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

Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 392 other Named Plaintiffs listed in Exhibit 1, Plaintiffs, vs. CITY OF CHICAGO, a Municipal Corporation, Defendant, and Trustees of the Policemen's Annuity and Benefit Fund of Chicago: the Firemen's Annuity and Benefit Fund of Chicago; the Municipal Employees' Annuity and Benefit Fund of Chicago: and the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago et al. Defendants.	Hon. Judge Neil Cohen, Cal. No. 5 2013 CH 17450 Previous Nos. 01 CH 4962 and 87 CH 10134

**Combined Amended Motion and
Memorandum In Support of Class Certification**

Plaintiffs Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 392 other Named Plaintiffs listed in Exhibit 1 of the Plaintiffs' Fourth Amended Complaint, ("Plaintiffs"), move, pursuant to 735 ILCS 5/2-801, to certify this case to proceed as a class action for a Class defined as:

> **All present or future annuitants of the City of Chicago, who became participants (i.e., hire date) by July 31, 2003 in one of the four City of Chicago Annuity and Benefit Funds:**
>
> a) Policemen's Annuity and Benefit Fund of Chicago
> b) Firemen's Annuity and Benefit Fund of Chicago
> c) Municipal Employees' Annuity and Benefit Fund of Chicago, and

d) Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago.

with Subclasses defined as:

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

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

3) Persons who began their participation in one of the Funds (initial hiring date) before July 31, 2003[1].

   3A: the **NonMedicare subclass** Persons who began their participation in one of the Funds before April 1, 1986 (i.e., whose City employment did not constitute Medicare-qualifying quarters); and

4) Alternatively, as to sub-class 3: "all current and former City employees who will become the Funds' Future Annuitants (as defined in the Settlement Agreement) on or before June 30, 2013, and their eligible dependents." (pursuant to the Second Amended Opinion and Memorandum of Law / Settlement, at page 9[2]).

The defined class and subclasses reflect the decisions of this Court and the Appellate Court, declaring annuitants/participants' entitlements by their described dates of hire and retirement, and Defendants' desire to bind class members by this proceeding, the classes should be identified and certified to provide members due process notice and protections.

[1] July 31, 2003 is the date Judge Dooling approved and entered the 2003 Settlement - the Second Amended Opinion and Memorandum of Law in *Korshak*, 01 CH 4962.

[2] The 2003 Settlement defines the Settlement Class as "all current and former City employees who will become the Funds' Future Annuitants (as defined in the Settlement Agreement) on or before June 30, 2013, and their eligible dependents."

Nature of the Case

Plaintiffs' Fourth Amended Complaint seeks permanent relief for annuitant healthcare participants in litigation that has continued off and on for now over thirty years.

History and Background of this case. This case was originally filed October 19, 1987 (*City v. Korshak, et al., (Trustees) and Ryan, et al. (Participants),* Circuit Court of Cook County, No. 87 CH 10134) by the City seeking to terminate its Annuitant Healthcare coverage for participants in the City's four Annuity and Benefit Plans, and recover monies expended under the Plan in prior years. After this court's dismissal of the City's claim, the trial of the Funds and participants' counterclaims for permanent coverage under the fixed-rate subsidized City Of Chicago Annuitant Health Benefits Plan, the pre-decision imposed ten-year settlement between just the City and the Funds, subsequent extension of that settlement, followed by a 2003 Settlement which included the annuitants, repeatedly revived over the opposition of the City and the Funds, who now disavow their previously acknowledged statutory obligations, this Court declared that the Funds have primary statutory obligations to provide and subsidize coverage for their annuitants, and the Appellate Court affirmed this declaration, expanding it to include all persons who became Fund participants by the "execution" or "effective" date of the 2003 Agreement, it is long past time to certify this case under 2-801 to proceed as a class action for all these annuitants, so that they may have due process notice and opportunity to be heard.

The plaintiffs' Third Amended Complaint addressed the class of current retirees with four subclasses: (1) the Korshak subclass, made up of people who retired before December 31, 1987; (2) the Window subclass, made up of people who retired between January 1, 1988 and August 23, 1989 (the date legislation corresponding to the Korshak Settlement was finally enacted); (3) subclass three, made up of people who retired on or after August 23, 1989; and (4) subclass four,

made up of people who were hired after August 23, 1989. *Underwood v. City of Chicago*, 2017 IL App (1st) 162356, ¶¶ 8-9.

The Plaintiffs' now Fourth Amended Complaint, and this Motion for Class Certification, reflect the court rulings to date, under which the Funds and the City are responsible to provide a Plan, and make payments of statutory subsidies.

The Class satisfies all the prerequisites for certification under 735 ILCS 5/2-801

A. Class Definition

Plaintiffs define the Class as all persons who became participants (i.e. hire date) by July 31, 2003 in one of the four Funds:

1) Policemen's Annuity and Benefit Fund of Chicago
2) Firemen's Annuity and Benefit Fund of Chicago
3) Municipal Employees' Annuity and Benefit Fund of Chicago,
4) Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago.

B. Sub-Classes

1. **The "Korshak" subclass-12/1/1987 Retiree Participants.** The claims for these participants are the same ones that have been certified to proceed as a class action with respect to the 1987 retirees (the "Korshak" subclass).

2. **The "Window" or Jacobson subclass-Retirees during the 1/1/1988-8/23/1989 "window".** As part of the 2003 Settlement, the action was also certified for the additional or expanded group to include the participants via a person who retired after 1987, but prior to August 23, 1989. (This group filed a parallel case in federal court, led by the Retired Chicago Police Assn. and participant plaintiffs led by first named plaintiff Jacobson, are commonly referred to as the "window" retirees; persons who retired during the 1/1/88-8/23/89 "window" period, after the Korshak class date and before 86-273 was enacted.)

3. **Persons who became participants by 8/23/1989, the date PA86-273 legislation was enacted.**

3a. **Those persons who became participants by 4/1/1986, whose city employment does not qualify them for Medicare.**

4. **Pre - July 31, 2003 Hirees' subclass - The Appellate Court's Ruling Expands the Protected Class to Include (at least) All Annuitants Hired by the "execution" or "before the 2003 settlement become operative" – which is July 31, 2003.** The third group of class members, who share common legal issues, are those who "vested" in their retirement benefits by their joining one of the relevant Funds on or before July 31, 2003.

On the appeal, the appellate court affirmed this court's declaration that the Funds have primary obligations to both provide a healthcare plan for their annuitants and to subsidize, and expanded the applicable date to include all annuitants who became participants by the 2003 Agreement's "execution" or "effective" date. *Underwood v. City of Chicago*, 2017 IL App (1st) 162356, ¶¶ 37, 48, 61, 62, and 64. The Appellate Court used the two terms interchangeably (the "execution[3]" or effective date[4] of the 2003 Settlement were so protected), obviously meant

[3] At ¶37: When the 2003 settlement expired in 2013, the rights of employees whose participation started before the 2003 settlement was executed merely reverted to the status existing when the *Korshak* case was filed in 1987. So, being back at that point, the City is obligated to those retirees under the 1983 and 1985 amendments.

At ¶61: However, the pension protection clause locked in the 1983 and 1985 fixed-rate subsidies for any employee who began participating in the system by the time the 2003 settlement was executed. Up until that point, all annuitants retained the rights that an annuitant had before the 1987 litigation began. Among those rights was the right to a fixed-rate subsidy that, under the Illinois Constitution, cannot be diminished or impaired for those employees already in the system.

At ¶64: On remand, the court will have to find a workable solution to address how the subsidy will be funded as the court already indicated it would do for subclass three under the 1983 and 1985 amendments. Now, the court will need to include any participant in the system before the 2003 settlement was executed into that matrix in accordance with this opinion

only one date, which could only be the date the 2003 Settlement was approved: July 31, 2003, the date the Settlement was approved, became effective, or went into effect, as that definition of "execution" must apply, and is the operative date that this court should use.

Alternative Date of those Hired by June 30, 2013 Based on the Agreement Itself.

Alternatively, the operative date for Sub Class 4 is based on the Settlement Agreement, referenced by the Appellate Court's decision, between the parties who agreed that the retirees who were hired until the end of the Settlement were included within the class definition – which is a person who began their participation before June, 30, 2013 (pursuant to the Second Amended Opinion and Memorandum of Law / Settlement, at page 9). Exhibit 1. The protected Settlement Class, whose rights were protected, includes "all current and former City employees who will become the Funds' Future Annuitants (as defined in the Settlement Agreement) on or before June 30, 2013, and their eligible dependents."

C. The 5/2-801 Prerequisites for Class Certification are Met.

Section 735 ILCS 5/2-801 (West 2014) provides: "An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:

(1) The class is so numerous that joinder of all members is impracticable.
(2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
(3) The representative parties will fairly and adequately protect the interest of the class.

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[4] At ¶48: As we explained above, any person who entered the retirement system before the 2003 settlement went into effect does have lifetime coverage under the pension protection clause.

At ¶62: Therefore, we agree with the trial court that the members of subclass three can state a claim on count I based on the 1983 and 1985 amendments, but we hold that the members of subclass four that began participating in the retirement system before the 2003 settlement became operative also have a claim under count I.

(4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.

735 ILCS 5/2-801 (West 2014).

1. Numerosity is met for each Class and Subclass.

Numerosity is undisputed here, where "the class is so numerous that joinder of all members is impracticable." In approving class certification, the numbers of class members may vary, but in this case the class is conceded to number approximately twenty-two thousand City of Chicago retirees. In *Bueker*, the court noted at issue were almost 10,000 delinquent tax sales in the relevant time period which the Court held "provides an ample basis for the court's decision that joinder of all members is impracticable." *Bueker v. Madison County*, 2016 IL App (5th) 150282, ¶ 24.

Based on the most recent reconciliation data, there are more than 22,000 members of the main Class, (8,370 Police, 2,948 Fire, 8,721 Municipal, and 2,498 Laborers annuitants) and each subclass also numbers in the thousands. Sept. 30, 2014 – Annuitant Healthcare Cost Reconciliation Statement for Plan period ending June 30, 2013, at 5-1.

Here, its undisputed that each proposed Class and Subclass numbers in the thousands, so joinder of all members of each class or subclass is impracticable.

2. There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.

Each Class and Sub-Class presents Common Questions of Law, which determine each class and subclass's entitlement; and predominate over any individual claims.

There are numerous questions of law and fact common to the Class, which common questions predominate over any questions affecting only individual Class members, as to, *inter alia*., issues of entitlement to a Plan and enforcement of the payment of the statutory subsidy.

The Class members' uniform claim is that under the 1970 Illinois Constitution Article XIII Section 5, they are each entitled under their respective statutes to a Fund-provided plan and statutory subsidy.

Each and any group or subclass class receiving their benefits would not diminish any other group or subclass' rights against the City or Funds. And, for Korshak and Window retirees, the *City*'s enforceable commitment to lifetime coverage paid 55% for life does not reduce their *Fund*'s obligation to subsidize their premiums. Nonetheless, even if the court determines differences in Plan or Fund obligations for particular groups, none conflict with any other groups' rights.

"With regard to the commonality requirement, a common issue may be shown where the claims of the individual class members are based upon the common application of a statute or where the proposed class members are aggrieved by the same or similar conduct or a pattern of conduct." *Bueker v. Madison County*, 2016 IL App (5th) 150282, ¶ 27, citing, *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill. App. 3d 538, 548 (2003).

Here each retiree group shares, both internally and with each other group, the common issues of their Constitutional and Statutory rights, pure questions of law regarding the Funds' and City's obligations to each group, to provide, subsidize and finance healthcare coverage for their annuitants. There are no differences between groups that conflict with each other. For example, all retirees, regardless of their subclass, are entitled to have the statutory subsidies brought current and for life. Retirees who claim additional benefits under a union contract are entitled to no less a Plan and Subsidy, the same as members, since they all were hired prior to 2003. Or, retirees who have found other insurance options still have a right to choose a Fund Plan and are still entitled to their statutory subsidy. Most notably, no group's statutory entitlement conflicts

with anyone else's. That is, any group's entitlement does not result in depriving any other group's entitlement.

And common questions predominate over individual issues, because each class and subclass' entitlement and rights are pure questions of law, and their rights flow directly from their date of hire. Everyone in each category is entitled to identical benefits of Plan and Subsidy to all others within their class and subclass. Indeed, the only individual claims would be for individuals who may assert that the Funds' or City's failure to provide and subsidize has caused them additional harms, something which may result in a defendant Trustee's personal liability.

3. The representative parties will fairly and adequately protect the interest of the class.

Adequacy of Representation-Plaintiffs and Class Counsel have demonstrated their qualifications and determination to more than adequately represent the Class' and Subclasses' interests.

Section 2-801(3) of the Code requires that the representative parties will fairly and adequately protect the interests of the class. 735 ILCS 5/2-801(3) (West 2012).

The hundreds of participant plaintiffs here are all members of the Class and the defined subclasses, who acted timely to engage counsel in 2013 or earlier, and engaged undersigned counsel Krislov, who has doggedly pursued these claims, from the City's 1987 launch of this litigation to the present, and will present representative parties for each of the four participant categories, who will fairly and adequately protect the interest of the classes.

The proposed participant class representatives understand the nature of the claim, the purpose of the litigation, their role in it, and have no interests antagonistic to the class, or to other class or subclass members, because the issues of entitlement to a subsidized retiree healthcare program against the City and their respective Funds, raise no conflicts among the participants.

Undersigned counsel is well experienced and capable of representing the class or classes, and has long acted as the certified class counsel in this specific case, already. Exhibit 2.

Plaintiffs and their counsel will fairly and adequately represent and protect the interests of the Class. Plaintiffs and their counsel have no interests adverse to, or which conflict with, the interests of other members of the Class or Subclasses.

The purpose behind the adequate-representation requirement is to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim. *Bueker v. Madison County*, 2016 IL App (5th) 150282, ¶¶ 40-42, *citing*, *Hall*, 376 Ill. App. 3d at 832. The test applied to determine adequacy of representation is whether the interests of those who are not parties are the same as those who are not joined and whether the litigating parties fairly represent those not joined. *Id*.

The proposed class action plaintiff must be a member of the proposed class, i.e., must be able to maintain an individual cause of action against the defendant. *Id*., *citing, Ramirez v. Smart Corp.*, 371 Ill. App. 3d 797, 810 (2007).

"A representative will not be disqualified merely because his claim is not exactly the same as the other members of the class." *Id*., *citing Purcell & Wardrope Chartered*, 175 Ill. App. 3d at 1078. "It is only necessary that the representative not seek relief antagonistic to the interests of other potential class members." *Id*.

Also, the class attorney for the representative party must be qualified, experienced, and generally able to conduct the proposed litigation. *Id.*, *citing Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981).

4. Appropriateness.

The class action is the appropriate method for the fair and efficient adjudication of the controversy

This court has already appropriately found that the class action is an appropriate method for the fair and efficient adjudication of this controversy, and it remains so. As the case is presently postulated, the decisions of this court and the Appellate court hold that for all class members (including all subclass members) their rights are determined by the 1983 or 1985 Pension Code provisions applicable to that group of participants. As pure declarations of law for each class and subclass, none of which conflict with each other, a class action is an appropriate method for the fair and efficient adjudication of the controversy and substantial benefits will derive from proceeding as a class action. Such treatment enables a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication of effort and expense that numerous individual actions would engender.

Calculation of Damages is Appropriate on a Class Wide Basis with each Individual's subsidy damage calculation being only a formulaic Calculation, based on category and time.

Each individual's subsidy damage calculation would involve only determining the person's Fund (police, fire, municipal or laborers), the person's statutory subsidy amount (for Police and Fire, either $55 or $21 for nonMedicare/Medicare status; for Municipal and Laborers $25), multiplied by the number of months beginning after 12/31/2016, when the subsidies were stopped; and reduced by the aggregate attorney's fees awarded by this court from the subsidies.

Damages here do not predominate over the readily proven common questions. *Bueker v. Madison County*, 2016 IL App (5th) 150282, ¶¶ 29-36, because all class members are entitled to statutory subsidies based solely on their date of hire and Fund category. The methodology for the calculation of damages on a class-wide basis is set by statute, are susceptible to measurement

on a class-wide basis, and questions of individual damage calculations do not overwhelm questions common to the class. *Id*.

And, regardless if some individuals ultimately assert individual damages from defendants' mal or nonfeasance, it has long been the case under Illinois law, that "the mere fact that damages may need to be individually calculated does not defeat class certification under Illinois law." *Id*., *citing Hall*, 376 Ill. App. 3d at 831-32 (the fact that some members of the class are not entitled to relief will not bar class certification), and if unusually complex, they can be determined in ancillary proceedings, and the "fact that the class members' recoveries may be in different amounts, which must be determined separately, does not necessarily mean that the common questions do not predominate." *Id*., *citing*, *Purcell & Wardrope Chartered v. Hertz Corp.*, 175 Ill. App. 3d 1069, 1075 (1988).

Timeliness. With all due respect, it is time for the court to certify this case to proceed on a class basis. Nearly five years has elapsed since this phase of the litigation was filed, all decisions of entitlement to date have been made on Class-defined bases, and the recent intervenors note that part of their reasons for intervening is the court's refusal to certify to date, despite the Code of Civil Procedure's direction to address class certification "as soon as practicable after the commencement of an action" 5/2-802 .

Possible alternative class/subclasses. In the event this court determines that a different class/subclass definition is/are the appropriate classes or subclasses to be certified, it can and should do so, with notice to the parties, with its reasons. If the Court favors a modified class definition, class certification under these circumstances should not be denied, but rather certified and then modified. Indeed, 5/2-802 provides that a class certification order "may be amended" which allows for adjustment of the appropriate classes or subclasses to be certified. *Cohen v.*

Blockbuster Entertainment, Inc., 376 Ill. App. 3d 588, 595, (1st Dist. 2007) "the trial court has a continuing obligation to take cognizance of a change in factual circumstances and to modify class certification rulings when necessary. 735 ILCS 5/2-802. A court can determine the actual definition to be used. *Santillan v. Ashcroft*, 2004 U.S. Dist. LEXIS 20824, at *14-15 (N.D. Cal. Oct. 12, 2004) concerning a proposal of a nationwide class the court held that "district courts may shape the contours of a nationwide class" *citing Lundquist v. Security Pac. Automotive Financial Servs. Corp*., 993 F.2d 11, 14 (2d Cir. 1993) (holding that a district court "is not bound by the class definition proposed in the complaint and should not dismiss the action simply because the complaint seeks to define the class too broadly"). See also, 7A Wright, supra § 1760 at 118 ("If the general outlines of the membership of the class are determinable at the outset of the litigation, a class will be deemed to exist.").

If any modifications are eventually necessary, the Circuit Court has the discretion to later modify the structure. *Bueker v. Madison County*, 2016 IL App (5th) 150282, ¶ 46 ("we conclude that the circuit court did not abuse its discretion in finding that the adequate-representation requirement was met. If the adequacy of the representation by the named plaintiffs becomes an issue or is questioned at a later time, the circuit court could, if necessary, modify the class structure.")

WHEREFORE, Plaintiffs, individually and on behalf of the Class of all others similarly situated, respectfully pray that this Court (i) certify the Class herein pursuant to the Illinois Class Action statute, 735 ILCS 5/2-801, *et seq*:

(i) Certify the case as a class action for City of Chicago Retiree Healthcare Plan Participants, hire dates by June 30, 2013, with the following proposed subclasses:

1. Korshak subclass-12/31/1987 annuitant participants;

2. Window subclass-retired Post-Korshak, but pre-8/23/1989;

3. Persons who became participants by 8/23/1989, the date PA86-273 was enacted;

3a. Persons who became participants by 4/1/1986, whose city employment does not qualify them for Medicare;

4. Pre-July 31, 2003 hirees; and

4a. Alternatively, as to 4, all hires prior to June 30, 2013.
Or such other class definition as this court finds appropriate;

(ii) appoint Plaintiffs Class Representatives;

(iii) appoint Clinton A. Krislov, Krislov & Associates, Ltd. lead Class Counsel; and

(iv) any and all other relief the Court deems just and proper.

Dated: June 4, 2018

By: /s/ Clinton A. Krislov
Attorney for Plaintiffs, Participants
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Certificate of Service

I, Kenneth T. Goldstein, an attorney, on oath state that on June 4, 2018, I caused the foregoing **Combined Amended Motion for Class Certification and Memorandum in Support** to be filed with the Clerk and served upon Defendants and Proposed Intervenors' Counsel, listed on the attached Service List via email.

s/Kenneth T. Goldstein

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

CITY OF CHICAGO, a municipal corporation,

Plaintiff-Counterdefendant,

v.

MARSHALL KORSHAK, et al,

Defendants-Counterplaintiffs,

and

MARTIN RYAN, et al,

Intervening-Plaintiffs.

No. 01 CH 4962
Calendar 5

SECOND AMENDED OPINION AND MEMORANDUM OF LAW

On June 4, 2003, this court presided over an evidentiary hearing to consider the proposed Settlement Agreement between the Plaintiff-Counterdefendant, City of Chicago ("the City"), and the Defendants-Counterplaintiffs, the Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago, the Retirement Board of the Municipal Employees', Officers' and Officials' Annuity and Benefit Fund of Chicago, the Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago, and the Retirement Board of the Laborers' and Retirement Board Employees' Annuity and Benefit Fund of Chicago (collectively "the Funds") and certain intervenor annuitants who, for purposes of the settlement hearing, have been designated as representatives of two subclasses: (1) annuitants who retired prior to December 31, 1987 ("Korshak Class")

and (2) annuitants who retired after December 31, 1987, but before August 23, 1989 ("Window Class").

HISTORY

This Settlement Agreement is the culmination of more than fifteen years of litigation and recently, two years of intensive negotiation. A brief history may be helpful. The Court finds the Funds' recitation is extremely exact in its factual presentation and adopts the following.

Since approximately 1964, annuitants of the Funds have participated in a group medical benefits program sponsored by the City. From 1964 to 1983, the City paid the entire cost of annuitant health care, although there was no state law or City ordinance requiring the City to do so.

State statutes relating to health care for annuitants were enacted in 1983 (for police and fire) and 1985 (for municipal and laborers). These statutes required that the Funds remit, from the tax levied by the City to meet pension obligations, a subsidy for each of their annuitants enrolled in the City's health care plan. The statutes also directed the Funds to deduct any premium, in excess of the subsidy, from the annuitants' monthly pension annuity. Initially, no deductions were made because the City paid the entire cost of coverage to the extent that it exceeded the subsidies.

In October of 1987, the City advised the Funds that it would no longer include the City's retired employees in the City's health care plan or pay for the medical services rendered to those individuals. The City then filed a complaint against the trustees of the Funds seeking to end the annuitants' health care coverage and recover approximately $58 million it had spent for annuitant health care benefits since 1980. *City of Chicago v.*

Korshak, et al., 87 CH 10134. The Funds moved to dismiss the City's complaint, arguing that the Funds had no obligation for annuitant health care except to provide the subsidies required by the Illinois Pension Code. The Funds filed a counterclaim attempting to prevent the City from terminating the annuitants coverage under the City's health care plan and to force the City to continue paying for most of the annuitants' health care coverage. The City's complaint against the Funds was dismissed by Judge Albert Green. There was no appeal from that order.

The Funds' counterclaim was tried before Judge Green in June of 1988. In that litigation, the Funds took the position that, except for the subsidies provided by statute, the City was obligated to pay the entire cost of the annuitants' health care regardless of what those costs might be. In opposition, the City argued that it had no obligation to provide health care benefits for the annuitants and that the Funds should arrange for group insurance for the annuitants, to be paid for by the annuitants, to the extent the cost exceeded the statutory subsidies. Certain annuitants intervened in that litigation.

In June of 1988, after a bench trial on the Funds' counterclaim was complete but before Judge Green could issue a ruling, the City and the Funds entered into a proposed Settlement Agreement ("1988 Settlement") that required the City to pay at least 50% of the participating annuitants' health care costs through the end of 1997. Premium amounts in excess of the City's contribution and the Funds' subsidies were to be paid by the annuitants. Premiums were to be deducted by the Funds from the participants' annuities. Judge Green held a Fairness Hearing on the 1988 Settlement and approved the 1988 Settlement as fair and clearly in the best interests of both the class members and the public. The intervenor annuitants appealed Judge Green's decision and the Appellate

Court affirmed, specifically stating, "...we find the agreement to be both reasonable and in the best interests of all concerned parties." *City of Chicago v. Korshak*, 206 Ill.App.3d 968, 974 (1st Dist. 1990).

The 1988 Settlement provided that, on January 1, 1998, if a "permanent solution" to the funding of annuitant health care had not been achieved, any annuitant could reargue his or her claims for coverage. In June of 1997, prior to the expiration of the ten-year settlement period, legislation was enacted requiring the City to continue to offer group health care benefits to the Funds' annuitants through June 30, 2002, and to contribute at least 50% of the cost of annuitant health care coverage. In June of 2002, legislation was enacted to extend the coverage and the City's obligation until June 30, 2003. After the expiration of that statute, and unless some other authority is in place, there will be no provision for health care coverage of City annuitants.

In 2000, because a "permanent solution" (as anticipated in the 1988 Settlement) had not been reached, the case was reinstated in the Circuit Court. Since then, the parties (the City, the Funds and intervenor annuitants) have participated in settlement discussions in an effort to resolve the controversy and to provide continued health care coverage for current and future annuitants of the Funds. On April 4, 2003, the parties reached a settlement.

On April 14, 2003, the Settlement Agreement was preliminarily approved, a Fairness Hearing was scheduled for June 4, 2003, certain individuals were conditionally certified as class representatives and the Notice of Proposed Class Action Settlement was approved. On or about April 25, 2003, the City and the Pension Funds mailed the Notice of Proposed Class Settlement to Class Members. Summary Notice of the Class Action

Settlement and Settlement Fairness Hearing was published twice in the *Chicago Sun-Times* and twice in the *Chicago Tribune* between May 1, 2003 and May 11, 2003. The Summary Notice informed Class Members that if any Class Member makes a valid request for exclusion by May 22, 2003, that Class Member will not be bound by any judgment entered by this Court. The Notice further informed Class Members they could file written objections to the proposed Settlement Agreement, appear at the June 4, 2003, Fairness Hearing and have their objections heard by notifying the Court and the attorneys for the parties by May 22, 2003.

TERMS OF THE SETTLEMENT

The Settlement Agreement in general terms consists of a ten-year plan requiring the City to provide health care coverage to all Class Members for a period scheduled to begin July 1, 2003 and continue through June 30, 2013. However, the Settlement Agreement will not be effective unless and until the Illinois Legislature enacts Senate Bill 1701. The Court has been advised that the Legislature passed Senate Bill 1701 on June 9, 2003, and it awaits the signature of the Governor. The City will provide both a Medicare Supplement Plan and a non-Medicare Preferred Provider Plan and these plans will replace the four former annuitant health care plans.

Under the Settlement Agreement, the City will pay a percentage of the defined cost of annuitant health care coverage depending on the annuitant's retirement date and years of employment with the City.

The City will pay at least:

- 55% of the Defined Costs of that coverage for all Class Members: (1) who are annuitants of the Funds based on City Service as of the date of this Settlement Agreement, and their eligible dependents; or (2) who

become Future Annuitants on or before June 30, 2005, and their eligible dependents.

- 50% of the Defined Costs of that coverage for all Class Members who become Future Annuitants after June 30, 2005, and before June 30, 2013, and who have 20 or more Years of City Service, and their eligible dependents.

- 45% of the aggregate Defined Costs of that coverage, for all Class Members who become Future Annuitants after June 30, 2005, and before June 30, 2013, and who have 15 to 19 Years of City Service, and their eligible dependents.

- 40% of the aggregate Defined Costs of that coverage for all Class Members who become Future Annuitants after June 30, 2005, and before June 30, 2013, and who have 10 to 14 Years of City Service, and their eligible dependents.

- 0% of the aggregate Defined Costs of that coverage for all Class Members who leave the employ of the city after June 30, 2005, and before June 30, 2013, and who have less than 10 Years of City Service. These persons may participate in the City's Settlement Healthcare Plans, but at their own cost.

Defined costs include physician services, hospital costs and prescriptions as detailed in the Settlement Agreement. The defined cost estimates for the upcoming year will be determined by a qualified independent actuary paid by the City and the Funds.

Pursuant to the Settlement Agreement, the Funds will increase the monthly subsidy they pay for each annuitant enrolled in the city's health care plan. For the period July 1, 2003 to July 1, 2008, the Funds will pay $85.00 for each annuitant who is not eligible for Medicare and $55.00 for each Medicare eligible annuitant. For the period July 1, 2008 through June 30, 2013, the Funds will pay $95.00 for each annuitant who is not eligible for Medicare; and $65.00 for each Medicare eligible annuitant. Annuitants will pay the remaining share of the total costs.

The Plan provides a Means Test for annuitants with total adjusted gross income below the poverty line. Low income annuitants may apply each year to have a cap on premiums if the combined household adjusted gross income of the annuitant's family as reported to the Internal Revenue Service is at or below 200% of the poverty level for the family size of the annuitant.

The City's right to terminate or amend the Plan is limited to specific changes in state or federal law. Except for state or federal law changes, the City will not terminate or amend the Settlement Agreement for Class Members who retired prior to August 23, 1989. For Class Members retiring after August 23, 1989, the City agrees not to make changes to the design of the Health Care Plan for a period of five years and may only make changes to the plan after 2008 upon approval of the Retiree Health Benefits Commission ("RHBC") as further delineated in the Agreement.

After the termination of the Settlement Period, the Class Members retain any right they currently have to assert any claims with regard to the provision of annuitant healthcare benefits, other than claims arising under the prior settlement of this Action or under the 1989, 1997, or 2002 amendments to the Pension Code, or for damages relating to the amounts of premiums or other payments that they have paid relating to healthcare under any prior health care plans implemented by the City, including the Settlement Agreement. The Funds agree that they will not, at any time, assert any: (1) claims on behalf of any annuitant for premiums or other payments under any prior City healthcare plan, including the Settlement Agreement; or (2) claims based on the City's pre-1988 conduct or statements. However, if any separate action relating to health benefits is brought after the end of the Settlement Period against a Fund or its Trustee(s), the Fund

or Trustee(s) may seek to assert a cross claim or third party complaint against the City in its defense.

During the Settlement Agreement, Class Members, the Funds and their current, future or former Trustees are precluded from asserting any claims regarding health care benefits against the City, except that all matters relating to the interpretation, administration, implementation, effectuation and enforcement of the Settlement Agreement are governed by the provisions of subsection V.B.7 of the Settlement Agreement. The City reserves its right to raise any defenses.

At the Fairness Hearing on June 4, 2003, this Court had the benefit of hearing the testimony of Donald Franklin, Deputy Comptroller for the City of Chicago, the arguments and statements of counsel in support of the settlement, and the testimony of three of the fourteen Class Members who had previously submitted written objections to the Settlement Agreement and requested to be heard by the Court. The Court also reviewed: (1) the Joint Submission of The Parties' Proposed Findings of Fact and Conclusions of Law; (2) Joint Statement Describing the History of this Litigation; and (3) the City's, the Funds' and the Participant Class Memoranda in Support of Approval of the Settlement Agreement. The Court also reviewed thirteen written objections from Class Members and the City's responses to those objections. Finally, this Court reviewed the Curricula Vitae of counsel for all parties.

CERTIFICATION OF CLASS

On April 14, 2003 the Court preliminarily approved the Settlement Agreement. The Court certified the following Settlement Class for settlement purposes: all current annuitants of the Funds who are receiving an annuity based on City Service and who are

enrolled in City healthcare plans and their eligible dependents; and all current and former City employees who will become the Funds' Future Annuitants (as defined in the Settlement Agreement) on or before June 30, 2013, and their eligible dependents (collectively referred to as Class Members), with the following subclasses, who are represented by Krislov & Associates, Ltd.:

(a) Class Members who retired on or before December 31, 1987 (the "Korshak Class"); and

(b) Class Members who retired after December 31, 1987 but before August 23, 1989 (the "Window Class").

For purposes of settlement only, the following individuals are conditionally certified as the Class Representatives:

(a) the named Plaintiffs in the Funds' Amended Counterclaim, John Dineen, Francis Higgins, Robert Nolan, William McMahon, Richard A. Eber, Michael L. Bunyon, Joseph Bagnole and Ralph Ciangi;

(b) for the Korshak subclass: Katherine Ryan, Bernard McKay, and Stephanie Woje; and

(c) for the Window subclass: Donald Jacobson, Donald Karner, and Robert Valleyfield.

NOTICE OF THE PROPOSED SETTLEMENT

Illinois Class Action Statute, 735 ILCS 5/2-801, et. seq. governs the Court's handling of class actions and their compromise or dismissal. As a general rule, notice to the class members is required before a settlement can be approved by the Court and the case dismissed. 735 ILCS 5/2-806. As discussed above, the Funds and the City notified,

by first class mail, every current city employee and every potential Class Member who is a former City employee and not an annuitant. Each Fund caused the Notice to be mailed by first class mail to each of its respective annuitants. In addition, the Summary Notice was published in both the *Chicago Sun-Times* and the *Chicago Tribune* ensuring notice not just to local Class Members but Class Members nationwide. The Summary Notice was published in the *Chicago Sun-Times* on May 1 and May 4, 2003, and in the *Chicago Tribune* on May 8 and May 11, 2003. The notice requirement is satisfied.

THE SETTLEMENT CLASS

The Settlement Class consists of between 32,400 and 80,000 persons, who are or have the potential to become health benefit plan participants in the future. The Court finds that the Settlement Class is so numerous that joinder of all members is impracticable.

The Court finds that there are common questions of law and fact that predominate over individual questions with respect to the Settlement Class which include the following:

a. whether the City is obliged under statutes or past practice to provide health benefits to its retired workers;

b. whether the Illinois Pension Code at any time required the Pension Funds to obtain or subsidize health insurance for the benefits of their participants;

c. whether the City's payment of claims for health benefits prior to 1987 was void because it was not expressly appropriated by the City Council, except in 1985; and

d. whether City employees and retirees are entitled or precluded as a matter of law from claiming that they are entitled to lifetime health benefits for any period after the initiation of this lawsuit in October of 1987, or after the enactment of the Pension Code amendments in August of 1989, either

or both of which provided notice that entitlement to lifetime health benefits was in dispute.

Class-wide relief is the most fair and efficient method of providing relief in this matter because health benefits may best be provided through the use of group purchasing power and because a large group, comprised of both the sick and the healthy, is the best mechanism to support health costs.

The named representatives of the "General Class" themselves have interests in assuring the fairness of the plan for themselves as plan participants which provide sufficient incentives for them to advocate on behalf of others similarly situated, so that they are adequate representatives for their class. The named representatives of the Korshak and Window subclasses themselves participate in the City's annuitant health benefits plans, and have incentives to protect the fairness of those plans such that they are adequate representatives for their classes. Active employees who will retire prior to June 30, 2013, and who are currently benefit plan participants by virtue of their contributions to the plans, are adequately represented in the General Class. Class counsel aggressively and diligently pursued this litigation for the benefit of the class at the trial and appellate levels. All class counsel are extraordinarily experienced in class action and complex litigation.

Taxpayer interests are represented in this Settlement by the City of Chicago.

A Class Action is a fair and efficient method for settlement of this controversy and the Settlement Class satisfies the criteria for class certification under 735 ILCS 5/2-801.

EVALUATION OF THE SETTLEMENT

The settlement of a class action must be fair, reasonable and adequate in order to be approved. *Steinberg v. System Software Associates, Inc.*, 306 Ill.App.3d 157, 169 (1st Dist. 1999). Although review of class action settlements necessarily proceeds on a case-by-case basis, Illinois courts have identified eight factors which are relevant to the fairness determination: (1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence or absence of collusion in reaching a settlement; (6) the

reaction of class members to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed. *City of Chicago v. Korshak*, 206 Ill.App.3d 968, 972 (1st Dist. 1990); *GMAC Mortgage Corp. v. Stapleton*, 236 Ill.App.3d 486, 493 (1st Dist. 1992). These eight factors are commonly referred to as the *Korshak* factors.

In 1988 Judge Green ruled that the Settlement Agreement entered into between the City and the Funds in this case was fair, adequate, reasonable and in the best interest of all affected by it. The validity of the 1988 Settlement was affirmed by the Illinois Appellate Court. *City of Chicago v. Korshak*, 206 Ill.App.3d 968 (1st Dist. 1990).

This Court will consider the above *Korshak* factors as they apply to this Settlement Agreement.

(1) The Strength of Plaintiff's Case on the Merits Measured Against the Relief Offered in the Settlement.

The first *Korshak* factor is generally considered the most important of the eight factors. *Steinberg v. System Software Associates, Inc.*, 306 Ill.App.3d 157, 169 (1st Dist. 1999). Here, the counter-plaintiffs' class consists of annuitants who retired from city employment or who participate in a City Pension Fund and employees who will be eligible to retire prior to June 30, 2013. Within that class there are two subclasses, the Korshak and Window subclasses, whose members retired prior to 1989.

All class members claim they are entitled to have the City provide health care coverage for life, either at the rate that was fixed when they retired or the 1983 rate. These claims involved numerous and diverse legal theories. The Korshak Window subclass' claims against the City and the Funds include theories based on protection found in Article XIII of the State Constitution. However, underlying all

counterplaintiffs' claims rests the theory that at retirement seminars, the City representatives promised the annuitants, either orally or in documentation distributed, that as a condition of their employment, they and their dependents would be provided health care coverage for life. The Class Members claim that they relied on the City's promises in planning for their retirement.

The City responds that all retirement plan documents provided by the City contained a reservation of rights to modify, amend or terminate any health care coverage that was promised. Furthermore, the City contends that the relative strengths of the counter-plaintiffs claims are not uniform. The City points out that the more recent the retirement date of the Class Member, the weaker the claim. It is the City's contention that the post-1987 retirees knew or should have known about the 1988 Settlement Agreement in this case, either from media reports or from enrollment packets containing information on the 1988 settlement that were mailed to all participants, and therefore cannot prevail on their claim that they were promised health care coverage for life. In sum, the City argues their case is strong against all Class Members, but especially so against the post-1987 retirees.

The Funds, the Korshak and Window subclasses, all recognize the risk that the City may prevail against some or all Class Members in the underlying litigation. The Funds recognized this risk as early as the completion of the bench trial before Judge Green in 1988 and they continue to do so today. Similarly, the Korshak and Window subclasses recognize their success is at risk in a legal climate where similar claims, by government employees to lifetime employment benefits, have not fared well. They note that as recently as two days before the Fairness Hearing, the United States Supreme Court

denied certiorari in *Schism v. United States*, 316 F.3d 1259 (Fed. Cir. 2002). The denial of certiorari allows the lower court decision to stand. The lower court decided that veterans from World War I and the Korean War who were orally promised free health care for life, if they completed twenty years of active duty, were not entitled to lifetime health care coverage.

The Funds and the Korshak and Window subclasses have participated in more than fifteen years of litigation, including a bench trial before Judge Green where the Funds' counterclaim was fully litigated, to allow them to thoroughly assess the risks involved in this litigation. All counter-plaintiffs agree that the risk of losing is a great concern. This Court must balance that risk against the relief offered to the Class Members in the Settlement Agreement. The relief afforded to Class Members under the Settlement Agreement provides for ten years of guaranteed benefits to be offered to annuitants and their dependents. The pre-1989 retirees would not see their health care benefits change during the life of the Settlement Agreement. Additionally, these Class Members will be charged Medicare qualified rates, whether or not they possess the calendar quarters required by Medicare. This benefit is especially important for these Class Members who because of their city employment may not have qualified for Medicare coverage.

The Class Members other than the Korshak and Window subclasses are also benefited by the Settlement Agreement. Current annuitants, along with those who retire prior to June 30, 2005, will receive an increase in the City's contribution to their health care coverage to 55% from the current 50% contribution. All Class Members will be provided with prescription coverage nationwide, including those who are Medicare

participants whose coverage is generally unavailable to this extent or only at a significant additional cost under private insurance. The testimony elicited at the Fairness Hearing indicates that under the Settlement Agreement the annuitants' rate for single coverage would be $97.00 a month for Medicare Supplement and $151.00 a month for non-Medicare coverage. In comparison, evidence was introduced to show that for an individual to get the same coverage directly from Blue Cross/Blue Shield the cost would be approximately $138.00 per person for a Medicare enrollee, and between $350.00 and $690.00 for a non-Medicare enrollee, depending on whether or not they are a smoker. Additionally, the rate quoted for Blue Cross/Blue Shield coverage did not include any drug prescription plan.

The health coverage offered under the Settlement Plan, especially with the prescription drug coverage, on the whole will offer a more comprehensive coverage at a lower cost to the annuitant than the Blue Cross/Blue Shield plans currently in effect for comparable age groups in the private sector. Having considered the strengths and weaknesses of the Class Members' claims and the likelihood of prevailing on those claims when balanced against the assurance that affordable health care coverage will be provided for ten years to a group who might not otherwise be able to obtain health care coverage even at a greatly increased rate, the Court finds the Settlement Agreement is in the best interests of the Class Members.

(2) The defendant's ability to pay the settlement.

This factor requires the Court to consider whether the City would be financially able to satisfy a judgment in excess of the Settlement amount. The appellate court and

Judge Green found in the 1988 settlement this factor was not particularly relevant. This Court agrees that the defendant's ability to pay is not a relevant factor.

(3) The complexity, length and expense of further litigation.

As previously described, the litigation in this case has already spanned fifteen years in both state and federal court. A review of the court files discloses the voluminous amount of discovery and motion practice over the years. The expense of additional litigation will further burden all parties. The Settlement Agreement would preclude any further litigation for a minimum of ten years and ensure the Class Members their health care coverage would continue for ten years.

(4) The amount of opposition to the Settlement/ (6) The reaction of members of the Class Settlement.

On April 25, 2003, Notice of the proposed settlement was mailed to more than 80,000 current and former City employees. Class Members were given until May 22, 2003 to exclude themselves from the Class or object to the Settlement Agreement. Only three Class Members requested exclusion. Reasons for exclusion did not appear in their requests; however, the City's filings indicate two of the individuals were not Class Members. Of the two, one was not an annuitant and the other did not participate in the health care plan. Therefore, only one Class Member out of 80,000 potential participants has reviewed the proposed Settlement Agreement and decided on exclusion.

Furthermore, the Court received only fourteen written objections to the Settlement Agreement. One of the objections was from an individual who was not a Class Member. Of the thirteen Class Members who filed written objections, only three appeared at the Fairness Hearing to voice those objections, one retired police officer, one retired firefighter and one retired truck driver. The Court listened attentively to their concerns.

The Court also examined the written objections filed prior to the Fairness Hearing and has carefully considered all concerns voiced by the Class Members.

Many of the Class Members' concerns addressed the high cost of health care coverage. The objectors complained that the monthly rates are too high. Many wrote that they are on a fixed income, and are worried about paying for health care coverage. This Court is sympathetic to the concerns of those class members who struggle to pay rising health care costs on a fixed income; however, the court also recognizes the reality that the cost of health care has exploded over the last decade. Mr. Franklin testified at the Fairness Hearing that the City's cost in providing health care coverage in the last ten years has increased 310% and he projects costs will double in the next four years. The Court also takes into consideration the monthly rates to be paid by annuitants under the Settlement Agreement are lower than the cost for private insurance. Furthermore, the City has proposed an ordinance that would freeze the contribution of all annuitants born before 1914 to the contribution rate in June of 2003. The ordinance is pending in the Finance Committee of the City Council. The passage of the ordinance is not a condition of the settlement but, if passed, would provide some relief to those most in need of good health care coverage at a lower rate.

Moreover, the Funds correctly point out that high rates are inevitable where health care coverage is good and the cost of the premiums is not really central to the question of the fairness of the settlement. The Funds posit the question before this Court is not what is the actual cost of annuitant health care, but who should pay for this health care coverage and whether the sharing of the cost of health care coverage by the City, the Funds and the annuitants is in the best interest of the annuitants.

The Funds are correct. The important facts here are that under the proposed settlement: (1) the annuitants have good health care coverage; (2) the City is paying between 40% and 55% of the cost of that coverage; (3) the Pension Funds are paying a subsidy to reduce each annuitant's portion of costs of their health care coverage; and (4) the annuitants will pay the balance as premiums. If the City were to prevail on its position that it has no obligation for annuitant health care, annuitants might have to pay the entire cost of their health care coverage. Some annuitants might be unable to secure coverage at any price. The proposed settlement eliminates that risk.

The other objections to this Settlement Agreement raise various claims. There were some objections to the high cost of prescription drugs. However, as the City points out, the Settlement Agreement's prescription drug coverage, which is not offered by Medicare, is an important benefit to senior citizens. The prescription drug benefit here provides a retail prescription drug card, so that an annuitant will only have to pay their share at the pharmacy, as opposed to the current plan where the annuitant has to pay the full cost up front and then seek reimbursement for the covered portion of the cost. For mail order maintenance prescription drugs, the City annuitant will pay only a $15.00 co-payment for a ninety-day supply of mail order generic medication. Those eligible under the Means Test will pay only $7.00 for the same prescription. In comparison, prescription drug coverage is not even offered by private Blue Cross coverage under Medicare.

There was an objection voiced at the Fairness Hearing that many Police and Fire Department members retire before reaching Medicare eligible age, and are unable to pay the years of non-Medicare rates until they reach Medicare age. However, the City has

already agreed under the applicable collective bargaining agreements to provide coverage at no monthly charge to those annuitants who retire at age 60 until they reach 65, as an incentive to keep experienced members on those Departments longer.

The reaction of the Class Members to this Settlement Agreement has been overwhelmingly favorable and the amount of opposition to the settlement from Class Members has been minimal. Although no Settlement Agreement can satisfy every individual in every provision, because any settlement agreement, by its nature, is a compromise, when the substance of the thirteen objections raised here are compared to the overall quality of the health care coverage that is provided to as many as 80,000 Class Members, the Court favors settlement.

(5) The presence of Collusion in Reaching a Settlement.

This Court has had the opportunity to acquaint itself with the facts and law of the case and has been apprised of the procedural aspects of this litigation to date. All evidence indicates that the parties here have engaged in fifteen years of hard-fought litigation. The parties' intensive negotiations over the last two years included sessions where hotly-contested issues were mediated with the compassionate assistance of Judge Lester D. Foreman. There is no hint or suggestion of collusion in this case; rather, the case was hard-fought on all fronts by determined and resourceful adversaries.

(7) The opinion of competent counsel.

Counsel for all parties urge this Court to approve this Settlement Agreement as a reasonable compromise with significant benefits for present and future retirees. Many current counsel for the parties were the original attorneys and have worked on this case for fifteen years. The Curricula Vitae submitted by all counsel convince the Court that

the attorneys involved in the case include extraordinarily competent class action litigators who are particularly qualified in the field of pension fund finance and health benefits, and the Court will accord their recommendation considerable weight.

(8) The stage of proceedings and the amount of discovery completed.

An examination of the fifteen years of proceedings indicates that the settlement was the product of arms-length negotiations following sufficient investigation. Fifteen years of discovery, motion practice in both state and federal courts, a bench trial and appellate review on the merits of the 1988 Settlement, clearly enable the parties to fully and fairly assess the relative strengths and weaknesses of their cases.

Finally, the Funds request this Court to approve the settlement because there is an overriding public interest in favor of settlement. They argue the case has gone on fifteen years and the settlement produces a very favorable outcome for the class members. This Court determines the settlement is fair, reasonable, adequate and in the best interests of all concerned. Simply put, the annuitants receive good health care coverage for ten years and the City avoids the possibility of a financial burden that could greatly weaken the City's economy. If the class members should prevail on their counterclaim and become entitled to health care coverage for life at pre-1983 rates, it would impose a tremendous financial burden on the City and taxpayers of Chicago. On the other hand, if the City should prevail, the class members would be without health care coverage at a time in their lives when obtaining coverage would be very difficult and extremely costly. The same public interest that favors settlement also favors the City providing good health care coverage for the thousands of class members who have and those who will continue to honorably serve the City and citizens of Chicago.

This Court finds the Settlement Agreement to be fair, reasonable, adequate and in the best interests of all concerned parties.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

The Settlement Agreement is approved. This Court retains jurisdiction for the purposes defined in the Settlement Agreement.

ENTERED

JUL 31 2003

JUDGE DEBORAH MARY DOOLING-1691

Deborah Mary Dooling
Circuit Court Judge
Chancery Division

July 30, 2003

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"Up Against the Big Guys"[1], Producing "Real Benefits for Real People"

For over 30 years, Krislov & Associates, Ltd. has specialized in pursuing complex class and derivative litigation involving nationwide consumer, securities, Qui Tam/whistleblower, governmental wrongdoing and corruption, and pension matters.

The Krislov firm has been lead counsel for plaintiffs or objectors in numerous major federal and state cases throughout the country, and has earned nationwide stature as independent, honest and aggressive attorneys pursuing the interests of investors, taxpayers, working families and the public.

[1] Chicago Tribune, June 13, 1989

Krislov Law Case Summary:

I. ENFORCING PUBLIC EMPLOYEE RIGHTS AND BENEFITS; PROTECTING PUBLIC PENSION FUNDS AND THEIR PARTICIPANTS

The Krislov firm is perhaps best known in Illinois for its "private attorney general" practice, for public pension participants in direct and derivative actions brought against state and local governments to correct the massively under-funded state and local pension systems. Cases include:

- **City Conversion of Fund Assets**

  Ryan v. City of Chicago, 148 Ill. App. 3d 638 (1st Dist. 1986) and 274 Ill. App. 3d 483 (1st Dist. 1995) (we recovered over $32 million cash, $80 million total benefits, fundamentally improved the handling of City pension tax levies, ending the City's illegal use of pension tax levies invested for its own benefit). Prevailed over trustees' subsequent attempt to hi-jack the recovery, in a decision the court labeled "The Mugging of the Good Samaritan".

- **Enforcing Funding Statutes and Protections**

  People ex rel. Sklodowski v. State, 284 Ill. App. 3d 809 (1st Dist. 1996), *see also*, 162 Ill.2d 117 (1994) and 182 Ill.2d 220 (1997) (we blocked the State's conversion of $51 million from the State Pensions Fund to State general budget use, and initially established the courts' power to compel State Officials to comply with statutory minimum contribution obligations for Illinois' five funded retirement systems to correct a shortfall now totaling $3.4 billion).

- **Enforcing Retiree Healthcare Benefits.**

  City of Chicago v. Korshak, 206 Ill. App. 3d 968 (1st Dist. 1990) and *Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584 (7th Cir. 1992), parallel state and federal cases (in litigation spanning over 26 years, we have fought for annuitants' contractual rights to promised lifetime healthcare coverage, the Krislov firm forced the City of Chicago to continue a fixed-rate subsidized plan of retiree health care insurance for 21,000 annuitants and their families, and, despite setbacks during various periods, successfully had these claims restored by the Illinois appellate court); in an unpublished order in 2000, we obtained injunctive relief, and ultimately obtained a settlement which ensures annuitant healthcare coverage through 2013 and beyond for Chicago Police, Firemen, Municipal Employees and Laborers). Now pending (*Underwood v. City of Chicago*) before the Circuit, Appellate and Illinois Supreme courts against the City's declaration to terminate retiree healthcare entirely at the end of 2016.

Recent Development: *City v. Korshak*, 2016 IL App. (1st) 152 183-4. Appellate Court decision ordering audit and reconciliation of City Retiree Healthcare Charges for 2013.

- **City Pension "Reform"**

  *Jones and Johnson v. Municipal Employees Ann.& Ben. Fund***,** 2016 IL 119618 (Ill. Supreme court) Co-plaintiffs counsel in obtaining declaration that legislation slicing and deferring statutory annual pension increases violate Illinois Constitution's Art.13, Section 5, Pension Protection Clause.

- **Challenging Mandatory Retirement at Age 63**

  Minch and Drnek v. City, Nos. 01-cv-840 and 2586 (N.D. Ill.)

II. CONSUMER PROTECTION AND ANTITRUST MATTERS

We are or have been lead counsel for nationwide consumer litigation and have established significant law in the consumer protection field, including:

- **GiftCards in Bankruptcy**

  (a) *Sharper Image: In re: TSIC, Inc. f/k/a Sharper Image Corp.*, No. 08-10322 (KG) (U.S. Bk. Ct. Del.) (We represented a certified class of consumer gift card holders in the Sharper Image bankruptcy (Del. Bk.) successfully asserting consumer deposit priority over general business creditors).

  (b) *In re: Borders Group, Inc., et al.*, No. 11-10614 (MG) (U.S. Bk. Ct., S.D.N.Y.) (asserting of class claim and priority for $156 million in unredeemed outstanding gift cards).

  (c) *RadioShack:* Del.Bk. 2016 –full cash priority refunds obtained, with State attorneys general.

- **Privacy**

  Burrow v. Sybaris, No. 13-CV-02342 (N.D. Ill.). Pending case over unauthorized recording of calls.

- **Students as Consumers**

  (a) *Velez v. Concordia College*, No. 2013 CH 11308 (Cir. Ct. Cook County, Ill.) (claims by students for refund of tuition charges when school dropped program accreditation without notice to existing students. Settlement provided for substantial refunds to students).

(b) Chicago Medical School: *Brody v. Finch Univ. of Health Sciences/The Chicago Med. Sch.*, 298 Ill. App. 3d 146, 698 N.E.2d 257 (Ill. App. Ct. Dist. 1998) (After trial, obtained full admissions to medical school enforcing representations and promises that those students who enrolled in defendant's Applied Physiology Program and received a grade point average (GPA) of 3.0 or higher would be admitted to defendant's medical school).

(d) *Ambrose v. Security Guard College and Bass ProShops*, No. 2014-CH-5850 (Cir. Ct. Cook County, Ill.) (Obtained full refund for charges by unlicensed trainer for concealed carry qualification).

- **Taxi Credit Card Charges**

Patt v. Taxi Affiliation Services, No. 2016-CH-5258 (Cir. Ct. Cook County Ill.). Obtained full refund of unauthorized surcharge on taxi fares charged to credit or debit cards.

- **Healthcare Litigation**

(a) Following Wellpoint's acquisition of RightChoice, followed by forcing ill policyholders to reapply and be rerated as strangers, we pursued litigation against Wellpoint, obtaining meaningful settlements for truly harmed individuals.

(b) In the wake of the Illinois Budget Impasse, we have pending litigation for state employees, against health insurers and providers failing to provide entitled coverage.

(c) Land of Lincoln Health insurance. Challenging Land of Lincoln healthcare's purging of University of Chicago network patients, followed by Land of Lincoln's being taken into receivership by State of Illinois.

- **Misstated Jewelry Stone Weights**

Caprarola v. Helzberg's Diamond Shops, Inc., No. 13 CV 6493 (N.D. Ill.) (obtained cash recoveries of $100-$1200, compensating purchasers of rings with overstated carat weights).

- **Deteriorating Windows**

Schwebe v. AGC Flat Glass N.A., d/b/a CASCO Industries, No. 1:12-CV-9873 (N.D. Ill.) Settlement replacing defective windows.

- **Unlicensed Debt Collectors**

LVNV Funding v. Trice, 2011 Ill App (1st) 092773,952, N.E.2d 1232 (2011) (ruling that judgments obtained by unlicensed debt collectors are void, even if license is subsequently obtain); *petition for leave to appeal denied* (Nov. 30, 2011).

- **Cemetery Abuses**

In re Perpetua/Burr Oak Holdings of Ill., LLC, No. 09-34022 (U.S. Bk. Ct. N.D. Ill.) (organized committee of families in Bankruptcy Court, involving scandal over re-sold graves and desecrated historic African American cemetery. Obtained meaningful resolution and settlements).

- **"Ethnic Hair" Charges**

  Mario Tricoci "Ethnic" Hair Charge Litigation, No. 05 C 5030 (N.D. Ill.) (settlement refunding charges for separate "ethnic" price list for salon services).

- **Telephone Consumers Antitrust**

  South Austin Coalition Community Council v. SBC Comm. Inc., 274 F.3d 1168 (7th Cir. 2001) (customer antitrust challenge to SBC-Ameritech merger).

- **Dishwashers with Fire Risk**

  Beckwith Place L.P. v. General Electric Co., No. 99-CH-18240 (Cir. Ct. Cook County, Ill.) (certified nationwide class against General Electric arising from dishwashers containing a defective switch causing fires; case settled).

- **Undisclosed Sweetener Content**

  Zapka v. Coca-Cola Co., 2001 U.S. Dist. LEXIS 20155 (N.D. Ill. 2001) (deceptive marketing of diet Coke, without disclosing that fountain version contains saccharin; settled action).

- **Collector Pens**

  Zazove v. Pelikan, Inc., 326 Ill. App. 3d 798, 761 N.E.2d 256 (1st Dist. 2001) (establishing Illinois jurisdiction over foreign producer of consumer products for consumer claims under stream of commerce concept).

- **Genetically Modified Food Products/Disclosure**

  In re Starlink Corn products, MDL 1403 ($9 million settlement for consumers) (lead counsel for consumer claims arising from the dispersion of the genetically engineered Starlink™ corn strain into human food products).

- **Deceptive Toy Pricing**

  DeGradi v. KB Holdings, Inc., No. 02-ch-15838 (Cir. Ct. Cook County, Ill.) (obtained $3 million settlement from toy store company who allegedly improperly manipulated product prices to the public).

- **Prison Commissary Overcharges**

  Jackson v. Randle (Ill. App. 2011, challenging State Dept of Corrections' pricing of commissary goods above legal markup limit. 2011 IL App (4th) 100790.

III. SECURITIES/SHAREHOLDERS RIGHTS

The firm, a member of Risk Metrics top 50 securities firms, has been involved in complex corporate governance, fraud, shareholder rights, and takeover litigation, especially in cases involving truly complex valuation issues. These cases include:

- **Options Backdating**

  In *Ryan v. Gifford* (Maxim Integrated Products, Del.Ch. 2008), we obtained the Delaware Chancery Court's definitive declaration that backdating option grants violates directors' fiduciary duties to shareholders. The litigation also produced landmark Delaware decisions regarding personal jurisdiction, discovery issues in derivative litigation and interlocutory appeal issues. On January 2, 2009, the Delaware Chancery Court approved a settlement of $28 million in cash plus option givebacks and unique and unprecedented corporate governance reforms.

- **Bank Merger/Takeover/Securities Fraud**

  In re Nationsbank/BankAmerica Securities Litigation, MDL 1264 (E.D. Mo., Nangle, DJ) (Executive Committee counsel in litigation involving $100 Billion bank "merger of equals" between Bank of America and Nationsbank which was shaken by post-merger disclosures of hedge fund losses) (significantly participated in achievement of $490 million settlement of all constituent claims), 263 F.3d 795 (8th Cir. 2001).

- **Partnerships Securities Fraud**

  (a) *In re Prudential-Bache Energy Income Partnerships Securities Litigation*, MDL No. 888 (E.D. La.), (lead Objectors' counsel, forced the disclosure of Prudential's internal "Locke Purnell" audit showing truly corrupt actions in selecting partnerships to "pump" through the Pru sales force, blocked an early-stage low cash rollup settlement, forced an auction, found the high-bid purchaser who ultimately paid $508 million for the auctioned partnerships, and ultimately initiated global Prudential Securities litigation and settlement.)

  (b) *Massad v. Prudential Insurance Co.* (global Civil RICO case against Prudential Securities, initiated from knowledge gathered in *Prudential* partnership litigation case; became the global civil RICO case referred to as *In re Prudential Securities, Inc. Limited Partnerships Litigation*, MDL No. 1005 (S.D.N.Y.), which produced more than $110 million cash for all of Prudential's limited partnership unit-holders nationwide, *see also* 163 F.R.D. 200 (S.D.N.Y. 1995) (preliminary approval) and 912 F. Supp 97 (S.D.N.Y Jan. 24, 1996) (award of fees following final approval)).

- **Corporate Securities Fraud**

  (a) *In re DVI, Inc. Securities Litigation*, No. 2:03-cv-5336 (E.D. Pa.) (Recovered over 30% of PSLRA losses for class over more than ten years representing institutional

investors. We were appointed by the court as sole lead and class counsel on behalf of both equity and debt securities purchasers in securities fraud litigation following the collapse and bankruptcy liquidation of a $2 billion medical equipment finance company. We overcame numerous legal challenges, reviewed millions of documents, took over seventy depositions, retained and challenged numerous experts on issues of market efficiency, accounting and auditing matters, loss causation and damages, obtained class certification, which the Third Circuit Court of Appeals affirmed; prevailed on summary judgment motions, and recovered over $21 million from certain inside and outside directors, paid from their own personal funds, certain third-parties and one of the company's largest shareholders; plus obtained $2.2 million additional recovery from the company's auditors and certain directors and officers). Notable reported decisions in this case include: *In re DVI, Inc. Sec. Litig.*, 249 F.R.D. 196 (E.D. Pa. 2008) (granting plaintiffs' motion for class certification against all but one defendant), *aff'd*, 639 F.3d 623 (3d Cir. 2011) (rejecting defendants' challenges to the adequacy of lead plaintiffs based on their trading strategies and the efficiency of DVI's stock and bond markets); *In re DVI, Inc. Sec. Litig.*, 2005 WL 1307959 (E.D. Pa. May 31, 2005) (denying defendants' motions to dismiss); and *Janovici et al. v. DVI, Inc. et al.*, 2003 WL 22849604 (E.D. Pa. 2003) (appointing our client as lead plaintiff and our firm as lead counsel over the objection of applications filed by larger class action firms).

(b) *In re Safety-Kleen Rollins Shareholder Litigation*, No. 3:00-1343-17 (D. So. Carolina, Judge Joseph F. Anderson, Jr.) (co-lead counsel) (survived motions to dismiss and summary judgment, obtained class certification and, in 2005, obtained recoveries totaling 100% of PSLRA losses. Entered into settlements totaling $3.15 million in action asserting § 14(a) proxy claims on behalf of former Rollins shareholders; settlement represented a substantial recovery of class member estimated losses).

(c) *In re First Chicago/Bank One Shareholder Securities Litigation*, No. 00-CV-880 and 916 (N.D. Ill.) (Executive Committee member in action asserting § 11, 12(a) and 14(a) claims brought on behalf of First Chicago Shareholders in connection with Bank One Merger; action settled in 2005 for $120 million).

(d) *Mercury Finance Company Securities Litigation*, No. 98 B 20763 (U.S. Bktcy Ct.) (cooked-book finances of subprime auto lender, Krislov firm helped organize diverse groups of competing claims and counsel in federal and state court, bankruptcy court and outside arbitration, ultimately designated lead counsel for state court claimants in both state and federal courts, bankruptcy and arbitration matters, instrumental in achieving multi-court settlements and arbitration of claims resulting in multi-million dollar recovery to the Class).

(e) *Malone v. Brincat*, 722 A.2d 5 (Del. Sup. 1998), establishing actionable director duties to shareholders.

(f) *Gavin v. AT&T Corp.*, 464 F.3d 634 (7th Cir. 2006). Corporation charged shareholders for delivery of stock certificates in connection with a merger when shareholders could have obtained certificates for free. The Seventh Circuit Court of

Appeals reversed the district court's dismissal, pursuant to the Securities Litigation Uniform Standards Act, because the exchange of stock certificates was not sufficient in connection with the merger that caused the stock certificate exchange. The Seventh Circuit remanded the case to the Circuit Court of Cook County, Illinois, and the case was subsequently settled).

- **Merger/Takeover cases**

(a) *In re Jacuzzi Brands S'holder Litig.*, C.A. No. 2477-CC, (Del. Ch. 2007): on executive committee to achieve settlement based on corporate therapeutics and reduction in the termination fee in connection with Apollo Management Co.'s takeover of Jacuzzi.

(b) *Ryan v. John H. Harland Co.*, No. 2007 CV 128712 (Fulton Cty. GA 2007): lead counsel in achieving meaningful disclosure settlement in connection with its takeover by M&F Worldwide Inc.

(c) *Smith v. The ServiceMaster Co.*, C.A. No. 2924-VCS (Del. Ch. 2008): lead counsel in achieving therapeutic settlement in connection with Clayton Dubilier & Rice's takeover of The ServiceMaster Company.

IV. PRIVATIZATION OF PUBLIC ASSETS

The Krislov firm has been lead counsel for taxpayer challenges to (i) the City of Chicago's 75 year Parking Meter Lease transaction, as violating the Illinois Constitution's provisions, e.g., the prohibition of spending public money for non-public purposes (i.e. for police enforcement of private owned meters) and challenge to conditioning exercise of City's legislative police powers on compensating concessionaire; *Indep. Voters of Ill. Indep. Precinct Org (IVI-IPO)* v. Ahmad, 2014 IL App (1st) 123629, 13 N.E.3d 251, 2014 WL 2808123 (Ill. App. Ct. 1st Dist. 2014) and (ii) the City's 99-year "lease" of Millennium Park garages, as illegally consigning future development of Chicago Loop to the private garage operator. *Independent Voters of Illinois IVI-IPO v Widawsky, Comptroller*, 2016 IL App(1st) 140817-U, 2016 Ill.App. Unpub. LEXIS 493 (March 19, 2016).

V. FALSE CLAIMS/WHISTLEBLOWER, QUI TAM CASES

The Krislov firm has also recovered funds for the government, due to governmental fraud, abuse and mismanagement. Representative cases include:

(a) *County of Cook ex rel. Rifkin v. Bear Stearns*, 215 Ill.2d 466 (2005); *Scachitti v. UBS Financial Services*, 215 Ill.2d 484 (2005); and *City of Chicago ex rel. Scachitti v. Prudential Securities*, 332 Ill. App.3d 353 (Ill App. 2002) *petition for leave to appeal denied*, (establishing constitutionality of whistleblower actions against underwriters "yield burning", i.e. overcharging municipalities on refinancing government debt

litigation, established ability of whistleblowers to employ "nullum tempus" doctrine eliminating ordinary limitations periods on claims for government entities).

(b) *Ryan v. Cosentino*, 776 F. Supp. 386 (N.D. Ill. 1991), 793 F. Supp. 822 (N.D. Ill. 1992) and 1995 WL 516603 (N.D. Ill. August 24, 1995) ($14 million judgment obtained for corrupt loans to public officials in exchange for deposits of State monies without interest); and *McKay v. Kusper*, 252 Ill. App. 3d 450 (1993).

We also have pursued several qui tam/whistleblower type actions, including:

(c) *U.S. ex rel. Chovanec v. Apria Healthcare Group, Inc.*, 606 F.3d 361 (7th Cir. 2010);

(d) *U.S. ex rel. Kennedy, et al. V. Aventis Pharmaceuticals, Inc.*, 512 F.Supp.2d 1158 (N.D. Ill. 2007);

(e) *U.S. ex rel. Magnino v. Passages Hospice, LLC and Seth Gilman*, 09 C 2009

and have multiple pending cases currently under seal.

VI. PRIVATE EMPLOYER BENEFITS, PENSION, ERISA MATTERS

We have particular expertise in litigating issues of protecting pension benefits over corporate manipulation and in ERISA-related matters.

- **ESOP Redemption Abuse**

(a) *Montgomery v. Aetna Plywood*, 231 F.3d 399 (7th Cir. 2000) (we doubled the Profit Sharing accounts of the 100 participants whose ESOP [Employee Stock Ownership Plan] had been redeemed out of the 95% ownership of their employer for less than half of fair value. Won a judgment after a 3-week bench trial, and successfully completed a recovery of $7 million cash plus restored 20% ownership of company). Served on Board and eventually obtained additional $1.8 million in fair value buyout of restored ESOP interests.

(b) We were also brought in to settle remaining ESOP fiduciary claims arising from the SEARS buyout in which management was accused of selling a large percent to a newly-created ESOP to thwart the outside takeover threat.

(c) *Clair v. Harris Trust & Savings Bank*, 190 F.3d 495 (7th Cir. 1999) (established payout requirements from qualified plans).

- **Restrictive Stock Vesting on Sale of Division**

Petit v. HD Supply Holdings, Inc., No. 2016 CH 06885 (Cir. Ct. Cook County, Ill.) (pending litigation over company's refusal to accelerate vesting of stock interests on sale of division).

- **Employee Overtime and Gratuities Collected**

Danhka v. Wrigley Rooftops III, et al., No. 2012 CH 37196 (Cir. Ct. Cook County, Ill.). Near full compensation recovery of overtime and "gratuity" charges for servers.

- **FLSA Employee Overtime**

Bertrand v. BMO/Harris Bankcorp, No. 1:11-cv-05496 (N.D. Ill.). Full recovery settlement.

- **Challenging Misstated Early Retirement Benefits**

Kannapien v. Quaker Oats Co., No. 04-CV-6829 (N.D. Ill.)

VII. COMMON FUND HEALTHCARE LIEN REDUCTIONS

Representative cases include:

(a) *Brannan v. Health Care Service Corp.*, No. 00 C 6884 (N.D. Ill. Mag. Judge Geraldine Soat Brown) *Coughlin v. Health Care Service Corp., d/b/a Blue Cross Blue Shield of Illinois*, No. 02 C0053 (N.D. Ill.) and *Doyle et. al. v. Blue Cross Blue Shield of Illinois*, No. 00 CH 14182 (Ill. Cir. Ct., Cook County) (parallel federal and state litigation; as co-lead counsel we obtained a $6.95 million settlement, plus prospective relief valued at millions more, for class of insureds who were damaged by Blue Cross's alleged practice of seeking reimbursement liens for amounts greater than what they actually paid health care providers and for failing to reduce their liens pursuant to Illinois' common fund doctrine).

(b) *Cruz v. Blue Cross/Blue Shield of Illinois*, No. 00 CH 14182 (Cir. Ct. Cook County, Ill.); *Blue Cross/Blue Shield of Illinois v. Cruz*, 2003 WL 22715815 (N.D. Ill. Nov. 17, 2003); and 396 F.3d 793 (7th Cir. 2005)(parallel state and federal litigation over Blue Cross's claimed reimbursement right against third-party recoveries; obtained summary judgment for Plaintiff and a certified class in the state litigation; prevailed at district court level in the federal action, and successfully vacated the Seventh Circuit's judgment for Blue Cross before the United States Supreme Court, 547 U.S. 677 (June 26, 2006); *see also, Empire Healthchoice Assur. v. McVeigh*, 126 S. Ct. 2121 (2006), in which Krislov firm acted as amicus in support of *McVeigh*, the prevailing party, and cited Id. at 2135, in the United States Supreme Court's decision regarding the scope of federal jurisdiction and preemption under the Federal Employee Health Benefits Act and federal common law. 547 U.S. at 682. State law case settled for $1.5 Million, providing full recovery to the certified class.

(c) *Health Cost Controls v. Sevilla*, No. 94 M2-1217 (Cir. Ct. Cook County, Ill., transferred to Ch. Div.); (Successful 15-year battle to recover 100% of insureds' common

fund claims, plus pre-judgment interest for the Class and attorneys' fees. Counsel's successful advocacy included two appeals to the Illinois Appellate Court, where counsel succeeded in reversing trial court's dismissal on federal preemption grounds, *Health Cost Controls v. Sevilla*, 307 Ill.App.3d 582 (1st Dist. 1999), and reversal of trial court's class certification denial, *Health Cost Controls v. Sevilla*, 365 Ill.App.3d 795 (1st Dist. 2006). Counsel also successfully defended against HCC's removal to federal court, and Primax's (HCC's successor) federal retaliation lawsuit all the way to the Seventh Circuit. *Primax Recoveries, Inc. v. Sevilla*, 324 F.3d 544 (7th Cir. 2003) and *Primax Recoveries, Inc. v. Sevilla*, 2002 WL 58816 (N.D. Ill. Jan. 15, 2002).

VIII. CIVIL RICO

The Krislov firm has also established significant precedent in the consumer protection field, especially in Civil RICO matters.

(a) *Commercial Cleaning Services LLC v. Colin Service*, 271 F.3d 374 (2nd Cir. 2001) (we established that competitor companies may use Civil RICO against competitors whose hiring of undocumented aliens enabled them to underbid the competition).

(b) *Allenson v. Hoyne Savings Bank*, 272 Ill. App. 3d 938, 651 N.E.2d 573 (1st Dis. 1995) (Established federal civil RICO action in Illinois state courts; obtained full recovery for mis-amortized home mortgage payments).

(c) *Wallace Acquisitions v. Allied Waste Industries, Inc.*, 304 Ill. App. 3d 1009, 711 N.E.2d 383 (Ill. App. 1999) (Civil RICO recovery for bogus "Federal Clean Air Fuel Surcharge").

(d) *Iowa Car Rentals* (Action in Iowa state court for fictitious "Tax Reimbursement Surcharge").

IX. BANK AND BROKER PRACTICES

- **Mortgage Payment Misamortization**

  Allenson v. Hoyne, 272 Ill. App. 3d 938 (1st Dist. 1995) (civil RICO cause upheld in state court over mis-amortizing of home mortgage payments).

- **Foreign Securities Charges**

  Cohan v. Citicorp, 266 Ill. App. 3d 626 (1st Dist. 1993) (charges on ADR shares of foreign securities).

X. UTILITIES AND TELEPHONES

- **Power Outages**

  In re Commonwealth Edison 1990 Chicago Power Outages, Nos. 90-7547 and 90-7637 (Cir. Ct. Cook County, Ill.) (the firm recovered $4 million for some 63,000 low-income customers for damages from extended power outages).

- **Late Charges**

  In re Illinois Bell, Nos. 91-930, 91-1354 and 91-12529 (Cir. Ct. Cook County, Ill.) (firm recovered $3.5 million over disputed late charges and surcharges); Revived case pending in Illinois Commerce Commission, No. 14-301Seeking refund of $121 million in illegally imposed late fees, for phone company's knowing noncompliance with mail dating).

XI. CHALLENGING CORPORATE ABUSE AND ABUSIVE SETTLEMENTS

We are also independent, and uniquely have not hesitated to intervene and fight to block or improve corporate transactions and litigation settlements, which need to be blocked or improved, with special expertise in issues of valuation Representative cases include:

- **Shareholder Cases**

  (a) *Ryan v. Armstrong*, Del. Chancery 2015-2016-class/derivative claims for shareholders of Williams Companies Inc. (WMB) asserting directors' fiduciary breach in committing company to $428 million termination for purely defensive entrenchment transaction to block acquisition by unwanted suitor ETE.

  (b) *Ryan v. Gusahaney*, Del. Supreme Court Chancery and 2015 Del. Ch. Lexis 123 (2015). Challenge to ADT premium buyout of activist shareholder.

  (c) *Fox v. Riverview Realty/Prime Group Realty Trust*, No. 2012 CV 9350 (N.D. Ill.) (challenge to cashout redemption of preferred shareholders of REIT owning 330 North Wabash/IBM Plaza building over major valuation dispute. As co-lead counsel, obtained $8.2 million settlement for shareholders).

  (d) *In Re Scattered Corp.*, No. 93 C 4069 (N.D. Ill.) (Co-lead Plaintiffs' counsel in a case challenging massive short-selling of LTV common shares).

  (e) *Lyphomed Shareholder Litigation*, No. 89 CH 7585 (Cir. Ct. Cook County, Ill.), (Lead counsel in shareholder litigation over Fujisawa takeover).

(f) *Starr v. Graham Energy* (Counsel for Objectors in New Jersey and for Plaintiffs in Delaware derivative litigation).

- **Objector Cases**

(a) *Hooker v. JMB/Arvida*, No. 92-C-7148 (N.D. Ill.) (Co-lead objectors' counsel against settlement of investor class' loss of entire $234 million investment for $6 million).

(b) *In re Domestic Air Transp. Antitrust Litig.*, MDL No. 861, 148 F.R.D. 297 (N.D. Ga.) (Krislov firm was one of the Objectors' counsel and was instrumental in identifying problem areas of the widely criticized settlement and eliminating the prohibition on use of the settlement coupons through travel agents).

(c) *Michael Milken and Associates Securities Litig.*, MDL No. 924 (S.D.N.Y.) (Krislov was a member of the nationwide Allocation Committee of the plaintiffs' counsel). We forced the disqualification of lead counsel in the MDL proceedings over the conspiracy to fix floor prices for compact disc music.

(d) *In re Compact Disc Minimum Advertised Price Antitrust Lit.*, 2001 WL 243494, (D.Me. 3/12/2001)(Hornby, Ch.D.J.) (case settled for $115 million).

XII. MASS TORT LITIGATION

As counsel for Longshore Objectors, Krislov uncovered potentially fatal defects in the original asbestos mega-settlements in the federal courts in Philadelphia and in Tyler, Texas and devised the use of a defendant third-party employer class to prevent individual potential forfeiture of Longshore Act benefits for longshoremen and harbor workers nationwide, without which the settlement could not have been approved. *Ahearn v. Fiberboard*, No. 6:93-cv-526, 1995 U.S. Dist. Lexis 11522, 11532, 11062 (E.D. Tex. July 27, 1995), *affirmed In re Asbestos Litigation*, 90 F.3d 963 (5th Cir. 1996), *reversed on other grounds*.

XIII. PARTNERSHIP ROLLUP LITIGATION

Krislov & Associates earned a nationwide reputation for contesting unfair "rollup" transactions in which limited partnerships are consolidated into new listed corporate entities in

which existing management obtains an unfair proportion of the surviving entity. Krislov has been lead or co-lead counsel in cases in Delaware, *Preim v. Franchise Finance Corp. of America,* C.A. No. 13192 (Del. Ch.) (reduction of management share in $900 million rollup); in Louisiana, *In re Prudential-Bache Energy Income Partnerships Securities Litigation*, MDL No. 888 (forced $500 million auction plus improved $120 million settlement); and in California, *Blumberg v. Glenborough Realty Corp.*, No. 391223 (Cal. Super. Ct. San Mateo Co.) ($100 million real estate rollup).

XIV. MAJOR TAX LITIGATION

Prior to focusing on class actions, Mr. Krislov was a tax litigator involved in the litigation of major tax disputes, civil and criminal, with the federal government. *See, e.g.*, *Caterpillar Tractor Co. v. United States*, 589 F.2d 1030 (7th Cir. 1978) (interplay of Domestic International Sales Corporation and Western Hemisphere Trade Company export provisions); *Estate of Jenner Commissioner*, T.C. Memo 1977-54 (U.S. Tax Ct. 1977), *rev'd on different grounds* 577 F.2d 1100 (7th Cir. 1978) (pre-IPO valuation of largest block of shares of closed-end investment company and permitting deduction of underwriting commission for Estate Tax and Estate Income Tax).

XV. FEDERAL CONSTITUTIONAL LITIGATION

Matter of Grand Jury Subpoena Duces Tecum, 725 F.2d 1110 (7th Cir. 1984) (establishing invalidity of subpoenas issued by U.S. Attorneys without Grand Jury authorization). *Shaper v. Tracy*, 97 Ohio App. 3d 760 (1994), *cert. denied*, 116 S. Ct. 274 (1995) and 76 Ohio St. 3d 241, 667 N.E. 2d 368 (1996) (Dormant Commerce Clause challenge to discriminatory state income taxation of only foreign-state municipal income).

XVI. ENVIRONMENTAL CLASS ACTIONS

Enzenbacher v. Browning Ferris Ind. Of Ill., 332 Ill. App. 3d 1079 (2nd Dist. 2002) settled case involving trespass and nuisance issues related to landfill on behalf of neighbors of the landfill.

XVII. VETERANS EMPLOYMENT RIGHTS

Veterans Legal Defense Fund v. Schwartz, 330 F.3d 937 (7th Cir. 2003). Veterans' right to statutory preferential hiring for state job openings.

XIX. VOTING RIGHTS; ELECTION LAW

- **Ballot Access**

  In the widely cited *Krislov v. Rednour,* 97 F.Supp.2d 862 (N.D. Ill. 2000), affirmed 226 F.3d 851 (7th Cir. 2001), *cert. den. sub nom McGuffage v. Krislov*, 531 U.S. 1147 (2001), Mr. Krislov successfully attacked Illinois' ballot petition procedures that had previously prevented non-organization candidates from getting on the ballot. *See also Orr v. Edgar*, 179 Ill.2d 589 (1998), State constitution challenge to statute eliminating straight ticket ballot.

- **Absentee Voters-Right to Challenge Disqualified Ballots**

  In another voting rights victory, the Krislov firm obtained class certification of a bi-lateral class of all absentee voters whose ballots were rejected without receiving notice until after the canvas of votes (so their votes were not counted) and against a defendant class of all 111 Illinois election authorities, ensuring that absentee ballot voters have uniform rights statewide. *Zessar v. Helander, et al.*, 2006 WL 573889 (N.D. Ill. Mar. 7, 2006) (certifying double classes); *Zessar v. Helander, et al.*, 2006 WL 642646 (N.D. Ill. Mar. 13, 2006) (granting Summary Judgment to Plaintiffs and the class).

- **Felon Politicians**

  We successfully enforced the statutory prohibition on convicted felons from serving in municipal office, defeating efforts by four convicted felons to resume the office they had been convicted of corrupting. *Bryan and DelGado v. Bd. Of Election Commissioners*, Nos. 104105 and 104112 (Ill. S. Ct. Feb. 23, 2007).

XX. REPRESENTATION OF DEFENDANTS

Krislov & Associates has also represented defendants in very limited instances. *Primax v. Sevilla*, 324 F.3d 844 (7th Cir. 2003) (successfully defended against plaintiff's action brought against named plaintiff, which was essentially an action brought in federal court to collaterally attack the progress of a state court class action); *see also, LaSalle v. Medco*, 54 F.2d 443 (7th Cir. 1995); *Lorence/Gallagher v. Cannonball, Inc.*, Nos. 89 CH 11016 and 89 CH 11347 (Cir. Ct. Cook County, Ill.); and *Cruz v. Blue Cross/Blue Shield of Illinois*, 396 F.3d 793 (7th Cir. 2005) (federal action against class action plaintiff involving Blue Cross Reimbursement Lien; claim upheld by Appellate Court), vacated by 126 S. Ct. 2964 (2006); and dismissed on remand to the Seventh Circuit, 495 F.3d 510 (7th Cir. 2007).

XXI. FAVORABLE MENTION BY COURTS

The standing of the Krislov firm in successfully conducting complex and class action litigation has been favorably noted by the courts. For example, in *Ryan v. City of Chicago*, No. 83-CH-390 (Cir. Ct. Cook County, Ill.), former Chief Chancery Judge Curry characterized our battle for the integrity of pension fund moneys against the forces of the City and its pension funds, who had engaged in the "Mugging of the Good Samaritan" stating:

> The petitioner's [Krislov] efforts for and on behalf of the Firemen's Fund have now spanned nine years. His energy, persistence and legal scholarship have (1) righted a serious wrong, (2) secured restitution for past misconduct, (3) created a climate which will assure fidelity in transmitting future pension fund tax receipts, (4) delivered a handsome recovery, (5) enhanced that recovery by ferreting out auditing mistakes, (6) secured an award of compound interest, and (7) engaged in collateral litigation so as to protect the benefits gained for the Firemen's fund.

Slip Op., December 14, 1992, at 7.

In approving the Firm's settlement with Blue Cross, Magistrate Judge Geraldine Soat Brown stated:

> I will note for the record that this Court presided over literally a score of settlement conferences in this case, at least nine of which were in person, and I think I counted – I stopped counting at eleven telephone settlement conferences in this case. Both sides were represented by able and experienced counsel who have represented parties in class actions of this nature and have made an informed evaluation of the benefits of settlement in light of the risks of litigation and possible recovery.
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> ***
>
> I think counsel has certainly earned the fees that are going to be awarded them in this case by the able way they have taken this case on, the fact that in these very difficult and complex issues they were able to assemble law, argument, discovery to support and bring the defendant to the table, and obtain a settlement of this case that benefits the class in this way. Those attorneys' fees are reasonable and well deserved.

September 30, 2004 Transcript of Final Hearing on Settlement before Magistrate Judge Geraldine Soat Brown. *Brannan v. Health Care Service Corp*., No. 00-CV-6884 (N.D. Ill.), coordinated w/ *Coughlin v. HCSC*, No. 02-CV-0053 (N.D. Ill.) and *Doyle et. al. v. Blue Cross Blue Shield of Illinois*, No. 00 CH 14182 (Cir. Ct. Cook County, Ill.).

ATTORNEY BIOGRAPHIES

CLINTON A. KRISLOV

Clint Krislov, a graduate of Northwestern University (B.A. 1971), Phi Beta Kappa, and Cornell Law School (1974), is the founder and senior attorney of Krislov & Associates, Ltd.

Admitted to practice in Illinois and Michigan state courts, the United States Supreme Court, numerous Circuit Courts of Appeals (2d, 3d, 5th, 6th, 7th, 9th, 11th and Federal Cir.), all U.S. District Courts in Illinois (including trial bar) and N.D. Ohio, plus the U.S. Tax Court and Court of Federal Claims.

Mr. Krislov, an Adjunct Professor of Law at Chicago-Kent College of Law, teaching courses in Consumer Protection Law (2001-2005) and federal income tax (1976-7), founded and directs the law school's Center for Open Government™ law clinic; assisting taxpayers, citizens and others, litigating matters pertaining to FOIA (Freedom of Information Act) OMA (Open Meetings Act), public official accountability, and privatization of public assets.

He has authored several articles, including: *The Illinois Consumer Fraud Act: Hey! What Happened to all the Strict Constructionists?, Judicial Add-Ons are Ruining a Perfectly Good Statute*, 11 Loyola Consumer Law Review 224 (1999); "*Scrutiny of the Bounty: Incentive Awards of Plaintiffs in Class Actions*," 78 Illinois Bar Journal 286, June 1990; "Tax Considerations in Buying, Selling and Dissolving the Professional Practice," in Professional Practices, IICLE, 1986; "Civil and Criminal Tax Litigation," in 1981 Federal Tax Skills Course, IICLE, 1981; "Evaluating Publicly Syndicated Investments," in Basic Tax Shelters, IICLE, 1984; and is presently nearing completion of a major article on privatizations, with analysis and evaluation structure for judging "public private partnerships" and privatizations.

Mr. Krislov has also served many terms as Chair, or vice-Chair, of the Chicago Bar Association Class Litigation Committee, and initiated programs of bench-bar communications which continue.

He also holds three United States patents in Digital File Security and Registration.

Mr. Krislov also serves as a member of the Board of Editors of Class Action Reports (1992-present), the Board of Trustees of the Chicago Chapter of the Federal Bar Association (1995-96), and the Chicago Region ABA-IRS Nonfiler Initiative (joint Program to reach out nationwide to persons who had not filed income tax returns offering amnesty-type opportunity to get on the system without fear of prosecution).

As a former candidate for the United States Senate, Illinois Attorney General, and Comptroller, Mr. Krislov has also led the fight to open the electoral system fairly for all participants. He is the 2001 recipient of Independent Voters of Illinois-Independent Precinct Organization's "Legal Eagle" award for his work in election reform and defense against corporate overreaching.

KENNETH T. GOLDSTEIN

Ken is a graduate of the University of Wisconsin, Madison (B.A. 1990) and The John Marshall Law School (J.D. 1996). He was a member of The John Marshall Moot Court Council, Spring 1995. He was admitted to practice in Illinois state and federal courts in 1997. Mr. Goldstein has been active in electoral and legislative politics in Illinois. He joined the firm of Krislov & Associates in January 1998. His practice is concentrated in consumer class actions and qui tam actions.

CHRISTOPHER M. HACK

Chris is a graduate of the University of Illinois, Urbana-Champaign (B.S., Journalism, 2000) and the John Marshall Law School (J.D., 2011). During law school, Chris was on the Dean's List. He received a C.A.L.I. award in Conflicts of Law and was a member of the John Marshall Review of Intellectual Property Law. He served as a research assistant for Professor Corey Yung, and externed for the Hon. Brigid Mary McGrath of the Circuit Court of Cook County. He also clerked for more than two years at the local office of Hagens Berman Sobol Shapiro LLP, a Seattle based plaintiffs' complex litigation firm, where he assisted on large scale class actions pending across the country. Prior to law school, Chris worked as a reporter and editor at a Chicago area daily newspaper. As a reporter, he covered state and federal courts, and was assigned for more than four years to the press room at the Dirksen Federal Building in Chicago. Chris joined Krislov & Associates, Ltd. in March 2012.

Chancery DIVISION

Litigant List

Printed on 06/05/2018

Case Number: 2013-CH-17450

Plaintiffs

Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
UNDERWOOD MICHAEL C			0000	
VUICH JOSEPH M			0000	
SCACHITTI RAYMOND			0000	
MCNULTY ROBERT			0000	
DORN JOHN E			0000	
SELKE WILLIAM J			0000	
ARCHER JANIECE R			0000	
MUSHOL DENNIS			0000	
AGUINAGA RICHARD			0000	
SANDOW JAMES			0000	
SANDOW CATHERINE A			0000	
JOHNSTON MARIE			0000	
IN EXHBIT 1 TO THIS 320 A			0000	
REMVD TO FED CT 08/09/13			0000	

REMAND FROM FED CT 0000
040815

Total Plaintiffs: **15**

Defendants

Defendant Name	Defendant Address	State	Unit #	Service By
CITY OF CHICAGO		0000		
TRUSTEES, POLICEFUND		0000		
TRUSTEES,FIREFUND		0000		
TRUSTEES,MUNICIPAL		0000		
TRSTEES,LABORERSFUND		0000		
REMVD TO FED CT 08/09/13		0000		
PENSION FUND		0000		

Total Defendants: **7**