

EXHIBIT 4

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

CITY OF CHICAGO)	
)	
Petitioner,)	
)	
-vs-)	No. 87 CH 10134
)	
MARSHALL KORSHAK, et al.,)	
)	
Respondents.)	
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MARTIN RYAN, WALTER)	
RUCINSKI, BERNARD McKAY,)	
JOSEPH COGLIANESE and)	
LOUIS EISEN,)	
)	
Intervening-)	
Petitioners.)	

87-812-9-EM-3-18

INTERVENORS' CLASS ACTION RESPONSE
AND REQUEST FOR INJUNCTIVE RELIEF

Martin Ryan, Bernard McKay, Walter Rucinski, Joseph Coglianesse and Louis Eisen, plaintiffs in Ryan v. Chicago, 83 CH 390, by their attorney, Clinton A. Krislov, for themselves and as representatives of all persons similarly situated as participants in the four City of Chicago Annuity and Pension Benefit Funds, respond and state with respect to the City's complaint herein and petition for relief against the City of Chicago and each of the trustees named as respondents in the City's original complaint in this case, as follows:

Preliminary Statement

1. This lawsuit was brought by the City of Chicago to enforce obligations upon and seek restitution from the trustees

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of the City's four primary pension benefit funds and against the beneficiaries thereof in connection therewith the costs of medical benefits provided to annuitants and their dependents and other persons claiming the benefit of such medical coverage through annuitants.

2. On or about November 19, 1987, petitioners/intervenors sought to intervene and protect their interests in the pension funds, which interests are distinct from the interests of either the City or the trustees.

3. Through their attorney, Clinton A. Krislov, petitioners are presently involved in litigation against the City and trustees over the City's misuse of pension taxes. Ryan v. Chicago, 85 CH 2630 (Cook County, Circuit Court, County Department, Chancery Division). The Illinois Appellate Court's decision in this matter is reported at 499 N.E.2d 517 (Ill. App. 1986).

4. Each petitioner is a participant in one of the four annuity and benefit funds. Ryan, McKay, Coglianesi and Eisen are retired annuitants participants in, respectively, the Police, Fire, Laborers and Municipal Employee Funds. Each petitioner is individually and severely adversely affected by the City's complaint and the relief sought therein.

5. To the extent the City seeks to modify or terminate the medical coverage which petitioners have had for the past several years and to the extent the City seeks restitution from the funds or from the petitioners individually, their interests would be

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adversely affected. See Complaint, Count I, ¶¶8-15; Count II, ¶¶7-13.

Petitioner's Interests Are Not
Being Adequately Represented By The Trustees

6. The interests of the petitioners and the class they seek to represent, are not being adequately represented by the trustees named as respondents in the City's petition.

7. The trustees, to whom petitioners and the class would ordinarily look for protection, are faced with an inherent conflict of interest in that they have an incentive to shift any restitutionary obligation onto the pension funds or petitioning class members, as opposed to themselves individually. Further, they have an interest, which may be contrary to the interests of petitioners and the class, in avoiding responsibility for any prior breaches of duty as alleged in the City's complaint which may be in conflict with petitioners' and class members' interests in seeing that such liability, if any, ultimately rests on them. Finally, the trustees do not share the interests of the petitioners or the class members in maintaining medical coverage on the same terms and conditions as it has heretofore been available to them.

Class Action Allegations

8. The class is so numerous that joinder of all members is impracticable. Although petitioners do not now know the exact number of class members, they certainly number in the thousands.

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This information is currently in the hands of the trustees or the funds, or, alternatively, the City.

9. Questions of fact and law common to the class predominate over the questions affecting only individual members. Such common questions include, but are not limited to:

- a. Whether the trustees have a conflict of interest in representing the interests of the class members in this proceeding;
- b. Whether the trustees breached their duties as alleged in the City's complaint;
- c. Whether restitutionary relief, as sought by the City, can be awarded against either the trustees or the class members;
- d. Whether the City or other responsible party is estopped from unilaterally modifying or discontinuing medical benefits in view of the reliance of the class members, on its being a promised benefit of their current or previous employment by the City, and thus in not previously seeking or obtaining alternative coverage.

10. Petitioners are represented by counsel experienced in class action litigation. Their claims are typical of those to be asserted on behalf of the class and they will fairly and adequately represent the interests of the class.

11. Because the interests of the petitioners and class members are virtually identical, particularly with respect to any restitutionary obligations, a class action is the most appropriate method for fairly and efficiently adjudicating this controversy.

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Claims And Defenses To Be
Alleged By Petitioners And The Class

Restitution

Declaratory Relief

12. Pursuant to the Illinois Declaratory Judgment statute, Ill. Rev. Stat. ch 110, ¶2-701 (1986), petitioners seek individually and on behalf of the class a declaratory judgment to the effect that any restitution sought or obtained by the City in connection with its complaint shall be the sole responsibility of the trustees and not of the pension funds, the petitioners or the class.

13. There is an actual and concrete controversy between the petitioners and class members, on the one hand, and the trustees and the City on the other, which is ripe for adjudication by the Court at this time.

14. All parties necessary for the adjudication of such declaratory judgment claim are presently before the Court in connection with this lawsuit.

Alternative Answer And Affirmative Defenses
To The City's Complaint

15. As an alternative to the declaratory relief sought above, petitioners and the class state the following by way of answer and affirmative defenses to the City's complaint.

Count I

1. Petitioners and the class admit the allegations contained in ¶1 of Count I of the complaint purport to describe the causes of action alleged in and relief sought by the

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complaint but deny the validity of the causes of action alleged and deny any entitlement to relief on the part of the City.

2. Petitioners admit the allegations of ¶2.

3. Petitioners admit the allegations of ¶3.

4. Petitioners admit the allegations of ¶4.

5. Petitioners admit the allegations of ¶5.

6. Petitioners admit the allegations of ¶6.

7. Petitioners admit the allegations of ¶7, except that it appears from the complaint that relief is also requested from the petitioners and other members of the class.

8. Petitioners deny the allegations of ¶8.

9. Petitioners admit the allegations of ¶9.

10. Petitioners lack sufficient information or knowledge to form a belief as to the allegations of ¶10 and accordingly deny same and demand strict proof thereof.

11. Petitioners deny the allegations of ¶11.

12. Petitioners admit the allegations of ¶12.

13. Petitioners lack information or knowledge sufficient to form a belief as to the allegations of ¶13 and accordingly deny same and demand strict proof thereof.

14. Petitioners admit the allegations of ¶14.

15. Petitioners deny the allegations of ¶15.

16. Petitioners deny the allegations of ¶16.

17. Petitioners deny the allegations of ¶17.

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Count II

1. Petitioners admit that the allegations in ¶1 purport to describe the claim asserted in Count II but deny the validity of such claim and deny any entitlement to recovery based thereon.

2-6. Petitioners reallege ¶¶2-6 of their alternative answer to Count I and incorporate them by reference.

7. Petitioners lack information or knowledge sufficient to form a belief as to the allegations of ¶7 and accordingly deny same and demand strict proof thereof.

8. Petitioners lack information or knowledge sufficient to form a belief as to the allegations in ¶8 and accordingly deny same and demand strict proof thereof.

9. Petitioners deny the allegations of ¶9.

10. Petitioners lack knowledge or information sufficient to form a belief as to the allegations of ¶10 and accordingly deny same and demand strict proof thereof.

11. Petitioners deny the allegations of ¶11.

12. Petitioners deny the allegations of ¶12.

13. Petitioners deny the allegations of ¶13.

Affirmative Defenses
(Applicable to Count I and Count II)

First Affirmative Defense

1. The City's claims, even if legally sufficient, are barred by principals of laches.

2. The pension funds became a part of the City's self insurance program in cooperation with the City.

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3. If the City's expenditures on behalf of the annuitants and their dependents since 1980 were made without necessary appropriations by the City Council, as the City now contends, the City has known or had reason to know that deficiency from the very beginning.

4. Relying on their participation in the City's health insurance plan, and upon the City's words and conduct in connection therewith, petitioners and the annuitants did not make other alternative arrangements for health care coverage or to finance such coverage.

5. If their participation in the City's plan is now discontinued, many or all of the annuitants and their dependents would not be able to obtain equivalent health insurance coverage due to advanced age, current physical health conditions, limited financial resources and/or for other reasons.

6. Moreover, if either the pension funds or the annuitants were forced to provide restitution, they would be severely prejudiced. The restitution sought by the City is and would be a wholly unanticipated and unforeseeable expense.

7. The pension funds themselves are currently underfunded, in part because of the City's own actions in using pension tax monies for itself as shown in the Ryan v. Chicago case, and may be already unable to satisfy their own future obligations.

8. Many, if not all of the annuitants and their dependents now live on fixed incomes, substantially below the incomes received while working, and cannot afford to bear additional medical care charges.

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9. Until fall of 1987, seven years after they first became part of the City's self insurance plan, neither the pension funds nor their participants had any reason to suspect that the City might be seek to expel them from the City's health insurance plan or seek restitution for past expenditures.

Second Affirmative Defense

1. Under no circumstances is the City entitled to restitution for any past expenditures made as a result of the pension funds' participation in the City's health insurance plan.

2. The City not only made any such expenditures voluntarily, but it was in cooperation with the City that the pension funds initially decided to join the City's health care plan. Equity does not favor a volunteer. The City has no equitable basis upon which to seek restitution for expenditures it voluntarily made and upon which petitioners and other class members have detrimentally relied.

Relief Requested By Petitioners And The Class

Petitioners and the class request declaratory, injunctive and other relief as follows:

A. Petitioners seek an order determining that this action may be maintained as a class action under Illinois law and that all necessary prerequisites to the maintenance of such class action are satisfied.

B. Petitioners request an order finding that the trustees have a conflict of interest which prevents them from adequately or properly representing the interests of the petitioners and the

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class in connection with the matters alleged in the City's complaint.

C. Petitioners request this Court to issue its declaratory judgment stating that any wrongful conduct as alleged by the City is solely and exclusively the fault and responsibility of the trustees and not of the petitioners or other class members and that they shall suffer no adverse financial or other impact as a result of the matters alleged in the City's complaint and that any such results or impact are solely and exclusively the fault and responsibility of the trustees.

D. Alternatively, petitioners request that the Court enter an judgment in favor of the trustees, the petitioners and the class and against the City on all claims asserted in the Complaint.

E. That plaintiffs recover their costs of suit, attorneys' fees and other reasonable expenses incurred in the prosecution and defense of the claims at issue herein.

F. That petitioners and the class be afforded such other and further relief as this Court deems just and appropriate in the circumstances of this case.

Respectfully submitted,

CLINTON A. KRISLOV


Attorney for Intervening-Petitioners

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