

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

4 A Yes, there are plans out there.

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

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

9 (Document tendered.)

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

12 THE COURT: Sure.

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

14 BY MR. LAYDEN:

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

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

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

21 A Correct.

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

24 Why is there a vertical column for the

1 the City's current plan?

2 A Yes, they do.

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

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

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

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

11 A Correct.

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

15 A Correct.

16 Q So this is in effect now?

17 A Correct.

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

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

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

24 Q And are there plans under the ACA where

1 age of retirees?

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

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

6 A Smoking status also plays into the premium.

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

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

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

15 A Correct.

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

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

23 Q And where was this information obtained
24 from?

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

So you took somebody who has an age of
55, correct?
A (Nodding.)
Q And then you took -- another thing you did
is you looked at their smoking status, correct?
A Correct.
Q Then you went to an ACA -- the ACA website,
correct?
A Correct.
Q And you put in that data.
A (Nodding.)
Q And as a result of that, you got the
corresponding premium associated for coverage for
that person under the ACA, correct?
A Correct.
Q You did that for each age, each smoking
status identified on this exhibit, correct?
A Correct.
MR. KRISLOV: Your Honor, can I -- I
mean, I'm letting him go on in the --
THE COURT: That's nice of you, but
I'm the one who lets him.
MR. KRISLOV: I understand, but I
don't want --

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

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

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1 A As compared to the City's standard plan,
2 for example, the ACA plans do have some advantages.
3 They cover preventive care. They have
4 office visits. You can go to the doctor's office and
5 pay a copayment and not have to meet the deductible.

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

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

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

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

16 THE COURT: One second.

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

20 MR. KUGLER: If that was the --

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

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

3 Do you understand, you, young lady?

4 UNIDENTIFIED GALLERY MEMBER: Yes.

5 And I apologize.

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

8 Proceed.

9 BY MR. LAYDEN:

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

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

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

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

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

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

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

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

1 you're no longer eligible for coverage.

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

4 A No, it does not.

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

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

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

16 A Correct.

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

22 A No, it does not mean that.

23 Q Can you explain how that works?

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

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

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

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

10 Under the ACA, how does a copay work?

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

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

20 A Correct.

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

23 A Correct.

24 Q Can you explain what kind of things are

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

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

8 Q 100 percent under the ACA plan?

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

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

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

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

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

20 A Correct. One is on a PPO network.

21 Q Is another network called the Choice
22 network?

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

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

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

6 A Yes, it is.

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

10 A Correct.

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

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

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

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

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

1 that network.

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

5 A In terms of the size of the network?

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

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

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

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

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

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

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

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

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

9 REDIRECT EXAMINATION
10 BY MR. KRISLOV:

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

12 A Blue Choice.

13 Q Blue Choice has the more limited network?

14 A Yes.

15 Q And that doesn't include Advocate?

16 A No, it does not.

17 Q Northshore?

18 A I don't know about Northshore.

19 Q Northwestern?

20 A No, Northwestern is not in there.

21 Q University of Chicago?

22 A No.

23 Q And Rush?

24 A No.

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

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

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

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

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

3 Q Fair enough. Okay.

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

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

9 A Correct.

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

12 BY MR. KRISLOV:

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

17 A Correct.

18 Q You full tax return?

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

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

24 A It's got your adjusted gross income on

1 BY MR. LAYDEN:

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

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

9 Do you remember that question?

10 A Correct.

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

13 A This is just for single coverage.

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

16 A Correct.

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

21 A Correct.

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

24 THE COURT: Ms. Currier, I release

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

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

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

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

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

16 Q That's okay.

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

19 A Correct.

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

22 THE COURT: Recross.

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

24 RE-CROSS-EXAMINATION

1 you.

2 THE WITNESS: Thank you.

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

6 (Witness excused.)

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

9 MR. KRISLOV: No, Your Honor.

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

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

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

16 THE COURT: They are.

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

20 THE COURT: I have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the '89, '97 and 2003 amendment.

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

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

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

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

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

14 THE COURT: Ball's in your court.

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

21 THE COURT: I don't feel that.

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

24 Here's where your -- the statement you

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

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

5 That's my decision.

6 MR. KRISLOV: If I can --

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

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

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

24 MR. KRISLOV: On the preliminary --

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

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

5 THE COURT: Yeah, sure.

6 MR. KRISLOV: Okay.

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

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

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

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

3 MR. KRISLOV: Right.

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

7 Because you've already --

8 MR. KRISLOV: Not only --

9 THE COURT: Let me finish.

10 MR. KRISLOV: Yes.

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

20 MR. KRISLOV: Yes, but not solely.

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

1 And that was the class that I represented then.

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

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

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

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

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

22 MR. KRISLOV: Yes.

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

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

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

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

11 THE COURT: You did, actually.

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

18 But Kanerva is absolutely clear.

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

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

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

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

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

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

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

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

8 MR. KRISLOV: I know. I know.

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

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

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

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

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

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

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

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

21 THE COURT: What rights?

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

24 THE COURT: What rights do they have

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

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

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

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

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

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

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

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

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

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

9 THE COURT: I see.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 How do you jibe that?

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

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

17 THE COURT: Really?

18 MR. KRISLOV: Yes.

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

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

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

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

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

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

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

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

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

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

And there's no law saying that they

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

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

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

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

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

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

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

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

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

12 MR. KRISLOV: No.

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

15 MR. KRISLOV: It's fine.

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

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

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

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

1 before August 23 of '89.

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

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

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

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

16 THE COURT: Okay.

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

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

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

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

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

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

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

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

16 THE COURT: Sure.

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

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

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

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

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

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

13 MR. KRISLOV: Right.

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

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

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

24 MR. KRISLOV: No, no. The program

1 when the public employer grants a benefit --

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

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

8 THE COURT: Okay.

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

13 THE COURT: Not the case here.

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

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

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

23 MR. KRISLOV: Maybe so.

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

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

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

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

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

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

11 THE COURT: That's what I meant.

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

15 THE COURT: I understand.

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

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

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

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

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

9 THE COURT: If the benefits are time
10 limited, and the City can do -- if I'm right, and the
11 City can do whatever they want with regard to that,
12 including nothing as of December 31st, 2013, and
13 give no extensions -- they did -- but then what's
14 there to reconcile after 2013?

15 MR. KRISLOV: If the rates are not
16 reflective -- what they said is they do a ballpark.
17 They do an estimate based on the same reports -- the
18 same estimate that they've done in the past. The
19 rates they're charging them are excessive. They're
20 more than would be done if they did the rates in an
21 audited, reconciled fashion.

22 The rates that they want to impose are
23 suspect as it is. The City says -- and the City
24 artfully changed things from at least 50 percent

1 rates beginning January 1st. That is the sum --
2 the total sum that you have to do.

3 The other thing is that the City
4 cannot just pick -- I told you, I argued that the
5 City cannot just pick which among those people it
6 will honor under Article 13, Section 5 between the
7 pre-'89 retirees and the pre-'89 hires. The City
8 also -- the City paints this as a subsidy, and it's
9 not.

10 The City, as --

11 THE COURT: I've talked about that.
12 That's just semantics. We know what it is.

13 MR. KRISLOV: Right, but it's
14 important to say that, to recognize that it is the
15 City who's the insurer, and that's how it comes into
16 its obligation in a secondary fashion, which is, by
17 agreeing with the Funds. The Funds should have, and
18 their obligation was to go out and find coverage for
19 their participants, which they did by the City's
20 agreement. And the City, once having entered into
21 that, is stuck with it.

22 Further, the new rates are as suspect
23 as the old rates were. We have been coming back for
24 the ten years of the settlement, after we discovered

1 to -- or at least 55 percent to as much as 50
2 percent. And it may still be, we don't know the
3 legitimacy of the rates, but based on the past, the
4 future rates are no more reliable than the past ones.

5 The bottom line to most of this is
6 that for the pre-August 23, '89 hires, they have a
7 right to enforce the plan as it was on August 22nd,
8 '89. And the City, as Ms. Holt basically said, we
9 couldn't raise -- and most of the other people's
10 rates, because they were -- sorry.

11 We couldn't deal with most of the
12 other people's salaries, benefits, whatever, because
13 they were protected by unions. Our participants have
14 only the Constitution of the State of Illinois and
15 this Court for their protection.

16 THE COURT: I'm just one of many
17 courts. And I'm going to do my best to get it right,
18 and what can I tell you? You're going to have to
19 just trust in my desire to get it right.

20 I'm not the only court, as you've
21 proven many times.

22 MR. KRISLOV: They say trust but
23 appeal.

24 THE COURT: Sure. Trust but verify is

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1 the old expression.

2 MR. KRISLOV: I think that that's what
3 that guy said.

4 THE COURT: That's what he said.

5 MR. KRISLOV: But the bottom line,
6 Your Honor, is that in terms of -- until this Court
7 decides the merits of the issue, and we have until
8 January to file our amended complaint, which I
9 believe will address everything fine, for the time
10 being, we ask that you hold the City off in
11 increasing the rates.

12 All that we're talking about is
13 delaying the City's imposition of these new rates for
14 a few months until this Court deals with the issue on
15 the merits. If Your Honor doesn't agree with me on
16 everything today, it's not necessary, but we
17 certainly have created a fair question. And there's
18 nothing, really, in the City's equities to say that
19 holding them off for a couple of months until you
20 decide what the merits are so we can get it teed up
21 for them to appeal or us to appeal, whatever --

22 THE COURT: Well, if it's only a
23 couple of months, and if they can be made whole by
24 money with interest, only a couple months, why is

1 appropriate. Whoever can appeal at that time can
2 appeal. But for the moment, the City can hold off on
3 raising the rates, because it can always get the
4 money back from the retirees.

5 As I understand it, the Funds assert
6 there's no limitation period on correcting the amount
7 that they withhold from people.

8 All that we need to do -- and some of
9 these people have had massive increases -- some of
10 the increases are such that their premium is more
11 than their annuity. And for others, they're paying
12 as much as \$26,000 for family coverage. That's a lot
13 of money.

14 And having to forego your family
15 coverage, or having to go with a lesser plan in which
16 none of your doctors are in -- I mean, what they've
17 testified to is the networks you can go in with
18 these -- the Choice plan -- you know, everything, if
19 there's a fairness statute, you know who things are
20 being done to. If there's a choice statute, you know
21 that you're reducing your choices. They have been
22 taken out of the plan. You no longer have a network,
23 Northshore, Northwestern, University of Chicago,
24 Rush, Advocate. If you take those out, you may have

1 damages at law not adequate to your clients, and,
2 thereby, as a matter of law, say that an injunction
3 should not issue?

4 MR. KRISLOV: Because going without
5 your City coverage -- and of all the plans that
6 people may prefer to keep their City coverage live,
7 going without your City coverage, is irreparable
8 injury. And it isn't even -- and for those people
9 that go off, they won't be addressed retrospectively.
10 They'll only be addressed prospectively if they come
11 back.

12 There is no -- and giving them --
13 refunding them the additional amounts if they're gone
14 is no replacement. And refunding it with interest
15 doesn't replace the risk, the fear of having to go
16 without your health insurance that you depend on.

17 These people are, for the most part,
18 we're talking about 22,000, or the bulk of them, who
19 are retirees. Their health is not great. The older
20 they get, the older they are, the sicker they get in
21 numbers. And so between the balance of equities, is
22 it fairer to say to the City, hold off for a few
23 months. We'll get this worked in whatever way we
24 think -- whatever way the Court deems to be

1 a few nice hospitals, but you have eliminated the
2 bulk of the medical care that is done by the premier
3 institutions in the Chicago area.

4 And so when you balance the equities,
5 who's undergoing a hardship? Not for the City. The
6 City just has to put off its phaseout for another
7 couple or three months. For the retirees, for the
8 participants in the plan, they have real risk. They
9 have real life, human experiences that the City
10 doesn't.

11 As I've said, Your Honor, the retirees
12 only have the Illinois Constitution and this Court.
13 And so for the time being, we ask this Court to hold
14 the City off in raising its rates January 1st.

15 THE COURT: Thanks.

16 MR. KRISLOV: Thank you, Your Honor.

17 THE COURT: Mr. Prendergast, may I
18 start with a question to you, or you start with a
19 question for me.

20 MR. PRENDERGAST: I'm happy to answer
21 any questions.

22 THE COURT: I'm rereading my opinion
23 of December 3rd, and I read that before the federal
24 district court, page five, the plaintiffs filed their

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1 amended complaint which identified the four putative
2 subclasses of plaintiffs, the Korshak subclass, those
3 retiring prior to December 31st, 1987; the Window
4 subclass, those retiring between January 1st, 1988,
5 and August 23rd, 1989; and the third subclass was
6 subclass 3. And that was any participant who
7 contributed to any of the four Funds before
8 August 23rd, 1989's, amendments to the Pension
9 Codes -- forget the fourth one for a second -- which
10 would encompass the class of folks that Mr. Krislov
11 just referred to as the hirees, anyone who was hired
12 before August 23rd, 1989, because they would have
13 been a participant, a participant who contributed
14 before that date.

15 You then go to my opinion at page ten,
16 and I say the 1983 and '85 amendments were in effect
17 when the Korshak subclass, the Window subclass, and
18 the subclass 3 entered into the Funds' retirement
19 system. That means the hirees that Mr. Krislov
20 referred to.

21 The '83 and '85 amendments were in
22 effect when the hirees entered into the Funds'
23 retirement system as participants before August
24 23rd, 1989, and I wrote:

[AS READ:

1 There does not appear to be any
2 dispute between the parties that the amendments
3 from '83 and '85 apply to these subclasses.]

4 That means the hirees. So doesn't
5 the -- these are lifetime benefits I held, according
6 to my opinion, through the '83 and '85 amendment,
7 because they were not time limited. And Kanerva
8 holds that that which is given cannot be diminished
9 or impaired.

10 Doesn't that mean that the City cannot
11 diminish or impair any benefits that enure to the
12 benefit, for lack of another word, of the hirees
13 before August 23rd, 1989?

14 In other words, doesn't that mean that
15 Mr. Krislov is absolutely right, that with regard to
16 his request for a preliminary injunction, it should
17 issue with regard to raising the subsidies, the rates
18 to be charged these folks, including the folks of the
19 hirees, the people who entered as participants into
20 the Funds' retirement system before August 23rd,
21 1989?

22 That's my question.

23 MR. PRENDERGAST: Well, the answer
24

1 centers on the fact that those retirees, you have to
2 be relying on the '83 and '85 amendments.

3 THE COURT: I'm talking about the
4 hirees, not the retirees.

5 MR. PRENDERGAST: Yeah, they're hired
6 but, at that point, the '83 and '85 amendments are
7 the amendments in place.

8 THE COURT: Yes. We are relying on
9 those.

10 MR. PRENDERGAST: And for purposes of
11 the '83 and '85 amendments, the one thing that
12 counsel has conceded, at least ten times, including
13 this morning, is that they're not relying on the '83
14 and '89 [SIC] amendments, because for good reason --
15 I'll give two reasons. One is the '83 and '89
16 amendments don't impose any obligation on the City.
17 We've talked about that.

18 THE COURT: '83 and '85.

19 MR. PRENDERGAST: '83 and '85, I'm
20 sorry, don't impose any obligation on the City.

21 And, two, because even if they did --
22 and this is where I'd kind of like to start. Even if
23 they did, the amount that the City would pay under
24 the 2016 plan is greater than the amount that the

1 City would pay under either the '83 or '85
2 amendments. The amount is greater.

3 Now, this case is about the pension
4 clause. It is about whether or not there is a
5 diminution, or a reduction, or whatever word we want
6 to use, in a pension benefit. We're accepting the
7 fact that under Kanerva healthcare costs are pension
8 benefits.

9 But as you mentioned just now in your
10 conversation with Mr. Krislov, rights must -- using
11 your words, rights must be specifically granted in
12 order to be protected.

13 So if the rights that they were
14 granted are the rights under the '83 and '85
15 amendments, in other words, if we lose our motion to
16 reconsider, so I'm not going there right now --

17 THE COURT: But it is inextricably
18 bound with his request for the issuance of
19 preliminary injunction, so you can go there if you
20 want.

21 MR. PRENDERGAST: And I will, with my
22 prepared remarks.

23 But to answer your question, and
24 jumping a little bit ahead of them, the '83 and '85

1 amendments require the City to pay less than the
2 2016, okay? Therefore, there is no diminution.
3 There is no reduction. You cannot --

4 THE COURT: So you're saying that
5 assuming Mr. Krislov is right, and all hirees before
6 August 23rd, 1989, are included as participants,
7 and their right to receive paid benefits for
8 healthcare is immutable, it cannot be diminished or
9 impaired, you're saying that, nevertheless, it is
10 subject to the terms of the '83 or '85 amendments; is
11 that correct?

12 MR. PRENDERGAST: That's correct.

13 THE COURT: In terms of the amount
14 that the City has to pay?

15 MR. PRENDERGAST: Yes, because that's
16 the statutory basis. And I'm going to jump around
17 here a little bit from my prepared remarks, because I
18 really think it's important to go to this.

19 We are talking about the diminution or
20 reduction in a pension benefit.

21 So you have to look at '83 and '85 and
22 say what were they. In '83, the police department --

23 THE COURT: You mean what was that
24 which was granted?

1 to pay, whether it's the City or the Funds, paid \$55
2 for the firemen and police officers who were
3 non-Medicare, and \$21 for those that were Medicare.
4 And under the '85 amendment for labor and for
5 municipal, it was \$25 a head across the board.

6 THE COURT: Regardless of Medicare or
7 not.

8 MR. PRENDERGAST: Exactly, right.

9 Okay. That amount is considerably
10 less than what the City paid in 2015 and what's
11 considerably less than what the City will pay in
12 2016. Therefore, the City is paying more in 2016
13 than under the only possible statutory bases that
14 they can rely upon for a diminution or reduction in
15 pension benefits.

16 If they're paying -- if the City is
17 paying more -- they're paying more than they used to
18 pay, then that's not a diminishment in what the City
19 is contributing. It is an enhancement of what the
20 City is contributing. There's no way you can do the
21 math any other way.

22 THE COURT: Explain that to me again.

23 MR. PRENDERGAST: Sure. I'm a
24 fireman. I'm 1986. We're going to use this -- I got

1 MR. PRENDERGAST: What was it that the
2 City was required to do, or what anybody was
3 required. City wasn't required to do anything under
4 the '83 amendment or the '85 amendment.

5 But let's just use the numbers. Let's
6 suppose that you hold that the City does have
7 obligations to do what the '83 and '85 amendments
8 require. I don't think that is correct, but that's
9 okay. Let's assume that.

10 THE COURT: I've already said that.

11 MR. PRENDERGAST: Under the '83
12 amendment, the City of Chicago had to contribute \$55
13 for police and fire who were not Medicare -- I'm
14 sorry, the Funds. The Funds had to do that. But,
15 again, I'm only assuming for purposes of argument --

16 THE COURT: Take for the sake of
17 argument the truth of what I said in my opinion, that
18 the Funds are an instrumentality of the City, and
19 there's really no substantive difference between the
20 two. So it's the City that had to do it. Take that
21 as granted.

22 MR. PRENDERGAST: Right. So we're
23 working in that framework for purposes of my answer.
24 And my answer is, the party that had

1 hired in 1986. We're using "hire." That's what he
2 wants to use. I'm hired in 1986.

3 I say I've got pension benefits. My
4 pension benefits include healthcare. I say, what
5 makes you think so? The answer is 1983. They passed
6 a statute. I'm entitled for the City -- the argument
7 being for the City rather than the Funds, but we'll
8 stay with that. I'm entitled for the City to pay \$55
9 because I'm not on Medicare. The City has to
10 contribute \$55 a month. The City contributes a lot
11 more in 2016 than \$55 dollars a month.

12 So for purposes of a preliminary
13 injunction, that is one that pertains to only 2016,
14 the City is now paying more than it would have had to
15 pay under the 1993 amendment to the Pension Code.
16 Consequently, there is -- there cannot be a
17 diminution in the benefit --

18 THE COURT: So there's no reason for
19 the issuance of a preliminary injunction --

20 MR. PRENDERGAST: Absolutely.

21 THE COURT: -- with regard to those
22 now raised rates relative to the '83 or '85, because
23 it's no harm, no foul, vis-a-vis the retirees.

24 MR. PRENDERGAST: Yes. If the only

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1 basis that can be cited, and, obviously, it can't be
2 the later statutes because it's time limited, if the
3 only basis, statutory basis, and there has to be one,
4 for the healthcare right is the '85 statute, or the
5 '83 statute if you're a fireman or policeman, you're
6 getting more now from the City than you got back
7 then. There can be no diminution.

8 We've covered that as clearly as we
9 can in our response to his request for preliminary
10 injunctive relief. He hasn't given us much of an
11 answer. But his answer seems to be, well, that's not
12 what Kanerva holds. You don't have to just look at
13 Pension Code. Kanerva makes it clear. You don't
14 look at just the Pension Code.

15 That's true. Kanerva wasn't based on
16 the Pension Code. What happened in Kanerva was, the
17 state argued that if it's not in the Pension Code,
18 there's no entitlement. And the court said, not so.
19 There's another statute. And that other statute was
20 the Group Health Insurance Act.

21 And under the Group Health Insurance
22 Act, that's the act under which they were entitled,
23 the state employees, were entitled to healthcare
24 benefits. There was a statutory basis.

1 So the Supreme Court said, we don't
2 care if it's in the Pension Code. There's another
3 statute here. Well, here, there isn't another
4 statute. The only statute for the people we're
5 talking about here is the '83 and the '85 statute.
6 And it, number one, in our view, doesn't apply to the
7 City of Chicago. But if it did impose obligations on
8 the City of Chicago, those obligations are far less
9 than what the City is doing now. Therefore, there
10 can be no diminution, and, therefore, there cannot be
11 a preliminary injunction.

12 THE COURT: Understood, your position.

13 Let me ask you a question, and getting
14 more to the core and the substance.

15 Mr. Krislov has said that that may be,
16 but you've given, and you've given without -- for
17 these '83, '85 participants, including the hirees,
18 you've given more than those enactments require, and
19 because they're not time limited at creation, it was
20 something you just gave, and you cannot take away
21 that which you've already given at the levels that
22 you've given it.

23 What's your response?

24 MR. PRENDERGAST: Well, my gut

1 reaction is no good act goes unpunished.

2 THE COURT: Well, that's absolutely
3 true. But here's another one. A deal's a deal.

4 MR. PRENDERGAST: Okay. So let's talk
5 about the deal. What was the deal? We will extend
6 benefits to a specific date, no magic about it, the
7 end of 2013. We will then wean you off this process
8 over a period of four years, through 2016, each year,
9 each step down being time limited.

10 Each one, the 2013 limitation ended in
11 2013, next 2014, 2015, 2016. They're all time
12 limited. There's absolutely no difference --

13 THE COURT: What about -- I'm not
14 talking about the folks who entered into the system
15 during those time limiteds. I'm talking about the
16 folks who entered into the system before they went
17 into effect.

18 MR. PRENDERGAST: Oh, yeah, and so am
19 I. I'm talking about --

20 THE COURT: Let's just talk about
21 those folks. Everybody in class 1, 2, and 3 being
22 the hirees, those who participated in the system
23 prior to August 23rd, 1989, you gave them benefits,
24 benefits as stated in those statutes. You chose to

1 increase them. And as you said, no good benefit goes
2 unpunished.

3 Was that not immutable?

4 MR. PRENDERGAST: Oh, no.

5 THE COURT: Why not?

6 MR. PRENDERGAST: Because they were
7 time limited. In the middle of 2013, the limitation
8 on the extension was the end of 2013.

9 THE COURT: Can you time limit
10 something that's been given for life? Can you just
11 change in midstream -- I understand why the City
12 wants to. No one loves the City more than me or any
13 of these folks here, I assume. No one wants the City
14 to be destitute. We all know what's going on. We
15 all know what the cause of it is, and we're all
16 looking for an answer. And I do understand that.

17 But when you've given something for
18 life, as you acknowledge has been given -- forget the
19 numbers. This is what Mr. Krislov's point is.
20 Forget the numbers. You gave the benefits for life.
21 Can you now take them away?

22 MR. PRENDERGAST: We didn't give them
23 benefits for life.

24 THE COURT: There's no time

1 limitations in the '83 and '85 statutes.

2 MR. PRENDERGAST: Oh, those benefits?

3 THE COURT: Yes. That's the ones I'm
4 talking about.

5 MR. PRENDERGAST: My point is, if
6 that's the benefits -- Your Honor, time and again,
7 they've said the '83 and '85 amendments don't apply
8 to them. Do you know why? The '83 and '85
9 amendments -- they don't want the '83 and '85
10 amendments.

11 THE COURT: Because they don't want to
12 be stuck at lower amounts.

13 MR. PRENDERGAST: Not only do they not
14 want to be stuck at the lower amount, they know they
15 have no constitutional claim if you're relying on the
16 '83 and '85, because the City pays less under the '83
17 and '85 amendments than it's going to pay for 2015.
18 We're now in 2015. They're seeking an injunction for
19 2016, where the City's going to pay more than the '83
20 and '85 amendments would require the City to pay.
21 That can't be a diminution, period.

22 THE COURT: Okay. So let's get to the
23 answer to my question.

24 By giving it to them, how can you take

1 THE COURT: They're subject to the
2 conditions that were stated in the '83 and '85
3 statute. Everyone agrees about that. There are no
4 time limitations on those benefits. So how can you
5 start weaning them off something about which there
6 were no time limitations?

7 MR. PRENDERGAST: We didn't wean them
8 off of that, Your Honor. We weaned them off of what
9 they were paid under the settlement statute that
10 ended in 2013. We're paying them more than 1983 and
11 1985. We don't have to wean them off of that. For
12 2016, we're paying more than we're required to by
13 statute, under the '83 and '85 statutes, if you hold
14 us accountable to the '83 and '85 statutes.

15 THE COURT: Let's assume I hold you
16 accountable for the subclass 1, 2, and 3. That
17 means, as I was discussing with Mr. Krislov, the
18 hirees before August 23rd, 1989. And they're in the
19 Korshak class and the Windows class.

20 What do you owe them?

21 MR. PRENDERGAST: Korshak and Windows
22 are classes 1 and 2.

23 THE COURT: Yes. Class 3 is everyone
24 who participated before August 23.

1 it away?

2 MR. PRENDERGAST: Because, for the
3 very reason that part of the your question said time
4 limited, and that's why I said they weren't. They
5 were not time limited. They had six -- they were
6 extended by six months, and six months only, to the
7 end of 2013.

8 And then they announced that they were
9 going to go through three years or four years of
10 stages of reductions for the very reason that Ms.
11 Holt testified to, and that is, they wanted to give
12 people a time to wean off of this and get into the
13 Affordable Care Act and give them an opportunity.

14 THE COURT: How can you wean people
15 off of something that they've been given for life?

16 MR. PRENDERGAST: It wasn't given for
17 life.

18 THE COURT: In '83 and '85, those
19 participants.

20 MR. PRENDERGAST: Oh, no.

21 THE COURT: Let's keep our eye on the
22 ball. I'm talking about subclass 1, 2, and 3, those
23 who began as participants before August 23rd, 1989.

24 MR. PRENDERGAST: Your Honor --

1 MR. PRENDERGAST: That's what they
2 say, so --

3 THE COURT: Yes, that's what they say.
4 But that's what we're dealing with.

5 MR. PRENDERGAST: Your opinion is
6 still otherwise, but we're not going to get into
7 revisiting it. Let's stay with one and two for a
8 minute.

9 What else has the City done that it's
10 now apparently being punished for?

11 Korshak and Windows class members,
12 have been extended lifetime healthcare by the City.

13 THE COURT: Yes.

14 MR. PRENDERGAST: Okay. They're gone.
15 They're taken care of. There's no injunction you
16 have to enter for them. They're going to get
17 lifetime healthcare for -- that's what they asked for
18 them. They cannot use a settlement statute that was
19 time limited as a basis for a diminution claim,
20 because, as you held, when it was time limited, the
21 rights under that statute ended, so you have to go
22 back to '83 and '85.

23 When you go back to '83 and '85, you
24 find that the City was paying less for '83 and '85,

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1 or the Funds were paying less --
2 THE COURT: Than they are now --
3 MR. PRENDERGAST: The numbers are
4 less.

5 THE COURT: -- under the time limited
6 enactments.

7 MR. PRENDERGAST: So there's no
8 diminution.

9 THE COURT: Does that then, also then
10 apply to the subclass 3?

11 MR. PRENDERGAST: It would apply to
12 any retiree that claims a diminution of healthcare
13 benefits.

14 THE COURT: Well, I'm asking
15 specifically. Is it your position that applies to
16 the hires, people who were hired and participated in
17 the program, and may still be working, before
18 August 23rd, 1989?

19 MR. PRENDERGAST: A person who, in
20 this case, it's brought on behalf of the retirees, so
21 let's stay with retirees if I could.

22 THE COURT: Yes, who was hired before
23 August 23rd, 1898 and retired thereafter.

24 MR. PRENDERGAST: Retired thereafter.

1 applies to 2016 only. So it's not a question of
2 lifetime benefits. It's a question of whether the
3 City has to give up \$30 million that is appropriated
4 --

5 THE COURT: I understand.

6 MR. PRENDERGAST: -- for 2016. And in
7 this case, the City's -- the amount the City would
8 pay under the '83 and '85 amendments is so much less
9 than what it's going to pay for 2016, that there's
10 nothing to enjoin. That's our position with respect
11 to that.

12 So it's really much more, Judge, in my
13 opinion, a question of -- put in that context. That
14 is a question of which class is covered or not.
15 We're at a preliminary injunction stage. They have
16 to prove everything necessary for preliminary
17 injunction.

18 THE COURT: Well, but,
19 Mr. Prendergast, Mr. Krislov has just acknowledged,
20 or conceded earlier today, that the post-hirees,
21 post-August 23rd, 1989, hires would not be included
22 in his request for a preliminary injunction because
23 they're not entitled to anything.

24 MR. PRENDERGAST: It doesn't say that

1 Okay. What are they entitled to? The only statute
2 that applies to them is the '83 and '85 statute.

3 THE COURT: Are those the benefits
4 you're giving for the lifetimes of the class 1, class
5 2 folks, those same benefits?

6 MR. PRENDERGAST: Well, for purposes
7 of the preliminary injunction, we're only dealing
8 with 2016. For the purpose -- as this case proceeds,
9 you're going to hear a lot of evidence going a lot of
10 different ways. A lot of arguments about whether you
11 can stop altogether at 2016, or whether you have to
12 pay the '83 or '85 benefits.

13 Although I must say to you, Judge, if
14 all they're looking for is the '83 and '85 benefits,
15 this case isn't going to last very long.

16 THE COURT: From your mouth.

17 MR. PRENDERGAST: To God's ears. And
18 they're clearly not. They are running away from '83
19 and '85 at record speed. They've done everything
20 they can to tell you that's not where they're going,
21 and the reason is because it doesn't get them
22 anywhere.

23 And so -- but for purposes of a
24 preliminary injunction, the preliminary injunction

1 in his papers, I must say.

2 THE COURT: Well, I understand. But
3 he argued that today, if we accept my version of what
4 the law is vis-a-vis Kanerva, with that exception,
5 which, by the way, I'm accepting, he acknowledged
6 that if I'm right on that, then the post-August 23rd,
7 1989 class has no ascertainable claim of relief.
8 They have no standing to complain, because they're
9 not covered. So that's done. I accept that.

10 MR. PRENDERGAST: Maybe one and two is
11 done.

12 THE COURT: So now we're just dealing
13 with the hires.

14 MR. PRENDERGAST: We're just dealing
15 with people who --

16 THE COURT: Who were part of the
17 program, who participated in the program before
18 August 23rd, 1989.

19 And it seems to me your argument is
20 that a preliminary injunction should ensue vis-a-vis
21 those at least -- so your argument is, it should be
22 granted in part, denied in part, but it should be
23 granted vis-a-vis those folks to the extent of the
24 benefits that they were entitled to under the '83 and

1 '85 amendments, yes?

2 MR. PRENDERGAST: No. The reason is
3 because this is an injunction for 2016. There's no
4 need for an injunction because they're going to get
5 more --

6 THE COURT: Because they're going to
7 get that anyway.

8 MR. PRENDERGAST: That's right.

9 THE COURT: At least at this point.

10 MR. PRENDERGAST: At this point,
11 they're going to get that.

12 THE COURT: But in the end, there's a
13 claim that those -- even those benefits are going to
14 be extinguished.

15 MR. PRENDERGAST: And in the end, at
16 the end of 2016, they may be back here, if necessary,
17 talking about an injunction if it's needed --

18 THE COURT: To prevent that from
19 happening.

20 MR. PRENDERGAST: Yeah, but that's not
21 today. And by the way, Judge, I expect, based upon
22 your remarks the last time we were here, and based
23 upon my assessment of what's got to be done in this
24 case, this case is going to be over before 2016.

1 Judge, I do think that --

2 THE COURT: That's why throughout your
3 brief, you argue in the alternative, that even if the
4 City's implicated in this, or part of this -- and I
5 understand.

6 MR. PRENDERGAST: And I have to argue
7 in the alternative until we get past that point.

8 THE COURT: Of course you do.

9 MR. PRENDERGAST: But I have to say
10 that it's been my experience that parties are held to
11 their pleadings, and they are held to what they say,
12 especially when they say it time and time again.

13 So they have said that the '83 and '85
14 amendments don't apply, and we all know, there has to
15 be a statutory basis. Even under Kanerva, there was
16 a statute that the Supreme Court relied upon, because
17 it's got to come from some basis, either a contract,
18 or it's got to come from a statute.

19 And the contract claim is out on your
20 ruling. And by the way, I know Mr. Krislov has said
21 on several occasions here, something -- one thing or
22 another is going to be in his amended complaint.
23 That's not the complaint that's before the Court
24 right now. That's the complaint we're dealing with

1 THE COURT: Once again, from your
2 mouth.

3 MR. PRENDERGAST: Yeah, right. But, I
4 mean, you know, there will be some discovery, I
5 suppose, and there will be motions and the like.

6 But we're not talking preliminary
7 injunction motions. Preliminary injunction motions
8 are to address an immediate need, and there is no
9 immediate need.

10 THE COURT: I understand.

11 MR. PRENDERGAST: Mike points out, I
12 think something I thought was implicit in my remarks,
13 and that is, remember, please, this preliminary
14 injunction that they're seek is against the City, and
15 they concede that the '83 and '85 amendments don't
16 apply to the City.

17 THE COURT: Well, that's true. They
18 concede that. It's really an interesting case. They
19 concede that.

20 But, I held that the Funds are an
21 instrumentality of the City. So from my point of
22 view, the City's in it. That's my ruling, which you
23 want me to revisit.

24 MR. PRENDERGAST: Well, you know,

1 for preliminary injunction purposes.

2 So let me go to -- some of this has
3 been covered, but if I could go to what I expected to
4 talk about -- maybe I'll be redundant, but that's the
5 lawyer's prerogative, especially when you give them
6 unlimited time.

7 Under the Pension Code, pension
8 benefits cannot be impaired or diminished. We all
9 agree on that. That's understood. Under Kanerva,
10 retiree healthcare benefits can be pension benefits,
11 as long as, like any other benefits, they are created
12 by statute or contract. We're good with that. We're
13 not trying to revisit you -- we don't want you to
14 revisit Kanerva on the central issue of Kanerva,
15 which is can healthcare benefits be pension benefits.
16 The Supreme Court's answered that question for us.

17 The plaintiffs' contract claim, that's
18 been dismissed. It was dismissed by the district
19 court. It's been dismissed by this Court.
20 Plaintiffs' have not asked you to reconsider that
21 ruling, even in argument today.

22 The plaintiffs' reliance on the
23 McDonough affidavit and deposition and the Kordeck
24 affidavit from back 30 years ago was raised before

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1 you made your ruling, and you still held that doesn't
2 establish the basis for a contractual claim. The
3 materials, of course, were before you when you
4 dismissed the contract.

5 Plaintiffs cannot claim a likelihood
6 of success on the merits, on the limited settlement
7 statutes, because you have ruled on that as well and
8 dismissed those counts. So that argument about
9 success on the merits goes out.

10 I do want to emphasize, by the way,
11 that that first requirement is a requirement for them
12 to establish a likelihood of success on the merits.
13 It is not a requirement just to establish that
14 they've stated a claim.

15 Mr. Krislov has a habit, and I'm not
16 being pejorative, but he does have a habit of
17 characterizing every denial of a motion to dismiss as
18 if he's won the case. That's not the case here. He
19 has to establish, for purposes of preliminary
20 injunction, a likelihood of success on the merits.

21 And the contract claim can't do it.
22 The time limited statutes can't do it. The estoppel
23 claim can't do it, because since you have dismissed
24 them, they can't possibly establish a likelihood of

1 In terms of the likelihood of success
2 on the merits, at least for purposes of preliminary
3 injunction, since they're getting more on their 2016
4 plan, 2016 plans than they would ever get under the
5 '83 and '85 amendments, they can't possibly show a
6 basis for a success on the merits under the '83 and
7 '85 plan.

8 And, therefore, on that ground alone,
9 and they have to satisfy all the criteria, on that
10 ground alone, the motion for preliminary injunction
11 has to be denied.

12 As we pointed out, this is their sixth
13 attempt to get a preliminary injunction with respect
14 to this phaseout program.

15 Mr. -- counsel states that, well, the
16 previous ones all involved a finding that the pension
17 benefits were not -- I'm sorry -- healthcare benefits
18 are not pension benefits, and Kanerva reversed all
19 that, but that's not correct. There's been -- all of
20 the arguments that he's making now were made in all
21 of those motions for preliminary injunctive relief.
22 And no one parsed out that, well, maybe you'll win on
23 some other ground.

24 But the point is, we're here today.

1 success on the merits. So that leaves the
2 constitutional claim, which was Count 1.

3 And so what he has to establish is if
4 there's been a diminution or impairment of pension
5 benefits. And if he doesn't have a likelihood of
6 success on that one, and he talked about summary
7 judgment. But I have to tell you, Judge, if he's not
8 relying on the '83 and '85 amendments, that summary
9 judgment motion comes from our side, not his.

10 So as we've just discussed --

11 THE COURT: And even if he does,
12 according to our colloquy during the last half hour,
13 it's coming from you, too, to the extent that it was
14 offered by those amendments.

15 MR. PRENDERGAST: Yes. So that leaves
16 him -- when you get rid of the contract -- there was
17 a reason they had a contract claim, because they
18 wanted to say well, we'll anchor this on a contract.
19 And there was a reason why they wanted to go to those
20 others statutes, because they wanted to say we want
21 to anchor these on a statute that we can use.

22 But what's left is the '83 and '85
23 statutes. We've already talked about that, and
24 that's their statutory basis for a claim.

1 We're here on this motion for preliminary injunction.
2 I don't mean to suggest the last five or six times
3 that he's lost sets precedent, but it is getting to
4 be habit for him.

5 I've talked about why the '83 and '85
6 amendments don't apply. Talked about it doesn't make
7 any difference whether they apply or not. There's no
8 irreparable harm.

9 And you have raised a very significant
10 point, and that is, if the pensioners have to pay in
11 in 2016 amounts greater than 2015 because of the
12 reduction in the subsidy, they have an adequate
13 remedy at law. And they clearly do. If they
14 ultimately win, the difference, plus interest, gets
15 paid back to them.

16 They have not made a compelling
17 argument why that's not an adequate remedy at law.
18 They have argued that people are retired, they have
19 less money than people who are working. That's also
20 true, but it still doesn't mean they don't have an
21 adequate remedy at law, especially in the context of
22 a class-action claim.

23 I mean, we're not talking about one
24 plaintiff in front of you where you can parse that

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1 out. There's 23,000 members of this class. So that
2 concern no longer justifies a preliminary injunction.

3 And so now we turn to the one thing
4 that they hammered on in this case, since they filed
5 it. They've hammered on the idea that people would
6 have to make choices. That's why this January date
7 is critical. People would have to make choices of
8 staying in or getting out.

9 But if they get out, and they went to
10 one of those lower-priced Affordable Care Act plans,
11 or even one of the premier plans that has all the
12 bells and whistles you want, they wouldn't be able to
13 get back in without an ability to prove insurability.
14 That has been the irreparable harm argument here
15 since day one.

16 So finally, we decided, you know, that
17 one's got come off the table. We went back to the
18 City, and we said let's revise that. Can you revise
19 that? Is that impossible? That won't require you to
20 do anything. It won't require the Funds do anything
21 in January of 2016 to unscramble the eggs.

22 But it would extend people the
23 opportunity if they become uninsurable because they
24 have bad health to still come back to the City plan

1 resolved with the cooperation and effort of everyone,
2 including the Court, and your calendar, to resolve
3 this case by September 30th, 2016.

4 I'm authorized to tell you one other
5 thing. It's not in that document, but I'm on the
6 record as an officer of the court, representing the
7 City of Chicago.

8 If at the end of the day they win this
9 case, and then they say -- but it's January 2017, and
10 it's after September, and they say, we won, I want
11 back in the City plan, they're going to be allowed to
12 go back in the City plan.

13 So this irreparable harm argument they
14 have made from the beginning is no longer existent.
15 All they have to do -- that gives them all the
16 choices they want. They can stay with the plan, in
17 the City plan if they want to. They can get out if
18 they don't want to. I'm happy you heard the
19 testimony of witnesses today that Mr. Krislov thought
20 would be helpful to the Court, because I think one
21 thing you should have come away with, I believe, from
22 that testimony is that the City makes a great deal of
23 effort to deal with its retirees, to put them on
24 notice of everything from change -- any changes, any

1 if they wanted to.

2 And so the exhibit, which I forget the
3 number of, and you saw it, which is only dated the
4 18th of this month. That's when it became official,
5 but it addresses --

6 THE COURT: It's your Exhibit 6 in
7 your submission.

8 MR. PRENDERGAST: That's correct,
9 Judge.

10 That program now allows people, if
11 they leave and they go into an Affordable Care Act
12 plan, or any other plan, if for some reason they find
13 out this wasn't really good for me, this wasn't -- I
14 don't like the deductibles here, I don't like the
15 copay, or whatever their concern is, they can come
16 back. They can come back anytime between
17 September 30th -- until September 30th of this
18 year, nine months out. And I know you point up when
19 say this.

20 THE COURT: 2016.

21 MR. PRENDERGAST: 2016.

22 THE COURT: Not this year.

23 MR. PRENDERGAST: I'm sorry. 2016.

24 But there's nothing about this case that can't be

1 options that they have, they're fully aware of it.
2 They've got a phone bank ready to answer any
3 questions that they have.

4 And certainly, you know, to the extent
5 that they ask questions of Mr. Krislov and he wants
6 to send those questions in, the City is going to
7 answer them.

8 The point is, they have all the basis
9 that they need to make choices. But if they make, in
10 their view, the wrong choice, and they get out of the
11 City plan, they can get back in. And that has not
12 been before you before this. I thought --

13 THE COURT: What limitations are you
14 putting upon their ability to get back in? You say
15 you've extended it now, as an officer of the court,
16 to -- at least into 2017. What limitations?

17 MR. PRENDERGAST: The same limitations
18 as are in the plan right now. For example --

19 THE COURT: No, what time limitations?

20 MR. PRENDERGAST: Oh, I think there
21 will --

22 THE COURT: Up until the end of this
23 case, whatever that's defined as; isn't that right?

24 MR. PRENDERGAST: I should clarify.

1 If they win this --

2 THE COURT: If this goes up the
3 Supreme Court and takes two or three years, and it
4 comes back, and they won, the City is game, yes?

5 MR. PRENDERGAST: The City is game.
6 The City will let them back into the plan, whatever
7 the plan is, if there is a plan.

8 If they lose the case, they'll say we
9 have to have a plan. If they win -- I'm sorry. If
10 they win the case, they're going to say, we have to
11 have a plan, and it's going to be ordered.

12 If they lose the case, there won't be
13 a plan to come back to. Which is one of the reasons
14 that it would be very prudent for those who have a
15 concern, and I mean the pensioners, to explore, like
16 a lot of people who are in the private sector,
17 explore the Affordable Care Act.

18 Because, as you heard in the testimony
19 today, there are considerable advantages to the
20 Affordable Care Act. Counsel points out that there
21 are going to be hospitals that are not covered by the
22 Affordable Care Act, and that's true. They can't go
23 to Northwestern or Chicago. People in Peoria don't
24 go to Northwestern or Chicago either, generally

1 that got in. If they want to stand up here when I'm
2 through and show it to you, it will surprise both of
3 us. But that's not there. There has not been a city
4 ordinance that grants healthcare benefits to anyone,
5 and there's no state statute that does so, with the
6 possible exception, possible exception, because we
7 have a motion to reconsider, of the '83 and the '85
8 amendments to the Pension Code.

9 And since the Kanerva case relied upon
10 another statute, there was a statutory basis. And as
11 this Court has said, there has to be. You have to
12 have a basis for the claim before the pension clause
13 can protect it. If there's nothing to protect, you
14 can't say there's a pension clause, so I get a
15 pension. That's not how it works. You've got to
16 have a basis for doing that.

17 In terms of the balancing of the
18 equities, if an injunction is entered requiring the
19 City to subsidize at the 2015 rates rather than the
20 2016 rates, the cost to the City will be
21 approximately \$30 million.

22 That 30- -- Ms. Holt, I was happy that
23 she was called. I didn't -- if I had put her on
24 direct, I would have spent the first five minutes

1 speaking. But they have good hospitals in Peoria.
2 Loyola's an excellent hospital. There are a lot of
3 excellent hospitals that are covered by the
4 Affordable Care Act.

5 So the idea that they can't get
6 healthcare -- I mean, there's a difference between
7 saying people should be able to get healthcare and
8 saying they should be able to get healthcare, forget
9 networks, forgetting limitations on hospitals,
10 forgetting limitations on doctors that don't want to
11 provide that healthcare, that's not a constitutional
12 claim. That's a beef. That's a political argument.
13 That's something they can take to their legislature.

14 But speaking of the legislature, I do
15 want to mention something, because I'll probably
16 forget to mention it.

17 In their papers, they say that
18 Mr. McDonough, in his affidavit or his deposition, I
19 think it's his deposition, testified that there was a
20 city ordinance that was passed that granted
21 healthcare.

22 Not only was there no such city
23 ordinance, it's not in his affidavit or in his
24 deposition. I don't know where that leaked in, how

1 going through her credentials, and they would have
2 been impressive. But it's not important, because I
3 think she's an impressive witness. She knows the
4 budget. She knows how to balance the budget. She
5 knows what's happened in the City of Chicago in
6 previous years when they haven't balanced the budget,
7 and they've gone off and sold the Skyway, sold
8 parking meters, found other things to sell in order
9 to raise money.

10 The objective now is to get the City
11 back on a solid footing, fair to the taxpayers, fair
12 to the residents of the city in a way that will make
13 the city great and keep it from going in the wrong
14 direction fiscally.

15 So she explained what goes into the
16 budget, and that means we looked at everything. And
17 one of the exhibits they talked about were the cuts
18 that they have to make. They aren't only cuts in --
19 it isn't just a step down in the amount that they
20 paid to subsidize healthcare. It cuts across the
21 board. Elimination of positions. Cutting programs.

22 I think it's -- I forget the number --
23 \$3- or \$400 million in new real estate taxes were
24 enacted this year. Other fees were enacted this year

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1 pursuant to the budget that they passed for 2016 so
2 they could balance that budget. \$30 million is an
3 imbalance. It's not an imbalance you make up by
4 snapping your fingers or flipping a switch. There's
5 a lot that goes into that, and it may mean cutting
6 300 jobs, or it may mean cutting 150 jobs and \$15
7 million worth of programs.

8 But it is an impact on the taxpayers,
9 on the residents. As she pointed out correctly, when
10 you raise taxes, you have to raise taxes across the
11 board. There's people up in Lincoln Park that afford
12 the tax increase. I can afford a tax increase. I'll
13 make it. There's lots of people who can't. A lot of
14 them are retirees. A lot of people who are going to
15 be put to the test of paying the other way in taxes.

16 And so balance that against the
17 hardship to the retirees. Well, we have before you a
18 fair amount of evidence for a preliminary injunction
19 hearing on the alternatives that the retirees have.
20 The alternatives would be the Affordable Care Act,
21 the opportunity to get insurance at lower prices so
22 they don't have to.

23 And in context of the discussion about
24 the breaks you get if you are below the poverty

1 income, because if they don't, then they're not going
2 to get hit as hard under the Affordable Care Act or
3 under the City plan. And, basically, what we were
4 told is, that's an unreasonable intrusion into their
5 privacy.

6 Well, it's a relevant fact. We'll
7 develop it in the course of discovery in this case to
8 find out what the real impact is, and we will make
9 our judgments accordingly.

10 But fact of the matter is when you
11 balance the availability of lower-priced insurance
12 under the Affordable Care Act, the availability of
13 insurance under the City plans, the lower-level City
14 plans, against the fiscal hit that the City has for
15 the \$30 million adjustment, I think the balance of
16 the equities falls in favor of the City.

17 And I know it's more popular to talk
18 about how people on pensions are hurt more, but I'm
19 saying to you that when you take \$30 million out,
20 everybody gets hurt. Taxpayers get hurt, residents
21 who do not have excess income see their taxes go up
22 even more than the \$347 million, I believe it was, in
23 new real estate taxes this year, more than the new
24 water fees, more than the other new fees that went up

1 level, I should say below two and a half times the
2 poverty level, or on the Affordable Care Act side,
3 four times the federal poverty level, four times the
4 federal poverty level is \$46,500. If you're making
5 \$46,500 or less, that's -- then you get substantial
6 additional breaks under the Affordable Care Act.

7 It's only two and a half times, but it
8 is two and a half times for the poverty level for the
9 city program, which, you know, if you're making
10 \$30 million, people making less than that.

11 One of the things that the witnesses
12 were asked here today was, how do you know? You
13 know, how do you know what people are making, you
14 know? Well -- and the only ones we know are the ones
15 that ask for the break, you know, that say, I'm
16 eligible to pay less.

17 So they send -- they -- basically,
18 their entire tax return is not sent to the City. The
19 first page, or the summary on the first page gives
20 your adjusted gross income is what does it.

21 So when they provided you with this
22 book full of various annuitants' letters and a
23 summary they put in the front, we were interested in
24 knowing whether or not those annuitants have other

1 this year in order to balance the budget in 2016.
2 It's a significant impact.

3 And, you know, the case law on that,
4 Your Honor, particularly when you get into the public
5 sector, is pretty clear that the public harm, the
6 impact of an injunction to the extent that it creates
7 a public harm, or public burden, has to be considered
8 by the Court. It's not just a question of, well, why
9 don't you write a check for \$30 million.

10 To a certain extent, in fact, to a
11 large extent throughout their reply brief, I think
12 that's the most important document that they filed,
13 they try to -- as was much the discussion that we had
14 with counsel, they tried to run away from the ruling
15 dismissing most of the case, and now they're down to
16 carving out, trying to carve out some group of class
17 members that are maybe part of a class and saying we
18 should enter an injunction for them.

19 But for the same reasons that we've
20 discussed at length here today, they don't have a
21 colorable claim under the '83 or '85 statutes.

22 So they turn to Kanerva, and I just
23 discussed Kanerva. Kanerva was based upon the
24 statute. There is no statute basis here. It's that

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1 simple. This is not, as counsel said, a photocopy of
2 the Kanerva case. This is a different case. There
3 is no ordinance, there is no statute on which to
4 rely.

5 Had there been no statute in Kanerva,
6 the state would have won. Had there been no statute
7 establishing the state's obligation to pay pension
8 benefits, the state would have won the Kanerva case.
9 It's absolutely clear from the opinion.

10 I don't want to sound patronizing, but
11 this is a preliminary injunction; it's not the case.

12 THE COURT: I understand.

13 MR. PRENDERGAST: Okay. I need to go
14 no further on that.

15 There is an argument that they make,
16 and he alluded to it, because we've decided -- the
17 City has decided that the Korshak and the Window
18 classes are going to have coverage for life, even if
19 the City otherwise gets out of the business.

20 They've thrown in an argument that
21 there's a denial of equal protection here. Now, that
22 argument has not previously been made, and I saw it
23 for first time when we got their papers fairly
24 recently, and so we really haven't had a chance to go

1 We talked about irreparable harm.

2 THE COURT: You have.

3 MR. PRENDERGAST: And I won't go back
4 to it, other than --

5 THE COURT: Good.

6 MR. PRENDERGAST: Good. I hope that
7 means I've persuaded you.

8 THE COURT: It means I've heard it
9 all.

10 MR. PRENDERGAST: You've heard it all,
11 yes.

12 THE COURT: We've been here since
13 10:30, it's now quarter to 3:00.

14 MR. PRENDERGAST: You have been
15 awfully patient, and I appreciate that.

16 THE COURT: I'm sorry? I didn't hear
17 that.

18 THE COURT REPORTER: Do you want me to
19 read it back?

20 (Laughter.)

21 THE COURT: No, no, no. I want to
22 give everyone an opportunity to argue.

23 MR. PRENDERGAST: One argument they
24 have made is that it -- and it was rebutted by the

1 into it in any depth.

2 THE COURT: And there's no need to,
3 because new ideas brought up in a reply brief are not
4 going to be considered by the Court. And I'll just
5 note that the equal protection argument, as I noted
6 to Mr. Krislov, is not pled.

7 So, as Mr. Krislov says, it may be in
8 the future, but that's not what I'm dealing with now,
9 so no need.

10 MR. PRENDERGAST: They argue with
11 respect to the handbook. Are you familiar with what
12 I'm referring to?

13 THE COURT: I sure am.

14 MR. PRENDERGAST: Plaintiffs
15 incorrectly argue that the City abandoned its
16 argument that under the handbook, the City maintained
17 the right to terminate its retiree healthcare plan.
18 That's just not what we've done. It's not correct.

19 Plaintiffs' opening brief did make
20 claims in support of a likelihood of success on the
21 merits based on the handbook for the straightforward
22 reason that the Court dismissed that contract claim,
23 so we had no reason to revisit it in our response to
24 the preliminary injunction.

1 sworn testimony today, is that, well, what's going to
2 happen if a retiree goes to an ACA plan and then
3 says, I want to go back to the City, and the ACA
4 insurer says, well, you have to pay for the next --

5 THE COURT: The uncontradicted
6 evidence is there's a 14-day period, notification
7 period, and there can be no -- at least according to
8 the evidence I hear, no penalty for that.

9 I don't know to the contrary, but
10 that's what the evidence is that was elicited from
11 the stand.

12 See, I remember, Richard.

13 MR. PRENDERGAST: So Mike Layden, my
14 colleague who's one of the best lawyers I know, just
15 handed me a note that said let's end it.

16 THE COURT: He's not only good, he's
17 wise.

18 MR. PRENDERGAST: Thank you for your
19 time.

20 THE COURT: You're welcome.

21 Mr. Burke.

22 MR. BURKE: Your Honor, I was going to
23 argue for another five hours, but I've changed my
24 mind, and we will rely on our filings, both in the

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1 underlying litigation and the one that we just pled.

2 THE COURT: Thank you.

3 Mr. Kennedy.

4 MR. KENNEDY: Thank you, Your Honor.

5 On behalf of the Laborers' Fund, we join in the
6 City's request that you deny the motion for
7 preliminary injunction.

8 THE COURT: Mr. Kugler.

9 MR. KUGLER: Yes, Your Honor. Well,
10 granting we've been here for four hours or more,
11 granting your preliminary injunction in full or in
12 part is now -- there's nothing further that the
13 Pension Fund can add to it. The Court has heard it.
14 It's in your hands.

15 The only thing I would say, Your Honor
16 is, as I understand it, I believe the timing of this
17 month, the deductions have already been made with
18 regard to the City, or are in effect, so whatever the
19 Court does, there may have to be some adjustment with
20 the check that's going out currently.

21 THE COURT: Thank you.

22 Mr. Krislov, you've got last ups.

23 MR. KRISLOV: Your Honor, I mean, we
24 obviously, as we have said before, object to the

Funds taking a positions today, especially to say
that it's some sort of hardship or difficulty to not
-- they've not asserted anything like this before.
All that they have to do is just not withhold from
their people the January premiums at the higher
rates.

If they're now saying that that would
be difficult, they could have spoken about this
before and not blindsided us today with that
argument, because they haven't made this argument
before.

THE COURT: They haven't made which
argument before?

MR. KRISLOV: They haven't made the
argument that it would be difficult for them to
comply with not raising the healthcare rates
beginning January 1st.

THE COURT: Is it not in their
submission?

MR. KRISLOV: They didn't make a
submission.

THE COURT: Is it not in the response
to your --

MR. KRISLOV: They didn't make a

1 response.

2 THE COURT: What's this?

3 (Indicating.)

4 MR. KRISLOV: No, no. The City.

5 THE COURT: That's what I'm talking
6 about.

7 MR. KRISLOV: I'm talking about the
8 Funds.

9 THE COURT: Oh, well. Okay. I
10 thought we were just talking -- my eye was on the
11 City, not the Funds.

12 MR. KRISLOV: Okay. As I say, you can
13 ignore that.

14 THE COURT: But it does call into
15 question where your eye is. Mr. Prendergast has
16 asserted, as I know, and I was here when he did it,
17 you conceded the City had no obligation under the '83
18 and '85 amendments. That, just so you know, is key
19 to my answer to this problem raised by your motion.
20 And you conceded the City has no obligations under
21 that.

22 Apart from my ruling, what's your
23 response to Mr. Prendergast's argument about that?

24 MR. KRISLOV: Our position is that

1 while the specific language of the Pension Code
2 provisions do not obligate the City to provide
3 healthcare, the City has in two ways subjected itself
4 to that obligation: Number one, by being the insurer
5 that the Funds have obtained that insurance from;
6 and, number two, by providing -- and this is what we
7 seek to enforce -- the City of Chicago Annuitant
8 Medical Benefits Plan. That is Exhibit 4 to our
9 reply, but it's been in everything. It's attached to
10 the complaint, it's attached to lots of things
11 throughout.

12 And it says eligibility. You will be
13 eligible for coverage if you are an annuitant of the
14 City of Chicago. Annuitant means a former employee
15 who is receiving an age and service annuity from one
16 of the four retirement funds. And here's what the --
17 here's where Kanerva comes in.

18 Once you provide as a governmental
19 employer, whether you regard the Funds as an
20 instrumentality of the City, or the City just does
21 it, because the state just did it in Kanerva, once
22 you provide a benefit that is conditioned on
23 exclusively whatever to people who are annuitants,
24 participants in one of the four pension funds, you

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1 are stuck with it for life because Article 13,
2 Section 5 doesn't say we protect benefits of
3 pension -- we don't protect benefit -- excuse me. We
4 don't protect pension benefits. It says, membership
5 in any pension or retirement system of the state or
6 any unit of local government, dot, dot, dot.

7 THE COURT: Shall not be diminished or
8 impaired.

9 MR. KRISLOV: The benefits of which
10 shall not be diminished or impaired.

11 THE COURT: Sure.

12 MR. KRISLOV: That's the key language.
13 That's why when the City provides the plan, and it's
14 the plan that we're seeking to enforce, it's the plan
15 that is the benefit.

16 Once they provide it to people
17 conditioned on their being members of the retirement
18 system --

19 THE COURT: They don't disagree,
20 really.

21 MR. KRISLOV: Then they're stuck.

22 THE COURT: They're just saying that
23 they're limited by the amounts that were granted by
24 the '83 and '85 legislation. They're capped at that

1 in terms of what they have to do, even for the
2 hirees.

3 MR. KRISLOV: That's what they have to
4 do under the Pension Code. That is not what they are
5 limited in having to do because they are -- because
6 they have taken it on.

7 That's why in Kanerva, the state, by
8 enacting a group healthcare plan, that, for these
9 people was conditioned --

10 THE COURT: But unlike Kanerva, here
11 it was time limited. It was not a, here, you're
12 getting it all for life. Apart from all your
13 assertions to the contrary in your briefs, they've
14 never said you can have it for life. In fact, they
15 didn't say it in the '83 and '85 amendments. I found
16 it, without it being in there, because it was given
17 without any --

18 MR. KRISLOV: Time limit.

19 THE COURT: -- limitation, to the
20 extent that it was given in those statutes.

21 MR. KRISLOV: See, that's where you
22 and I differ on this one, because --

23 THE COURT: There you go, and when you
24 wear the robes, I'll listen to you.

1 But I'll tell you, it's just ordinary
2 rules of statutory construction. You look at the
3 four corners of the statute and the contract. You
4 look at the four corners of the contract, and you are
5 limited by those terms as to what was given. That's
6 just the ordinary rules of construction, whether it's
7 a constitutional amendment provision, statutory
8 provision or a contract.

9 You're asking me to read into that
10 that which is not there. You're asking me to do it
11 because of Kanerva, and I understand that.

12 But Kanerva didn't just give carte
13 blanche. It doesn't say that which has been given
14 with limitations is, carte blanche, given for life.
15 It just said that which is given is guaranteed. It's
16 not guaranteed for life. It's guaranteed within the
17 ambit in which it was given, and that's up to the
18 legislature. It's not up to you, and it's not up to
19 me. I wish it were up to me; then we'd have a real
20 nice, platonic republic, and lots of things would be
21 changing. But we don't have that, and I'm somewhat
22 limited by that which is the -- by the separation of
23 powers in that regard.

24 MR. KRISLOV: Here's what I don't

1 understand and maybe missing the point.

2 Our view of Kanerva is that Kanerva
3 says where a public employer has granted a benefit
4 that is conditioned on --

5 THE COURT: Participation.

6 MR. KRISLOV: -- participation in one
7 of the retirement systems, it is a protected benefit
8 for life. And giving it --

9 THE COURT: What if the nature of that
10 which has been given is limited? I'm giving you \$5
11 every week for the rest of your life. Somehow,
12 because you need more money, or because things
13 change -- and I'm not trying to insult anybody here,
14 believe me, I'm not -- are you trying to tell me that
15 it should be \$10 or \$20 because the value of the
16 dollar has gone down? Does it ipso facto mean that I
17 have to give you \$100 a week? Isn't it limited to
18 that which I give?

19 MR. KRISLOV: If I'm a public
20 employee, and I say here is a benefit that I will
21 give to people who are participants in the retirement
22 system, I will provide your healthcare -- I will
23 provide the following benefit. I will provide, the
24 City of Chicago --

1 THE COURT: I will give you \$55 a
2 month.

3 MR. KRISLOV: But that's not what I'm
4 seeking to enforce.

5 THE COURT: I know. But that's what
6 it says. I understand you're trying to go beyond
7 that.

8 MR. KRISLOV: That's what the Pension
9 Code wording says. That's what I concede that the
10 Pension Code wording says.

11 What I'm saying is that by
12 providing -- and Ms. Holt said all they need is an
13 ordinance, and all they need is the appropriation
14 ordinance, and they could be -- no one said that the
15 City of Chicago annuitant healthcare plan was being
16 illegally provided. Once it is provided to people
17 based solely on their being annuitants or
18 participants in the plan, you're stuck with it for
19 life. Yes.

20 THE COURT: Okay. I got it. I got
21 your ideas.

22 MR. KRISLOV: So what we're trying to
23 enforce is not the \$55 subsidy. The subsidy is the
24 Funds. Providing the plan is what the City did.

1 balancing. I don't even get to adequate remedy at
2 law. I'll let you go on. You've said it before, and
3 I don't want to stop you. But I don't even get to
4 that if you don't pass the standing issue, which is
5 the first prong of the injunctive inquiry.

6 MR. KRISLOV: And our view is if we
7 interpret your ruling, people who were participants
8 on August 23rd, '89, have enforceable rights to
9 enforce a benefit whose parameters you said are to be
10 determined. And that's what you said, that on a
11 2-615 --

12 THE COURT: Yes. Oh, yes. That have
13 yet to be determined under 2-615. I did say that.

14 MR. KRISLOV: Yes.

15 THE COURT: Absolutely.

16 MR. KRISLOV: Those -- the exact
17 nature of those obligations, however, is not properly
18 decided on a 2-615 motion to dismiss. That's where
19 we figure that -- that explaining what we think the
20 obligations are is for later in the case.

21 At this point, the people who were
22 participants as of August 23rd, '89, have
23 enforceable rights. What they are entitled to
24 protect you left to be determined, and that's what I

1 There are differences. The City is saying, look, all
2 that they provided --

3 THE COURT: Providing the tax levy is
4 what the City did per the statute, '83 and '85.

5 MR. KRISLOV: Per the Pension Code
6 statute.

7 THE COURT: Yeah, well, isn't that
8 what I'm stuck with?

9 MR. KRISLOV: No, you're not stuck
10 with that. The City is stuck with it when it legally
11 provides a benefit to people based on their
12 participation in one of the four Funds, it's stuck
13 with that for their life. And that's -- if we
14 disagree on something, I believe I'm right on that
15 one.

16 I guess we'll find out.

17 But for these purposes, at least at
18 this point, until you decide the merits of it, who's
19 more harmed? They can't say the City's harmed. The
20 taxpayers, if they have an average of \$30 per
21 person --

22 THE COURT: But I don't get to harm if
23 I don't find an ascertainable claim, I mean a right,
24 standing. I don't get to harm. I don't get to

1 interpret your ruling to be.

2 THE COURT: Then how does that jibe
3 with the likelihood of success and an ascertainable
4 claim if I haven't yet determined what rights enure
5 to those three classes?

6 MR. KRISLOV: Because at this stage of
7 the proceedings, we need -- we don't have to prove
8 summary judgment. We just have to show that there's
9 a reasonable basis that we might --

10 THE COURT: No, that's not true, and
11 that's not the law, and you know that.

12 MR. KRISLOV: Oh, I --

13 THE COURT: For purposes of injunctive
14 relief, you have to show a likelihood of success.
15 Not a reasonable probability that there's a conflict
16 here, or it's been interpreted as being a fair
17 question, at least.

18 MR. KRISLOV: Fair question, at least.
19 We've done that. And I believe that you will say
20 that you will agree that at least for these
21 purposes -- whether you disagree with me ultimately
22 or not is for the Court to decide -- but the fact is,
23 I think we have raised an absolutely, at least a fair
24 question. I think we're right. I think we will

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ultimately prevail on that. But I think we've shown enough to justify hurdle number one.

And it's not an all -- and failing one. It is an overall -- we shouldn't fail any of them by a significant amount, but it is a balancing test overall, and it is to maintain --

THE COURT: No, it's not. I don't even get to the balancing test unless you can prove the first four.

MR. KRISLOV: Well, I think we have satisfied --

THE COURT: And that's the law, too.

MR. KRISLOV: Fair enough. But we've sat -- I believe we've satisfied the first one, at least, sufficient to preserve the status quo, until we get to the merits of the case.

In terms of the post-'89 hires, in our view, is that when you give things to people after that, whatever you give them, again, conditioned on their being participants, that's a floor.

But we can -- we may disagree with that, and that's why for purposes of this injunction that we're requesting, it's for the pre-8-23-89

off of the Choice.

So if you want to get lesser coverage -- and I probably should have asked Ms. Currier -- but if she's elected out of the coverage and to go in the ACA, everybody who says, oh, you'll be better off in the ACA is generally not in it.

The only ordinance needed is the appropriation ordinance. We're looking to enforce the plan, and at this point, I think we've shown, certainly for the pre-8-23-89 hires, a sufficient showing of likelihood of harm, balance of equities, hardship. I don't think we've missed any of the six on that.

But I think, overall, we're not asking for much. Just put off the increase until we find out who's entitled to do what. And until then, we -- all we can rely on, that's all these people have to rely on is the Constitution and this Court, and we ask you to do so.

THE COURT: Thanks.

First, I'd like to compliment Mr. Krislov and Mr. Prendergast and the other attorneys here on their submissions. They were as

hires.

THE COURT: You're not asking for it to be imposed as to the post-August 23rd, 1989, hires, or participants, correct?

MR. KRISLOV: We concede that that is a weaker claim that you, by your ruling, do not accept. How is that?

THE COURT: That means you want me to rule. Okay. I will.

Anything else?

MR. KRISLOV: Yes. This whole business of you can't get -- you know, you can still get healthcare. Too bad you can't get your doctor, too bad you can't get any of the hospitals you've been dealing with. These are hardships. These are unique hardships that everybody has been recognizing is a big problem.

If you can't deal with the doctor that you have been dealing with for years, if you must go to a lesser, far distant place -- people in Peoria don't necessarily go to Northwestern, but people in the city go overwhelmingly, it may be 80 percent of the patient treatment or more, I don't know, goes to the five or six institutions that I named who are all

well written as anything I've ever seen as a judge, and certainly better than I've ever written, and they helped me focus on what the issues were.

The Court is guided by the law with regard to issuance of injunctions. And for the sake of the folks here who do not know the law as well as the attorneys, let me just spend a few moments explaining to you what it is and what I'm guided by.

An injunction is called an equitable remedy. It's an order by which a party is directed to perform some act or is ordered to refrain from doing some act, which is what Mr. Krislov is asking for here.

A request for a preliminary injunction is called an interlocutory remedy. That means that they're intended to provide immediate but durational, that means not forever, relief prior to the final adjudication of a controversy on the merits.

And by definition, that means I can't, by the giving of the issuance of a preliminary injunction, make a ruling on the merits. And as Mr. Krislov just suggested, I have not -- with regard to the motion to dismiss, I do not know, have not yet decided, have not yet discussed with the attorneys

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1 what the nature and extent of the folks' interest is
2 under the '83 and '85 amendments to the Pension Code.

3 An interlocutory injunction is also
4 called an extraordinary remedy by our Supreme Court.
5 And that means that I shouldn't grant one unless I've
6 taken great care to assure that it is needed under
7 the circumstances.

8 What the circumstances are is
9 dependent on every case, and being equitable in
10 nature, that means not being guided by law, but being
11 guided by aspects of equity. They're addressed to
12 the sound discretion of the trial court. In this
13 case, that's me.

14 The elements which must be shown by
15 the movant for the issuance of a preliminary
16 injunction and calling upon this Court's discretion
17 to issue an extraordinary order is, first, there must
18 be an ascertainable claim for relief by the
19 plaintiffs.

20 Secondly, there has to be showing of a
21 likelihood of success on the merits, without ruling
22 on those merits, or, as I said just a few moments
23 ago, at least a fair question that the plaintiff will
24 succeed.

1 As I've ruled in my December 3rd
2 opinion, I find that the participants, post-August
3 23rd, 1989, that means the hirees thereafter, do not
4 have an ascertainable claim for relief.

5 And the reason for that, so you know,
6 is, as I said before, alluded to, I'm guided by the
7 law. And the law says that, yes, pension benefits
8 shall not be diminished or impaired.

9 But it doesn't grant pension benefits.
10 To that, I have to look at the core body, the body
11 which issued that. In this case, it's the
12 legislature. And for the post-August 23rd, 1989
13 hirees, whatever protections they were given,
14 whatever benefits they were given were a matter of
15 statute.

16 As I said before, if it were me, it
17 would be different. But I'm not a super-legislature.
18 I've been told, every court has been told, I cannot
19 impose my will on the legislature. And there's a
20 reason for that in democratic theory. They're your
21 representatives. They're the ones who decide what
22 the law is going to be; I decide whether they did it
23 right or not, and I look at it. As I said before, I
24 use statutory construction, if needed. But the first

1 Third, there has to be irreparable
2 harm to the plaintiff if -- or in this case, a class
3 of plaintiffs -- if the injunction is not given.

4 Fourth, there has to be an inadequate
5 remedy at law. And that means, according to the law,
6 as our Supreme Court has said, that means that money
7 damages will not suffice if it's not given.

8 Lastly, or -- not lastly, but the
9 courts say that if it comes down to it, I should
10 balance the equities, the hardships to both sides. I
11 should consider that in terms of giving or not giving
12 the injunctive relief.

13 And, also, some cases have said that I
14 should consider the public interest, and the harm to
15 the public, and public policy.

16 As you've heard, and I compliment you
17 all for, (a), being here. Obviously, you're
18 concerned, and it's a concerning matter. I've
19 noticed your attention to it.

20 With regard to the first element, the
21 ascertainable claim for relief, the plaintiffs must
22 clearly establish an ascertainable right and need of
23 protection, and the failure to do so obviates the
24 need to go further.

1 rule is, I just look at the ordinary words that are
2 in the statute.

3 And in the statutes in '89 and
4 thereafter, it was clearly limited, the benefits that
5 were given to the folks post- -- who were hired
6 post-August 23rd, 1989. So that's the core grant.

7 And Mr. Krislov's argument
8 notwithstanding, the Constitution protects that which
9 was granted. It doesn't add to it. It doesn't
10 magically create a right that was not given. The
11 problem therein lies with the legislature if you have
12 a beef, not with anybody else. And that was a long
13 time ago.

14 So, clearly, as to the -- it seems to
15 me, as to the post-August 23rd, 1989 group, the
16 fourth subclass, they do not have an ascertainable
17 claim for relief, and I need go no further.

18 With regard to the prior groups, the
19 1983 and '85 amendments were in effect when the
20 Korshak subclass and the Windows subclass and
21 subclass 3 entered into the Funds' retirement
22 systems, as I stated.

23 Although Mr. Krislov and I argued
24 about the issue, I do find, of course, that those who

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1 were participants prior to August 23rd, 1989, do
2 have an ascertainable claim for relief. And that's
3 what I said earlier in my December 3rd opinion.

4 What that claim for relief is, as I
5 mentioned earlier, and Mr. Krislov mentioned, is
6 going to be subject to further discussion between the
7 parties, arguments, etcetera. But as I have alluded
8 to, I use rules of statutory construction, and I
9 cannot write into a statute that which is not there,
10 even if I want to.

11 And I look at the 1983 and the 1985
12 statutes, and much as Mr. Prendergast has as argued,
13 they are limited. They are limited by their terms.
14 And the ascertainable claim for relief for those
15 three subclasses is, thus, limited thereby.

16 Therefore, they do have an
17 ascertainable claim for relief, but I have to go on
18 to see their likelihood of success on the merits as
19 to that which is being asked of me today and is being
20 asked of me in the complaint. That's the second
21 element, as you may recall I said to you.

22 Much as Mr. Prendergast has argued,
23 and I accept his argument, those retirees are subject
24 to the limitations of the statute that gave them the

benefit, the '83 and the '85 statute, which is
clearly less than that which is being given by the
2016 enactment, or appropriation.

Therefore, I do not find that there
would be a likelihood of success on the merits with
regard to that which is before me today.

I might say to you all who are
seriously interested in this, my ruling today is not
with prejudice. If there is some other evidence that
comes before me, I'm open to that. But I'm trying to
give you the analysis that I have gone through and my
thinking on the subject so you know that I cannot
give you that beyond which the legislature has given
you, as much as I would like to. And I would. And I
did in my opinion of December 3rd, but only to the
extent that the legislature gave it to you.

With regard to the third element,
irreparable harm, in this case, I find that there is
some harm that would occur to the retirees. I find
that that element mitigates in favor of the
plaintiffs. This is inextricably bound with the
hardship that would befall the retirees. And let me
talk about that just a little bit.

I find, as a matter of anecdotal

1 evidence, based on myself, that the older you get,
2 the less you like change. And as my father used to
3 say, "these newfangled ways, I just don't understand
4 them, and they're confusing." And I find that there
5 is a hardship to retirees, the elderly folks, to
6 change the way things are, and to go out and look at
7 this mysterious ACA, and have to go into the
8 marketplace when it's already and always been given
9 to you. That's the problem with our paternal
10 structure of government as it's been in the past.

11 I understand things have changed for
12 all sorts of reasons, a lot of which have been
13 alluded to today. And I just wanted to say that I'm
14 sensitive to that, and I do understand that it's a
15 problem for folks to go out into the marketplace and
16 start looking and thinking, instead of just taking it
17 as it's been given to them all these years. I
18 understand that, and I've taken that into
19 consideration.

20 But it doesn't throw the balance off
21 or replace the lack of a factor, in this case, the
22 claim for relief, which is limited by that which was
23 granted by the legislature, and the lack of a
24 likelihood of success on the merits for that reason.

1 The fourth element is the inadequate
2 remedy at law. There is case law that's been cited
3 to me that Illinois law is clear that a preliminary
4 injunction, which is being requested here, cannot be
5 premised upon a temporary loss of benefits or income.

6 The case law is cited in the parties'
7 submissions to me, especially the City's, and I have
8 read it, and it's actually true, wherein Knott versus
9 Illinois Racing Board, the court said the loss of
10 income for a brief period does not constitute
11 irreparable harm.

12 And wherein Kurle versus Evangelical
13 Hospital Association -- by the way, the citation for
14 the first case is 198 Ill.App.3d 364 at page 368,
15 and in Kurle, the citation is 89 Ill.App.3d 45 at
16 page 53, which vacated an order granting a
17 preliminary injunction as is being asked of me today,
18 because the relief requested sought back pay and
19 benefits, which is a purely economic benefit, and the
20 plaintiffs had an adequate remedy at law for the back
21 pay and the back benefits, which is true here.

22 Everything Mr. Krislov said is
23 absolutely accurate. It's just a few months, maybe.
24 And I hope everything Mr. Prendergast said is

1 accurate, that there's a chance that this is going to
2 be resolved without going much further and causing
3 more heartache to the retirees.

4 But I have to follow the law,
5 regardless of my heart, which I've been accused of
6 leading with too much. But I have to follow the law.
7 And when there's a remedy at law, as a matter of law,
8 an adequate remedy at law will prevent me from
9 issuing an injunction. In fact, injunctive relief is
10 proper when money damages are adequate to remedy the
11 wrong, absent a showing that it would be impossible.
12 And there has been no showing here. There hasn't
13 even been an argument about that here.

14 So three of the elements have not been
15 proven to me by a satisfactory burden by the
16 plaintiffs, the ascertainable claim of relief, past
17 that which was given by the '83 and '85 statutes.
18 Therefore, the likelihood of success on the merits
19 and the inadequate remedy at law, that's enough for
20 me to deny this, with my sorrow, especially on
21 Christmas, as we're approaching that.

22 I have considered the balance of the
23 equities. I have considered the hardships. And as I
24 mentioned, I'm aware of the hardships that befall the

1 right, or wrong -- but I truly believe the City is
2 implicated in this, and so that they are a proper
3 party with regard to the '83 and '85. That's
4 something that will be subject to review by the
5 City's motion to reconsider, which I will review and
6 keep an open mind on.

7 But that's my ruling as of today. So
8 for all those reasons, and with great respect for the
9 job that's been done by Mr. Krislov and
10 Mr. Prendergast and the attorneys for the Funds, the
11 motion for the issuance of a preliminary injunction
12 is denied.

13 What's next?

14 MR. KRISLOV: We need to do some
15 scheduling. And one of them -- at the moment, our
16 response to their to motion to clarify is due
17 tomorrow --

18 THE COURT: Ladies and gentlemen, I
19 know that you're done and you want to go. But I need
20 for you to still be quiet so that I can listen to
21 Mr. Krislov, your attorney, about what it is he wants
22 to do to help protect your rights. I promise it's
23 going to be over in no more than three minutes. Just
24 give me the three minutes, please.

1 elderly. And by the elderly, I mean anyone over 30.
2 (Laughter.)

3 THE COURT: But I am duty-bound by my
4 oath to follow the law, and that's the way I see it.
5 Although I understand intellectually and viscerally,
6 Mr. Krislov and I disagree on that. That's the way I
7 see it for the reasons I've stated.

8 Now, does this apply to the City, or
9 is it true, as Mr. Prendergast said, and as my review
10 of the record shows, Mr. Krislov conceded that he
11 wasn't going against the City, just against the
12 Funds.

13 MR. KRISLOV: I disagree with your
14 characterization, but...

15 THE COURT: You're entitled, and
16 you've made a record about it, and it's clear.

17 But the City is implicated in this.
18 I've ruled in my prior decision that the City was
19 used as an instrumentality of the Funds, and vice
20 versa, and, actually, the Funds of the City. And the
21 City agreed to tax levies for these '83 and '85
22 amendments.

23 And as Mr. Prendergast disagrees with
24 me, so does Mr. Krislov -- I must be doing something

1 Go ahead.

2 MR. KRISLOV: We're due tomorrow to
3 respond to their motion to clarify.

4 I would like, and I don't think
5 Mr. Prendergast has a problem with this, if we could
6 deal with that on the same schedule as our amended
7 complaint, which is due in January, January 11th.

8 So if we could --

9 THE COURT: How would you like to
10 modify the briefing schedule, Clint?

11 MR. KRISLOV: What we would do is, we
12 would file our brief and our amended complaint, and
13 we'll probably -- if our amended complaint is
14 permitted to incorporate all the things which we're
15 allowed to replead, we can deal with all of that in
16 our January 11th filing.

17 THE COURT: Well, one side of me says
18 if you're going to file an amended complaint, this is
19 all moot. Another side of me says that we should
20 keep things on parallel tracks but not together.

21 Because I think it's important for me
22 to file a written memorandum opinion and order with
23 regard to the City's motion for clarification.

24 So let's -- I'm going to separate

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1 that, and that's my ruling. Just tell me when you
2 would like to file your response.

3 MR. KRISLOV: I guess on the motion to
4 clarify, we'd probably like to file on the same day
5 as we file the amended complaint.

6 THE COURT: Have I given you leave to
7 file the amended complaint?

8 MR. KRISLOV: Yes.

9 THE COURT: What is that date? What
10 day is that?

11 MR. KRISLOV: January 11th.

12 THE COURT: Any objection to the
13 motion to extend time to file the response to
14 January 11th?

15 MR. PRENDERGAST: No objection.

16 THE COURT: When would you like to
17 file your reply?

18 MR. PRENDERGAST: 14 days thereafter.

19 MR. KRISLOV: I think that's already
20 set, actually.

21 THE COURT: But aren't we pushing
22 things forward? I don't have the briefing schedule.

23 MR. KRISLOV: Their response was --

24 THE COURT: Oh, I do have --

1 next. If we're going to --

2 THE COURT: Well, that's with the
3 motion for clarification. So I'll throw it in the
4 book on then, and show up so that Deborah can ask you
5 about your schedules, and choose a ruling date that's
6 commensurate with your personal and professional
7 schedule with regard to your motion to amend. And I
8 said it would be due by 1-11.

9 Do you wish to change that?

10 MR. KRISLOV: No. We would still file
11 that on January 11th.

12 THE COURT: Okay. And they're to
13 answer or otherwise plead by 2-16, which is the date
14 I gave you. Is that still all right?

15 MR. KRISLOV: Could they answer the
16 Count 1 that's been upheld?

17 THE COURT: No. No, they can't. No.
18 Let me explain to you why.

19 No. They're going to answer or
20 otherwise respond, per our schedule, by 2-16. That's
21 what I gave the last time. That was without
22 objection then. And then we have a clerk's -- a
23 status date before me of 2-24, and that still sounds
24 good to me. Is that okay for you?

1 MR. KRISLOV: -- February 16th, I
2 think.

3 THE COURT: No, I've got it here.

4 They were asking -- you were going to
5 file your response tomorrow. That pushes things up.
6 Now you want it to the 11th. I'm going to
7 commensurately give a further extension to them to
8 file a response, a reply, since their reply was due
9 on the 8th, and I'm not going to have them file it
10 before your response is due.

11 MR. KRISLOV: Obviously.

12 THE COURT: Okay. We're on the same
13 page. You want 14 days, Richard?

14 MR. PRENDERGAST: 14 days.

15 THE COURT: I'm going to give you a
16 little bit more, because 14 days brings us the
17 25th, and on that day, that's -- my clerk's status
18 days are on Monday. So I'm going to give you until
19 January 29th to file your reply, and the clerk
20 status day will now be on February 1st at 9:00 a.m.

21 Does that meet your with your
22 schedule, Clint?

23 MR. KRISLOV: I think that's no
24 problem. I think our only thinking is what happens

1 MR. KRISLOV: What I don't understand,
2 Your Honor, is why they don't have to answer the
3 count that's been upheld.

4 THE COURT: Because it's going to be
5 superseded by your amended complaint. It's going to
6 be mooted out. It's going to be nonexistent.

7 That's why.

8 MR. KRISLOV: I understand the Court's
9 ruling.

10 THE COURT: Okay. That's as much of
11 an, "oh, I get it," from you I get.

12 MR. KRISLOV: Well, no, I get it. But
13 usually if a count's been upheld, then usually you
14 proceed to answer the count that's been upheld.

15 THE COURT: No, there is no "usual"
16 about that, and certainly not in front of me. It's a
17 complaint, which I'll take as a whole. They're going
18 to answer or otherwise plead.

19 Who knows what you're going to do with
20 regard to the first count and whether you're going to
21 amend it or modify it. You're entitled to. I don't
22 want to prevent you from doing that.

23 So we'll take every step as it comes,
24 and we'll give everybody an opportunity to be heard.

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1 MR. KRISLOV: Okay. So we file our
2 amended complaint and our response to their motion to
3 clarify on January 11th.

4 THE COURT: Yes, sir.

5 MR. KRISLOV: They then file their
6 response to the reply on the clarification on
7 January 29th.

8 THE COURT: Correct.

9 MR. KRISLOV: And they have until
10 February 16th in which to answer or otherwise plead
11 with respect to the amended complaint.

12 THE COURT: Correct.

13 MR. KRISLOV: There is a clerk status,
14 I guess, on February 1, with respect to the clarify?

15 THE COURT: Correct. And there is a
16 -- and if you tell Deborah when you come on
17 February 1st, tell her there's a status date on the
18 new, amended complaint of 2-24-16 at 9:30.

19 Are we all on the same page,
20 schedule-wise?

21 MR. KRISLOV: We are.

22 MR. KENNEDY: The 2-24 had been on our
23 schedule as a ruling date on the reconsideration, but
24 now it's just --

1 everything that's occurred today, and you can go
2 home, and all these people can go home. And we have
3 a transcript anyway.

4 MR. PRENDERGAST: That will be fine,
5 Judge.

6 THE COURT: I will not be here next
7 week, so I can't sign off on anything, but Judge
8 Allen will be around. And I wish you well.

9 Happy holidays to everybody.
10 (Proceedings adjourned at 3:25 p.m.,
11 December 23, 2015.)

1 THE COURT: Well, it's not now.

2 MR. KENNEDY: I understand.

3 THE COURT: Things have been pushed
4 up. Who knows? If I can get to it, believe me, I
5 will. But I can't guarantee that, so I don't want to
6 lie to you about anything.

7 MR. PRENDERGAST: Should we put that
8 in the order, Your Honor?

9 THE COURT: Put in the "I don't want
10 to lie to you about anything" in the order.

11 MR. KENNEDY: Strike the --

12 THE COURT: Yes, please strike the --
13 which date are we striking?

14 MR. KENNEDY: The ruling date, which
15 is not --

16 THE COURT: Yeah, 2-24 is not a ruling
17 date. You're going to have to fill out another
18 briefing schedule, a modified briefing schedule as to
19 the motions to clarify.

20 Is anyone going to be around tomorrow?
21 I will. Is anyone going to be around?

22 MR. KRISLOV: I will.

23 THE COURT: So maybe you can put all
24 of these -- get a confirming order in writing for

1 REPORTER'S CERTIFICATE

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

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

12 IN WITNESS WHEREOF, I hereunto set my
13 hand as Certified Shorthand Reporter in and for the
14 State of Illinois on January 6, 2016.

15
16 *Jerri Estelle*



17
18 Jerri Estelle, CSR, RPR
19 License Number: 084-003284

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