

**In the CIRCUIT COURT of COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CITY OF CHICAGO, a Municipal Corporation,)	
Plaintiff-Counterdefendant,)	
v.)	No. 2001CH 4962
)	Prev.87 CH 10134
MARSHALL KORSHAK, et al.)	Cal. 12
Defendant-Counterplaintiff,)	
and)	Hon. Moshe Jacobius
)	
MARTIN RYAN, et al.,)	
Intervening-plaintiffs.)	

PARTICIPANT CLASS' MOTION

- (1) TO RETURN THE CASE TO THE ACTIVE CALENDAR;**
- (2) FOR LEAVE TO FILE AN AMENDED COMPLAINT; AND**
- (3) TO SET A SCHEDULE FOR DECISION ON MERITS AND A
PERMANENT INJUNCTION**

The Participant Class by their undersigned class counsel, hereby move this Court to: (1) return the case to the active calendar, and (2) grant them leave to file an Amended Complaint and (3) set a schedule for proceeding on a revised class certification and the merits, for judgment and a permanent injunction.

In support of this motion, the Participant Class states:

I. SUMMARY OF CASE AND RESTORATION REQUEST.

This is a dispute over the rights of certain annuitants of the City Annuity & Benefit Funds for Police, Firemen, Municipal employees and Laborers to permanent coverage under the City's retiree healthcare plan, subsidized by their respective Annuity & Benefit fund, unreduced from the terms and subsidy in effect on their dates of entry into their respective Fund participation.

The litigation addresses the claims for Participants to healthcare benefits from their participation in their respective Funds, unreduced from the terms and subsidy provided when they entered the system. The case proceeded to a bench trial during June 1988, on the participants' and their trustees' claims. After the trial, but prior to decision by the court, the City and trustees reached a settlement agreement that set the terms for annuitant healthcare coverage for the period through December 31, 1997, but explicitly restored the parties to their existing rights, if no permanent resolution was reached by the end of 1997. The Circuit Court's denial of Participants' motion to restore the case to the active docket in 1998 was reversed by the Illinois Appellate Court, reinstating the case, which then proceed to another settlement in 2003, resolving the retiree healthcare issues through June 30, 2013, while still reserving Participants rights to assert their claims for permanent healthcare coverage subsidized by each participant's respective Fund.

In accordance with their rights under the recently expired 2003 Agreement, the participant class now requests the court to restore the case to the active docket, permit the participants to file an amended complaint, restore the injunction previously in effect pendente lite, and proceed to grant the participants the judgment they seek, declaring permanently the rights for all participants.

As more fully described in the Amended Complaint, the entitled participants now include four groups of participants: (i) all surviving members of the originally certified class of participants as of December 31, 1987 (the original "Korshak" class), plus (ii) all other persons participating through a person who retired subsequently, but prior to August 23, 1989 (the date of passage of PA 86-273), or (iii) began participating (i.e., original hire date) on or before august 23, 1989, or (iv) whose initial participation (hire date with the City) was after August 23, 1989.

II. A (RELATIVELY) BRIEF HISTORY OF THE RETIREE HEALTHCARE “KORSHAK” LITIGATION

As of October 1987, the City provided healthcare coverage for retiree participants in each of its four pension funds¹ at a fixed monthly rate of \$21 for Medicare qualified participants and \$55 for non Medicare qualified participants. The Police and Firemen's Funds paid their annuitants premiums, and the Municipal and Laborers' Funds subsidized the premiums \$25 per month.²

The Korshak litigation. In October, 1987 the City of Chicago sued the trustees of the four City pension funds, seeking a declaration that it could stop providing annuitant health care coverage and recover \$58 million which it had previously paid for the coverage. The City's asserted basis was that it had provided retiree healthcare coverage under an appropriation that, for most years, did not explicitly mention annuitants. It argued that it therefore should be entitled to terminate the coverage and recover the money it had paid. In reality, the City was using the health care coverage as leverage in an attempt to offset its approximately \$25 million liability for its misuse of pension fund moneys, for which it had already been found liable in another case, Ryan v. City of Chicago, 148 Ill.App.3d 638 (1st Dist. 2nd Div. 1986). The City filed this action only after its efforts to assert it as an offset in the Ryan case or consolidate the two cases were rejected by then-Chief Judge Shields. See December 9, 1987 Order by Judge Shields in Ryan v. Chicago, 83 ch 390.

The Funds counterclaimed on behalf of their annuitants, asserting that the City had legal obligations to continue to provide the health care coverage. Several annuitants from the four funds immediately intervened, represented by undersigned class counsel, Clinton A. Krislov. They asserted that the City and the Pension Funds were obligated to continue to provide the health care coverage at the fixed rate subsidized plan in effect when they retired or vested. Their

¹ The Police Annuity and Benefit Fund, the Firemen's Annuity and Benefit Fund, the Municipal Employees' Annuity and Benefit Fund, and the Laborers' Annuity and Benefit Fund.

² Thus the only annuitants who paid for the healthcare coverage were the non Medicare qualified Municipal and Laborer annuitants, who paid a net amount of \$30 per month.

entitlement claims rested on constitutional protections for existing benefits of membership in retirement funds, estoppel and other claims asserted at trial.

This Court dismissed the City's complaint on May 16, 1988, but upheld the counterclaims to continue the existing annuitant healthcare plan. The case then proceeded to a bench trial, in June of 1988, on the participants' and trustees' claims that the City is obligated to continue providing the coverage permanently. After the trial, but before the Court rendered a decision, the City and the Funds reached a settlement which allocated the burdens between the parties through December 31, 1997 (the "Settlement Period"). Although the participant class objected to the settlement and sought summary judgment or judgment on the trial in their favor, the court instead approved the settlement and that was affirmed. City v. Korshak, 206 Ill.App.3d 968 (1st Dist. 1990), PLA den. 575 NE2d 912, cert. den. 503 U.S. 918 (1992).

According to the terms of that settlement, the City agreed to pay at least 50% of the healthcare premium costs; the Funds increased their subsidies by the amounts set in the settlement; and the annuitants paid the rest. The settlement, however, also provided that after December 31, 1997 the parties would be restored to "the same legal positions they were in as of June 1988."

The necessary corresponding amendments to the Pension Code were not actually enacted into law for sometime thereafter, by P.A. 86-273 on August 23, 1989. Consequently, retirees who began their participation after December 31, 1987 but prior to August 23, 1989, are entitled to the same non-diminution rights under the 1970 Ill. Const. Art. XIII. § 5, as original class members.

Over the course of the next decade, the settlement governed the operation of the retiree healthcare coverage terms, Funds subsidies and charges to annuitants.

However, since there had been no permanent solution by December 31, 1997, the participants moved to revive the litigation. Rather than restoring participants to their pre-1988 terms of coverage, the City instead sponsored legislation on its own that purported to set new terms for annuitant healthcare coverage through 2002. PA 90-32, enacted June 27, 1997. The

statute was almost certainly invalid on its face, as special legislation, because it explicitly applies to only persons who are participants by reason of employment by a named city; Chicago. See 1970 Const. Art. IV § 13.³

Although the Circuit Court rejected the Participants' efforts to restore the litigation, the Illinois Appellate Court held that the 1997 Amendments to the Pension Code were not a "permanent solution" within the meaning of the settlement agreement, reversed and revived Participants rights to asserted the claims in both the Funds' counterclaims as well as the Participants' initial pleading. Ryan v City and Korshak, et al., Nos.1-98-3465 and 1-98-3667, Order June 15, 2000, Exhibit 1.

Thereafter, the parties returned to litigation, but reached another settlement (the "2003 Settlement") that resolved the litigation through June 30, 2013, again reserving Participants' rights to assert their claims for lifetime coverage thereafter. City v. Korshak and Ryan, No. 01 CH 4962, July 30, 2003 Order of Judge Dooling, approving settlement.⁴

III. THE 2003 SETTLEMENT AGREEMENT CONTEMPLATES RESTORING THE CASE TO THE ACTIVE CALENDAR AFTER JUNE 30, 2013.

As Contemplated by the Settlements, it is now appropriate to restore the case to active status, with an amended complaint, reflecting both the history of the litigation to date, and the differing claims of the participants, based on their retirement and hire dates vis-à-vis the passage of P.A.86-273, which purports to make changes that may or may not be effective.

IV. ADDITIONAL INTERVENORS/NAMED PLAINTIFFS.

During the past few months, we have been contacted by literally hundreds of retiree healthcare participants, and a number of interested organizations, and have been engaged by

³ Section 13. Special Legislation.

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

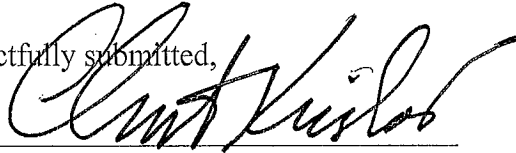
⁴ In 2008, the parties added a "reconciliation" procedure, by which the charges are corrected after the fact, in light of actual experience. October 1, 2008 Order of Judge Rochford.

persons in each of the four retiree categories. To the extent necessary, we will identify a number of them as potential class representatives in each category.

WHEREFORE, the participant classes request that the Court enter an order (1) returning the case to the active calendar; (2) granting leave to file the attached amended complaint (Exhibit 2), bringing the claims up to date; and (3) setting a schedule for resolution of the claims on the merits.

Dated: July 5, 2013

Respectfully submitted,



Clinton A. Krislov
Class Counsel for the Korshak (1987) and
Jacobson/Window (Pre-8/23/89 retirees), and
Proposed Class Counsel for Pre- and Post-8/23/1989 hired
Participants

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EXHIBIT 1

1-98-3465 & 1-98-3667 (consolidated)

decision on the merits and dismissing this case. The proposed intervenors, Olsen, Walsh, and Sweeney, appeal from the trial court's September 1, 1998, order denying their petition to intervene as class members. These actions arose from a prior settlement in this case which guaranteed the participants a right to have the case restored and their claims decided if they had not reached a "permanent solution" to their healthcare coverage dispute with the City by December 1, 1997. The trial court found that because a "permanent solution" was reached, it lacked subject matter jurisdiction to consider plaintiffs' claims. Plaintiffs filed a timely notice of appeal on September 15, 1998. The proposed intervenors, also filed a timely notice of appeal on September 25, 1998. For the following reasons we affirm in part and reverse in part.

BACKGROUND:

The City's retired employees are covered by four annuity and benefit funds, the Policemen's Annuity and Benefit Fund, the Firemen's Annuity and Benefit Fund, the Municipal Employees' Officers' and Officials' Annuity Fund, and the Laborers' and Retirement Board Employees' Annuity and Benefit Fund (collectively the Funds), which are governed by the Illinois Pension Code. In October 1987, the City provided health care coverage for annuitants in the Funds at a fixed monthly rate of \$12 for Medicare qualified participants and \$55 for non-medicare qualified participants.

On October 19, 1987, the City sued the trustees of the Funds for mandamus and restitution. The City sought to compel the Funds to pay for annuitants' health care benefits and to recover \$58 million it had previously spent for health insurance for the

1-98-3465 & 1-98-3667 (consolidated)

Funds' annuitants. The City also informed the Funds that it intended to cease payment of the annuitants' health care benefit costs as of December 31, 1987. The City's basis for these actions was that it had provided retiree healthcare coverage under an appropriation that, for most years, did not explicitly mention annuitants. The Funds counterclaimed on behalf of their annuitants to prevent the City from terminating the annuitants coverage under the City's plan and to compel the City to continue paying for a portion of the coverage. Certain individual annuitants, who are the plaintiffs in this matter, were granted leave to intervene in the trial court proceedings.

On May 16, 1988, the trial court dismissed the City's complaint with prejudice, finding that the Funds had no obligation to reimburse the City for the health care benefits received by the annuitants since 1980. In June 1988 a bench trial was held on the Funds' counterclaims. Before the trial court issued its decision, however, the City and the Funds agreed to support legislation amending the Pension Code and to enter into a settlement agreement consistent with the legislation. Following a fairness hearing on December 12, 1989, the trial court approved the settlement, over the objection of the intervenors. According to the terms of the settlement, the City paid at least 50% of the cost of the claims of annuitants and dependants participating in the City's plan.

On December 15, 1989, the trial court entered an agreed order memorializing the settlement agreement. The Order stated in relevant part:

"The City and the Funds have agreed that at the conclusion of the 10 years covered by the settlement the parties will return to the same

positions they were in before the proposed settlement was negotiated. In the words of the stipulation between the City and the Funds, which was read into the record before this Court on November 27, 1989:

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

Consequently, the annuitants have not "given up" anything through this settlement. (Other than the claimed right to have the City pay more than 50% of the costs between March of 1990 and December of 1997.) On January 1, 1998, if some "permanent solution" has not been achieved, the annuitants will be permitted to reargue the claims which were asserted in the Funds' Counterclaim as well as the Intervenors' initial pleading."

On November 28, 1990, this court affirmed the settlement agreement. City of Chicago v. Korshak, 206 Ill. App. 3d 968, 565 N.E.2d 68 (1990).

On June 27, 1997, the General Assembly enacted P.A. 90-32, extending the City's obligation to pay some of the costs of the annuitants' health benefits through June 30, 2002.

In June 1998, arguing that no "permanent solution" had been reached, plaintiffs filed a motion seeking to return the case to the active calendar, add or substitute additional intervenors, file an amended complaint, and set a schedule for a resolution of their claims on the merits. Additional annuitants, Olsen, Walsh, and Sweeney, moved for leave to intervene as class members on July 24, 1998. On September 1, 1998, the trial court denied the plaintiffs' motion, denied the proposed intervenors petition to intervene, and dismissed this case. The trial court held that with the legislature's adoption of a "permanent solution" for annuitant health care coverage, the

1-98-3465 & 1-98-3667 (consolidated)

1989 consent decree had expired and the court lacked subject matter jurisdiction.

On appeal, the intervening plaintiffs and the proposed intervenors contend: (1) that the circuit court erred in finding that it lacked subject matter jurisdiction to consider plaintiff's claims; (2) that the 1997 amendments to the Pension Code unconstitutionally impair vested contractual rights; (3) that the 1997 amendments to the Pension Code were unconstitutional special legislation; and (4) that the circuit court abused its discretion in denying the proposed intervenors leave to intervene in this case.

Discussion:

At issue in this case is whether the circuit court had subject matter jurisdiction to address the plaintiffs' claims. Under the express terms of the consent decree, the circuit court's jurisdiction lasted until December 31, 1997. The agreement further provided that the circuit court's jurisdiction could continue after January 1, 1998, if no "permanent solution" to the annuitant health care problem had been reached. In dismissing plaintiffs' claims, the circuit court held that it had no jurisdiction over those claims because the General Assembly had achieved such a "permanent solution" through P.A. 90-32. The parties disagree as to whether P.A. 90-32 amounted to a "permanent solution" under the terms of the 1989 settlement agreement.

The Funds and the City argue that the intervening plaintiffs are bound by the 1997 settlement and the Funds' decision to treat the 1997 Amendments to the Pension Code as a "permanent solution." However, the intervening plaintiffs were made full parties to this action when they were allowed to intervene. See Redmond v. Devine,

1-98-3465 & 1-98-3667 (consolidated)

152 Ill. App. 3d 68, 504 N.E.2d 138 (1987)(holding that Intervenor is entitled to all the rights of an original party). The settlement agreement reaffirmed the intervening plaintiffs' position in the case by expressly providing that if a "permanent solution" is not achieved by January 1, 1998, "the annuitants will be permitted to reargue the claims which were asserted in the Funds' counterclaim as well as the intervenors' initial pleading."

The sole issue before this court then, is whether the 1997 amendment to the Pension Code was a "permanent solution" within the meaning of the settlement agreement. We find that it was not.

The 1997 amendment by its very terms states that the City's responsibility to pay for annuitant health benefits ends on June 30, 2002. Anything bounded in time cannot possibly be considered permanent. Webster's defines permanent as "lasting indefinitely." Webster's II New Riverside Dictionary 509 (1996). The Supreme Court has defined "permanent" as "a relationship of continuing or lasting nature, as distinguished from temporary." Castillo v. Jackson, 149 Ill. 2d 165, 180, 594 N.E.2d 323 (1992), quoting, Holley v. Layne, 553 F.2d 845, 850 (2nd Cir. 1977). A 5 year plan clearly does not last indefinitely.

In Castillo, the Supreme Court also recognized that "permanent" does not equal "perpetual", stating "a relationship may be permanent even though it is one that may be dissolved eventually at the insistence either of the [State] or of the individual, in accordance with law." Castillo, 149 Ill. 2d at 180. The Funds argue that the 1997

1-98-3465 & 1-98-3667 (consolidated)

Amendments fall within this definition because pursuant to the Amendments, the City can discontinue or amend annuitants' health care benefits at any time, as long as they act subject to and in accordance with the law. However, this ability to discontinue or amend annuitant's health care benefits does not change the fact that the legislation expires after 5 years. It simply does not create the continuing or lasting relationship necessary to make it permanent.

We find that the 1997 Amendments to the Pension Code do not constitute a "permanent solution" within the meaning of the settlement agreement. Therefore, under the express terms of the settlement agreement, the intervening plaintiffs are entitled to reargue the claims originally asserted in the Funds' counterclaims as well as the Intervenor's initial pleading.

II Proposed - Intervenor

The proposed intervenors contend that the circuit court abused its discretion in denying their petition for leave to intervene in this case. The proposed intervenors sought to intervene as of right pursuant to section 5/2-408(a) of the Code of Civil Procedure (735 ILCS 5/2-408(a) (West 1996)) because "representation by the existing parties may be inadequate and the applicants may be bound by an Order and Judgment in this action." The decision whether to grant a petition to intervene as of right lies within the trial court's discretion, however, that discretion is limited to determining timeliness of the petition, the inadequacy of the representation by existing parties, and the sufficiency of interest of the potential intervenors. Joyce v. Explosives

1-98-3465 & 1-98-3667 (consolidated)

Technologies Int'l, 253 Ill. App. 3d 613, 625 N.E.2d 446 (1993). Once these requirements are met, the party must be allowed to intervene.

A petitioner seeking to intervene may establish inadequate representation by the existing parties by demonstrating that his interests are different from those of the existing parties. Redmond v. Devine, 152 Ill. App. 3d 68, 504 N.E.2d 138 (1987). The proposed intervenors have failed to demonstrate how their interests are any different from the annuitants who have already intervened in this matter.

In Warbucks Inv. Ltd. Partnership v. Rosewell, 241 Ill. App. 3d 814, 609 N.E.2d 832 (1993), the court noted "[a]lthough it is well settled that the intervention statute is remedial and should be liberally construed (citation omitted), the petitioner is nevertheless required to allege specific facts that demonstrate that he has a right to intervene. Allegations that are conclusory in nature and merely recite statutory language are insufficient to meet the requirements of section 2-408." 241 Ill. App. 3d at 817. In the present case, the prospective intervenors allege no specific facts to demonstrate their right to intervene. Their petition to intervene merely recites the statutory language in a conclusory fashion.

The proposed intervenors also make an argument based on section 2-804(a) of the Code of Civil Procedure (735 ILCS 5/2-804(a) (West 1996). This argument, however, has been waived. The proposed intervenors admit that they never raised this argument below in their petition for leave to intervene. Arguments not raised in the trial court are waived and may not be raised for the first time on appeal. E&E Hauling, Inc.

1-98-3465 & 1-98-3667 (consolidated)

v. Ryan, 306 Ill. App. 3d 131, 713 N.E.2d 178 (1999).

We find that the proposed intervenors petition to intervene was properly denied.

Accordingly, for the reasons set forth above the judgment of the Circuit Court of Cook County is affirmed in part and reversed in part, and the cause is remanded to the Circuit Court.

Affirmed in part and Reversed in part, Cause Remanded.

HALL, J., with HOFFMAN, P.J. and BARTH, J., concurring.

EXHIBIT 2

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

CITY OF CHICAGO,)
A Municipal Corporation,)
Plaintiff-Counterdefendant,)
)
vs.)
)
MARSHALL KORSHAK, et. al.,)
Defendant-Counterplaintiff,)
and)
)
MARTIN RYAN, et. al.,)
Intervening-Plaintiffs.)

No. 01 CH 4962
Prev. No. 87 CH 10134
Calendar No.5

**2013 (Third) AMENDED COMPLAINT
By Participants in the City of Chicago's Annuitant Healthcare Plan
For Declaratory Relief Against the City of Chicago and
the Trustees of the Police, Fire, Municipal Employees and Laborers
Annuity and Benefit Funds**

1. This Complaint seeks permanent relief for annuitant healthcare participants in litigation that has continued off and on for 26 years.
2. Background of the Case. This case was originally brought in 1987 by the City to enable it 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. The trustees/board members of the four affected annuity and benefit funds, and the annuitant healthcare plan participants class asserted counterclaims, seeking to force the City and the Pension Funds' trustees to continue annuitant healthcare coverage under the terms of the Annuitant Healthcare Plan as in effect on October 1, 1987 (through the August 23, 1989, date the Pension Code was amended in this respect.) After dismissing the City's claims, the case proceeded on the counterclaims by the Funds and Participants' claims against the City. A trial was conducted in 1988 before Hon. Albert Green. Prior to the verdict, the City and Trustees

entered into a 10-year class action settlement that was approved by the Circuit Court over the participant class' objections, and affirmed by the Illinois Appellate Court.

3. At the conclusion of that ten-year settlement, the participants moved to revive the litigation, were initially denied by Judge Green, who was reversed by the Illinois Appellate Court, reviving the litigation, which was resolved by another ten-year agreement, this time approved by all parties and the court, settling the dispute for the period through June 30, 2013; again with rights of participants to thereafter reassert their rights/entitlement to healthcare coverage in their retirement.

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

5. Class members' uniform claim is that under the 1970 Illinois Constitution Article XIII Section 5, they are each entitled to the unreduced level, determined at the date they began participation in any of the four affected Annuity & Benefit Plans, of benefits provided by the City and as then subsidized by their particular Plan.

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

- i) a person who retired by 12/31/1987 (the "Korshak" sub class) (this was the initial class certified in the 1987 Korshak Settlement)).
- ii) a person 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)).

- iii) a person who began their participation in one of the Funds (initial hiring date) before 8/23/1989 (thus entitled to benefits of participation no less than when they entered the system); and
- iv) a person who began their participation after 8/23/1989 (participants who were hired after P.A.86-273's enactment).

7. For purposes of the Original and 2003 Settlements, undersigned counsel Krislov is the court-certified class counsel for the first two subclasses. In the 2003 Settlement, the Funds trustees represented the post-8/23/1989 retiree participants. However, going forward, the Krislov firm has been engaged by participants in all four categories, and the Krislov firm asserts that it is the appropriate class counsel for the court to certify for all four participant classes.

8. Summary of the case. From before October 1987, to a period beyond August 23, 1989, the City's annuitant healthcare plan was continued without change, pursuant to Court Order.

9. During June 1988, the Cook County Circuit Court conducted a trial of the trustees and participants' claims that existing annuitants are entitled to permanent coverage under the City Plan as it existed on October 1, 1987. In that trial, the following claims were asserted.

- (a) Contract. The city bound itself contractually to cover the then-existing annuitants healthcare for life charging premiums equal to the statutory supplement paid by the pension funds; the premiums were subsidized by the Funds--the annuitants' entire premium for Police and Fire annuitants, \$25 per month for Municipal and Laborers.
- (b) Detrimental Reliance/Estoppel. The city, through its authorized officials, affirmatively induced the annuitants to act to their detriment, in joining and continuing their coverage the City's annuitant healthcare plan, in reliance upon the City's assurance of lifetime medical care coverage, and the City is now estopped from terminating or reducing those benefits.

- (c) Illinois Constitution. The Annuitant Healthcare Plan, as in effect on October 1, 1987 through August 23, 1989, was a benefit of participation in an Illinois statutory pension or retirement system, so 1970 Illinois Constitution, Art. 13, Section 5, prohibits the city's attempt to eliminate or reduce Lifetime fixed rate subsidized Medical Care as a retirement benefit.
 - (i) The City of Chicago Retirement Medical Plan is a pension and retirement benefit of City of Chicago employment.
 - (ii) A participant's right to coverage under the plan vests, and cannot be reduced after his entry into the system.
 - (iii) A participant's right to coverage under the City's Retiree Healthcare Plan vests no later than his retirement, and the terms of the benefits cannot be reduced thereafter.
- (d) Illinois Constitution, Special Legislation. The statutory provisions (P.A. 86-273 and P.A. 90-32/June 27, 1997) as they purport to change the terms or protection of class members' healthcare coverage are invalid special legislation because they apply only from employment by a named municipality. (1970 Ill. Const. Art. IV, Sec. 13).

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

11. Pursuant to the Settlement Agreement, the participants, at the end of 1997, were restored to whatever rights they held at the beginning of the case.

12. Unfortunately, no permanent resolution of the retiree healthcare issue was ever reached. Consequently, the litigation revived once again thereafter, culminating in the current 2003 settlement, which although expiring June 30, 2013, explicitly preserves Class members' rights to assert:

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

13. Accordingly, the participant class-members respectfully ask this Court to restore this case to the active calendar and declare the rights of participants under the Illinois Constitution, the Illinois Pension Code, and common law, as follows:

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

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

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

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

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

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

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

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

Plaintiffs, Class Members believe that there is no material dispute as to the following facts:²

² References and Authorities Cited. Unless otherwise described:

- 1) All statutory references are to either the provisions of Illinois law in effect during the period October 1, 1987 through August 23, 1989, including generally, provisions of the Illinois Municipal Code, Ill.Rev.Stat. Ch. 24 ("Municipal Code § ____") or to the Illinois Pension Code, Ill.Rev.Stat. Ch. 108-1/2 ("Pension Code § ____")(1986), or to their subsequent provisions under the Pension Code under the current ILCS format 40 ILCS 5/.
- 2) Trial Exhibits are referred to as identified in the Trial of this matter June 20-22, 1988, either as introduced at trial or by stipulation. "DX" means Defendants' Exhibits, "CX" indicates a City Exhibit.
- 3) Testimony by individuals is referred to by their last name and the appropriate page in the trial transcript.

June 20, 1988 Witnesses - Afternoon Session

Witness	Role	Page
James B. Waters, Executive Director	Police Fund	4-48
James Capasso, Jr., Executive Director	Laborers Fund	49-65
Norman S. Holland, Trustee	Fire Fund	66-94
Thomas J. Stack	Municipal Fund	94-99

June 21, 1988 Witnesses - Morning Session

Witness	Role	Page
Edward Arenz	Blue Cross	8-36
Peter Jundersits	Annuitant	37-43
Richard Gayne	Annuitant	43-53
Charles T. Wilhelm	Annuitant	53-59
Edwin Ogonowski	Annuitant	59-63
Benedict J. Scacchitti	Annuitant	63-70
Bernard P. Sweeney	Annuitant	70-74
Sam Venturella	Annuitant	74-81
Robert Shackleton	Annuitant	81-84
Fred Hince	Annuitant	84-93
Maryanne Hester	Spouse	93-98
Constance Becker	Widow	98-101

Parties:

14. The CITY OF CHICAGO (the "City") is a municipal corporation organized in accordance with Section 1-1-1 of the Illinois Municipal Code, Ill.Rev.Stat. Ch. 24, ¶1-1-1. The City is sued as a defendant.

15. The Pension Funds. The POLICEMEN'S ANNUITY & BENEFIT FUND OF THE CITY OF CHICAGO (the "Police Fund"), the FIREMEN'S ANNUITY, BENEFIT FUND OF THE CITY OF CHICAGO, (the "Firemen's Fund" or the "Fire Fund"), the MUNICIPAL EMPLOYEES, OFFICERS AND OFFICIAL ANNUITY AND BENEFIT FUND (the "Municipal Fund"), and the LABORERS' AND RETIREMENT BOARD EMPLOYEES' AND BENEFIT FUND OF CHICAGO (the "Laborers Fund") were each created and operate under, respectively, Articles 5, 6, 8 and 11 of the Illinois Pension Code, Ill.Rev.Stat. Ch. 108-1/2, to provide for and administer, inter alia, certain annuity, disability insurance and healthcare programs under the Illinois Pension Code (Previously contained in Ill.Rev.Stat. Ch. 108-1/2, the "Pension Code's current provisions are contained in 40 ILCS 5/Arts. 5, 6, 8 and 11).

16. The Funds as Necessary Parties. The Funds are necessary parties in any event, because of their involvement in the statutory scheme. However, they are sued as cross-

June 21, 1988 Witnesses - Afternoon Session

Witness	Role	Page
Sharon Gist Gilliam	City Chief Operating Officer	3-82
Daniel K. Kubasiak	Former City Budget Officer	83-108

June 22, 1988 Witnesses

Witness	Role	Page
Ronald Picur	City Comptroller	114-149
S. Nathan Williams	City Risk Manager	150-169
Al John Fattore	City GS Director of Finance	169-188

defendants only for a declaration that they are not permitted to reduce their subsidy for class members from the highest levels enjoyed by each participant; currently \$95 monthly for those not Medicare qualified, \$65 for those who are Medicare qualified. If they acknowledge their obligation as such under 1970 Ill. Const. Art. XIII §5, then the Participants/Cross-Plaintiffs seek no further substantive relief against them.

17. The individual respondents, Marshall Korshak, *et. al.*, and their successor trustees were or are the Members/Trustees of their respective Fund's Board of Trustees, and are named in their official capacities, and may be retitled for their current trustees.

18. City Officials. By their offices with the City, (i) the City Comptroller is a member of the Board of Trustees of the Firemen's and Municipal Fund and his designee sits as a member of the Laborers' Fund. Pension Code §§6-174, 8-192 and 11-181; (ii) The City Treasurer, City Clerk and City Fire Marshall are also ex officio members of the Firemen's Fund Board (§6-174); (iii) the City Treasurer also sits on the Police Fund's Board (§5-178) and Municipal Fund's Board (§8-192). Each Board has one annuitant member (5-178, 6-174, 8-192, 11-181). The rest of each Board is either appointed by the Mayor or elected by the active employees who participate in the Fund.

19. The City's Medical Benefits Program. Since approximately 1964, the City has maintained a medical benefits program in which annuitants are entitled to participate. Many of the Funds' annuitants have participated, with the active City of Chicago employees, in the group medical benefits program sponsored by the City. That program, since the mid-1970's, has been administered on a self-funded (*i.e.*, the City pays these claims itself rather than obtaining "insurance" coverage from an outside third party provider), "claims made" basis (meaning that sufficient money is appropriated each year for claims expected in that year only).

20. The City's healthcare program has generally been administered by private carriers who are reimbursed by the City (often referred to as "ASO" for "Administrative Services Only."

21. Annuitant Participation. Based on the most recent reconciliation report for 2011, the participants total 24,721, including annuitants of all four Annuity & Benefit Funds, plus survivors and dependents who participate in the City's Annuitant Medical Plan for their primary medical coverage.; Policemen's Fund participants 9,183, Firemen's Fund 3,253, Municipal Employees' Fund 9,522 and Laborers' Fund 2,763.

22. These annuitants are now predominantly over age 65. Due to age and existing medical conditions, some (probably most of them) would be unable to obtain their own medical coverage at an affordable cost or to qualify for alternative medical coverage at all. Based on their initial hire date, many of them cannot qualify for Medicare coverage from their City employment; some are without sufficient qualifying employment quarters at all, and can obtain Medicare coverage only by paying additional premiums.

Relevant Constitutional and Statutory Provisions

23. Illinois Constitution. Under the 1970 Illinois Constitution, municipal pension membership benefits are enforceable contractual relationships which may not be diminished or impaired:

"Membership in any pension or retirement system of the State, any unit of local government . . . or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."
1970 Illinois Constitution, Art. 13, §5.

24. Group Health Benefits for City Annuitants have been a benefit of Participation in the City's Annuity & Benefit Funds since at least 1982. The City of Chicago's annuitant healthcare plan in existence from 1982 through at least 1989, was the statutory result of a

“handshake” agreement between the City’s Byrne administration, the Police and Fire Unions and/or Funds trustees, under which the City agreed to provide healthcare coverage to annuitants at a fixed-rate monthly premium(\$55 for non-Medicare qualified, \$21 for Medicare-qualified persons) that was to be subsidized by the Police and Fire Funds’ payment of the annuitant’s monthly premium, that was financed by a special tax levy for the Funds. This was understood and intended to be both a benefit of a person’s employment by the City and participation in the annuitant’s respective annuity and benefit fund.

25. Statutory Levy/Subsidy. Incorporating this agreement, P.A.82-1044 was enacted into the Illinois Pension Code obligating the Policemen's Fund (5-167.5) and the Firemen's Fund (6-164.2) to contract to provide group health insurance for all annuitants, with the basic monthly premium to be contributed by the City in an amount of \$55.00 per month for annuitants who are not qualified for the Medicare program; \$21.00 for Medicare-qualified annuitants.

26. No medicare coverage for existing subclass of retirees whose original hire date precedes March 1, 1986. Local government employees who were originally hired prior to the March 31, 1986 effective date of the federal Combined Omnibus Budget Reconciliation Act of 1985 ("COBRA," PL 99-272) cannot qualify for healthcare coverage under the Medicare plan by their government employment, regardless of their length of service.

27. Accordingly, none of the class members of the 1987 Participant Class or the Pre-8/23/89 retiree participants qualify for Medicare coverage by reason of their employment for the City of Chicago. Arenz at 29 (as to 1987 Class).

28. However, all existing City workers who were first hired after March 31, 1986, are required to contribute and are accruing qualifying calendar quarters of employment towards the

required 29 quarter condition for full coverage under the Medicare program upon reaching age 65. Arenz at 29.

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

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

31. Statutory Subsidy: Police and Firemen's Funds. Since January 12, 1983, and continuing through 8/22/1989 (the date of enactment of P.A.86-273) Pension Code Sections 5-167.5, 6-164.2, respectively, required the Police and Firemen's Funds' Boards to each contract for group health insurance and required the City to pay for a portion of its cost, for electing annuitants, out of the City's levy for its contribution to the Police Fund.

* * *

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

* * *

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

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

benefits, or up to a maximum of \$21 per month if the annuitant is qualified to receive Medicare benefits.

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

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

33. Statutory Subsidy: Municipal and Laborers' Funds. During 1984, legislation was added to the Illinois Pension Code, P.A. 84-23, establishing similar Group Health Care Plans under the Pension Code for Municipal and Laborers Funds annuitants.

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

"Each employee annuitant in receipt of an annuity on the effective date of this Section and each employee who retires on annuity after the effective date of this Section, may participate in a group hospital care plan and a group medical and surgical plan approved by the Board if the employee annuitant is age 65 or over with at least 15 years of service. The Board, in conformity with its

regulations, shall pay to the organization underwriting such plan the current monthly premiums up to the maximum amounts authorized in the following paragraph for such coverage.

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

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

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

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

36. Legal issue of the legality of creating a non-protected benefit of participation. It

has never been determined that the Municipal and Laborers Funds' limiting statutory language is effective to strip these benefits of participation in a statutory pension plan of their Art. XIII, Sec.5 protection against diminution or impairment.

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

38. The City Has Historically Paid For Retiree Healthcare Costs. Since the mid-1970's, when the City health benefits plan became self-funded, the City has been paying a significant portion of the costs of the annuitants' medical benefits. Indeed, the City has actually functioned as the self-insured carrier for the annuitants' health care plans for all four relevant Funds.

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

Under Age 65 – Single	\$ 55.00
Under Age 65 – Family of Two	110.00
Under Age 65 – Family of Three or more	150.00
Medicare Eligible – Single	21.00
Medicare Eligible – Two	42.00
One Over Age 65, One Under Age 65	76.00

40. These rates for the Funds' annuitants' medical benefits coverage remained unchanged to a date beyond August 23, 1989.

41. Thus, from April 1, 1982 through August 23, 1989, annuitants received their healthcare coverage as a benefit of participation in their Funds, who obtained that coverage from the City, who acted as the self-insured carrier for the plan, and paid all of the “insurer’s” costs of the Funds' annuitants medical benefits program to the extent that they have exceeded the premium rates.

42. Communication of Coverage to Annuitants. In approximately 1984, the City prepared a booklet advising individual annuitants of their rights, benefits and the terms of the City's annuitant medical care plan. This document was distributed to employees at or about the time of their retirement and was also submitted to existing annuitant participants as part of the re-enrollment process.

43. Pre-Retirement Seminars. From at least 1984 until sometime in 1987, the City also presented a series of "Pre-Retirement Seminars" to employees. Employees near retirement were invited to attend to inform them as to the terms of various benefits upon retirement including the City's annuitant medical benefit plan. Ogonowski at 60 ff; DX 24, 26.

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

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

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

47. Actions by Retirees. Many employees worked, retired and made plans on the basis of the representations made to them in these seminars, *e.g.*, Jandersits at 40. Additionally, it was the common understanding among City employees that the City would provide medical coverage for life upon retirement, (Wilhelm at 55-6; Scacchitti at 68; Hince at 85) and that was a significant factor for many individuals in choosing to work for the City, rather than work for a private sector employee, *e.g.*, Gayne at 44-45.

48. Many individual employees retired on the basis that this coverage existed, Carlisle Moore, Fire Stip. #1; Feinberg, Fire Stip. #3, and did not seek medical coverage elsewhere.

49. Many employees made retirement plans in reliance on that promise. Sweeney at 72-73; Zalley (Fire Stip. #5).

50. Some people purchased property elsewhere in reliance on the continued existence of medical coverage upon the terms described. Shackleton at 82-83.

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

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

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

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

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

55. 1985 Appropriation Language. In the 1985 City Budget, line item .042 was described as:

For the health maintenance organization premiums or cost of claims and administration for hospital and medical care provided to eligible employees and their families including employees on duty disability leave and for partial payment of the cost of claims and administration for hospital and medical care provided to certain participants in the Policemen's Annuity and Benefit Fund, Firemen's

Annuity and Benefit Fund, Laborers' and Retirement Board Employees' Annuity and Benefit Fund, and Municipal Employees Annuity and Benefit Fund. (DX39, emphasis added.)

56. The 1985 language was inserted by the City Council's Budget Committee to clarify the annuitant medical coverage under line item .042. Kubasiak at 89.

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

58. The previous year's expenditure included expenditures paid by the City for annuitant medical claims without any dispute as to their authorization under the annual appropriation. Gilliam at 10-11.

59. Thus, the appropriated dollars for each budget year included annuitant medical expenses. This was known to the City's Budget Office (Gilliam at 10-11, 18; Fattore at 179) and Council members believed that the annuitants were covered under the City's plan (Gilliam at 18-19) although the City disputes whether the language of the appropriation legally extends to annuitant medical expenditures.

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

Year	Dept. Request	Mayor's Recom.	Appropriation	Actual Expenditures
1979	[open]	[open]	[open]	\$37,002,963
1980	[open]	\$48,000,000	[open]	\$46,742.071
1981	\$56,906,000	\$56,906,000	\$56,225.00	\$64,569.800

Year	Dept. Request	Mayor's Recom.	Appropriation	Actual Expenditures
1982	\$66,200,000	\$66,200,000	\$65,870,000	\$75,100,196
1983	\$75,250,000	\$75,250,000	\$74,650,000	\$86,289,215
1984	\$88,500,000	\$88,500,000	\$87,200,000	\$84,465,869
1985	\$89,288,200	\$89,288,200	\$89,438,000	\$91,506,685
1986	\$97,942,000	\$97,942,000	\$97,942,000	\$83,705,038
1987	\$107,158,500	\$107,158,500	\$107,158,000	

Source: DX37-43.

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

62. Communication of Plan to Annuitants: Regarding Termination of Coverage.
 During the class period, the City of Chicago's Annuitant Medical Benefits Plan provides as follows regarding "Termination of Coverage:"

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

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

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

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

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

Source: DX33, City X3.

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

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

65. During 1984, the costs of medical coverage for active employees and annuitants began to exceed the amount of premiums that were being charged. DX33.

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

67. No Premium Charge for Annuitant. The operation of the Plan was that Police and Fire Funds' annuitants were not required to pay anything out-of-pocket as premiums for their own coverage,³ Municipal and Laborers' Funds' annuitants had to pay either nothing or \$30.00 per month (depending on their Medicare qualification) and paid their own funds for only the additional cost of family dependent coverage.

68. City's Past Efforts to Contain Costs. Beginning in 1984, various members of the City administration began to focus on containing healthcare costs. Gilliam at 20, 31; Carmody Memo 04/15/83 DX9, DX11 and 12.

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

69. Re-Enrollment. One effort to contain costs was to require re-enrollment of plan participants both active and retired. By this all plan participants were required to produce evidence of their continued qualifications to participate in the City's medical plan. Gilliam at 40; DX17.

70. The City actively solicited annuitants to re-enroll in the plan. Gilliam at 40; DX18.

71. During enrollment, the City did not suggest that annuitants seek or investigate the desirability of obtaining coverage elsewhere. Gilliam at 40-41.

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

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

74. 1984 "Trial Balloon" to Raise Costs of Coverage. A proposal was also submitted under which the premiums would be increased for participation under the City's plan. Gilliam at 20; DX15.

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

76. This proposed rate change was communicated to representatives of the four pension funds. However, the response of the funds and their participants was so strong and negative that the effort was abandoned. Gilliam at 52-53.

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

78. The Ryan Case. In late 1986 or early 1987, the City administration became aware of a substantial liability would soon have to be paid to the City's pension funds as a result of the decision in Ryan v. Chicago, 148 Ill.App.3d 638, 499 N.E.2d 517 (Ill. App. 1986) (petition for leave to appeal denied, 505 N.E.2d 361 (1987)). In the Ryan case, the City had converted pension tax levies to its own benefit, investing the money while in its hands and retaining the earnings it had made when turning over the principal months later. The Illinois Appellate Court held that the city would have to repay all earnings made on pension fund tax monies used by it during the period 1979 through 1983 and would have to restore similar earnings made in subsequent years. Picur at 143-4.

79. The City's Reaction. Among City officials, the expectation was that this "Ryan" liability would total approximately \$20 million. Gilliam at 76.

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

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

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

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

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

85. Ronald Picur. While this was being planned, then-City Comptroller Ronald D. Picur continued to sit as a trustee of the Firemen's Annuity and Benefit Fund, the Municipal Fund and the Laborers' Fund without advising the other trustees of the City's intentions. Picur at 120.

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

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

88. The City actually did seek to assert these issues as an offset in the Ryan case, but was denied by the presiding judge in that case.

89. This Suit Filed by the City. On October 19, 1987, the City then filed suit in this case seeking to terminate the coverage, force the pension funds to take over the annuitant medical cost obligation and reimburse the City for the \$58,000,000.00 it had spent on annuitant medical coverage through September, 1987.

90. Participants' Intervention and Class Certification. Martin Ryan and the other individual plaintiffs in the Ryan case sought and were granted leave to intervene for annuitants' interest in this case, represented by Krislov. May 5, 1988 Order. Their motions for certification of the class as a class action on behalf of the annuitants were granted by this Court, with undersigned counsel as class counsel.

91. The pension funds each moved to dismiss the City's claim and moved to file counterclaims of their own against the City to continue the coverage unchanged or at least provided a reasonable period in which the plans could obtain alternative medical coverage.

92. On May 16, 1988, this Court dismissed the City's claim against the Pension Fund's Trustees but left standing the counterclaims against the City to force the City's annuitant healthcare coverage to continue.

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

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

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

Back to the Present:

96. May 15, 2013, the City declares its intention to reduce benefits beginning January 1, 2014, and to eliminate all of the City's retiree healthcare plans by January 1, 2017. (Attached Exhibit 1, City Letter dated May 15, 2013). Anticipating the June 30, 2013 end of the applicable settlement periods, the City on May 15, 2013 issued a letter to all retiree healthcare participants that it intends to:

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

Ex. 1, City Letter dated May 15, 2013.

97. The Funds Subsidies after June 30, 2013. Per P.A. 86-273 and its following statutes, the Funds statutory authority to subsidize the healthcare ended June 30, 2013, but was recently extended by P.A.98-43, signed into law June 28, 2013, extending the current statutory authorization of the subsidies at their current levels until the earlier of January 1, 2017, or such date as the City terminates its retiree healthcare plans.

98. The Funds' trustees will not continue subsidies beyond any time period provided in the applicable statute, and otherwise refuse to continue the subsidies as benefits of participation protected solely by Ill. Const. Art. XIII, Section 5.

99. Participants assert that the Funds subsidies are themselves benefits of participation in their respective Funds protected by the Illinois Constitution Article XIII, Section 5 from being diminished from the levels in existence during any Participant's lifetime.

II. Class Allegations

100. **The Korshak subclass-12/1/1987 Retiree Participants.** The action has already been certified as a class action with respect to the 1987 participants (the "Korshak" subclass).

101. **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, who share the Korshak class' claim to common law vesting (entitlement to permanence for the benefits as they existed on one's retirement date), plus statutory and constitutional protections against diminution of benefits which have already begun at a certain level. (This group, who had filed a parallel case in federal court, led by the Retired Chicago Police Assn. and participant plaintiffs led by first named plaintiff Jacobson, are commonly referred to as the "window" retirees; persons who retired during the 1/1/88-8/23/89 "window" period, after the Korshak class date and before 86-273 was enacted.)

102. **Pre-8/23/1989 Hireses' subclass.** The third group of class members, who share common legal issues, are those who "vested" in their retirement benefits by their joining one of the relevant Funds on or before August 23, 1989, regardless of their retirement date. (This group might be called the "Pre-8/23/89 Hiree Vesters"). Their entitlement is based primarily on their

claim to the 1970 Constitution, Art. XIII, Section 5's protection against diminution or impairment of their benefits of participation in one of the four Funds determined at their entry into the system, i.e., their hire date. Buddell v. Bd. of Trustees, State Universities Retirement System, 118 Ill.2d 99, 103, 514 N.E.2d 184, 186 (1987).

103. **Subclass 4-Post 8/23/1989 Hirees**. The last subclass are those individuals who began their participation (by initial hired date) after the passage of P.A.86-273, which added the questionable language to the statute purporting to label the retiree healthcare benefits as not protected by Art. XIII, Section 5, whose claim to permanence of their benefits will turn on the purely legal issue whether the legislature can legally create a benefit of participation that is not protected by Article XIII Section 5.

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

105. Numerosity. Each group numbers in the thousands, so joinder of all members of each class or subclass is impracticable.

106. Common Questions. Each group shares, internally and with each other group, the common issues of whether their right to a fixed-rate subsidized plan is protected from being diminished or impaired by the Illinois Constitutional protections of benefits of participation in an Illinois pension fund. Differences between each group's entitlement under other theories may arise. However, they do not conflict with each other. For example, pre-1988 retirees might additionally claim detrimental reliance that may not be available to pre-1989 vesters who have

not yet retired. But the entitlement claims made for any one of the three groups would not conflict with either other group's entitlement claims.

107. Adequacy of Representation. Undersigned counsel Krislov has been engaged by hundreds of participants 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 claims and the purpose of the litigation, and have no interests antagonistic to the class. And participants' undersigned counsel is well experienced and capable of representing the class or classes, and has long acted as the certified class counsel in this specific case, already.

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

COUNTS AND CAUSES OF ACTION

COUNT I - Diminution of Pension Benefits - State Constitution

109. Plaintiffs re-allege paragraphs 1 through 108.

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

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

111. Participants' healthcare coverage, terms and Fund subsidy under the Illinois Pension Code, as it existed on their entry into their particular retirement system are a benefit of membership in a pension or retirement system of a unit of Illinois local government.

112. The defendants' actions and declared rights to reduce that benefit constitute unlawful impairment of the participants' contractual rights under Art. 13 §5 of the 1970 Illinois Constitution.

COUNT II - Common Law Breach of Contract

113. Plaintiffs' re-allege paragraphs 1 through 112.

114. As per the 1970 Illinois Constitution, Art. XII, §5, the plaintiffs and class members have a contractual right to the fixed-for-life healthcare premiums.

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

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

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

COUNT III - Common Law Estoppel

118. Participants re-allege paragraphs 1 through 117.

119. The City is estopped by its own conduct from changing or terminating the annuitant coverage to a level below the highest level of benefit during a participant's participation in the group healthcare benefits.

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

COUNT IV - U.S.C. § 1983

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

122. Each plaintiff and class member has a property right to a lifetime fixed-rate healthcare plan.

123. By increasing the healthcare premiums charged to annuitants, the City and the Funds have denied the plaintiffs and class members their property rights.

124. Each healthcare premium charged to the annuitants by the defendants which exceeds the fixed-for-life rate previously alleged herein, is a deprivation of a property right secured under the Fourteenth Amendment and actionable under 42 U.S.C. § 1983.

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

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

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

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

COUNT V - Impairment of Contract - Federal Constitution

129. Plaintiffs re-allege the foregoing paragraphs.

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

131. By increasing the healthcare premiums charged to annuitants, the City and the Funds have denied or impaired the plaintiffs' and class members' contractual rights.

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

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

"No State shall... pass any... Law impairing the Obligation of Contracts..."
(United States Constitution, Art. I, Section 10).

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

135. Korshak and Window Retirees. With respect to the class members who retired before August 23, 1989, the statutory recharacterization of group health benefits for Fund participants, and each healthcare premium charged in excess of the fixed-for-life rate alleged herein are thus impairments of a contractual right in violation of the United States Constitution.

III. Conclusion

136. For the above reasons, the City has knowingly paid for annuitants' healthcare coverage, on a specific promised basis, over a number of years; has actively induced annuitants to participate in it, and forego other coverage options. The annuitants have so detrimentally relied on the City's inducements, by continuing the City's employ, making specific retirement plans, and entering into significant obligations in reliance thereon, and that, the annuitants are protected by the Illinois Constitution and by the doctrine of estoppel, and are entitled to have the coverage as best terms of each person's health annuitant group health benefits provided by the City and the Funds, for each Participant's life, without reduction.

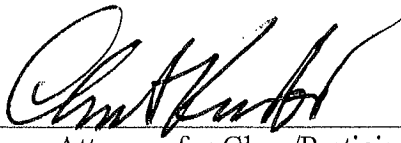
Prayer for Relief

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

- A. Certify the case as a class action for City of Chicago Retiree Healthcare Plan Participants, with the four proposed subclasses:
 - i. Korshak subclass-12/31/1987 annuitant participants,
 - ii. Window subclass-retired Post-Korshak, but pre-8/23/1989,
 - iii. Pre-8/23/1989 Hired Vesters, and
 - iv. Participants –First hired date after 8/23/1989;all represented by undersigned Counsel;
- B. Declare the pre 8/23,1989 retiree participants' entitlement to resumption of the fixed-rate subsidized \$55/\$21 monthly premium retiree healthcare plan, fully subsidized by the Funds;
- C. Declare that PA 86-273 and PA 90-32 are (i) facially invalid special legislation and/or (ii) invalid to the extent the statutes purport to either create a class of non-protected benefits of membership or (iii) invalid as applied to the class to convert existing protected benefits into non-protected benefits;

- D. Issue a preliminary, and eventually a permanent injunction prohibiting the City and Funds from reducing the group health benefits provided to class members from the level any of them have been provided as a participant, from when plaintiffs and the class members began their participation in the Plan to the present;
- E. Award Plaintiffs Attorneys fees and costs;
- F. Any and all other relief the Court deems just and proper.

Dated: July 5, 2013

By: 

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EX. 1



DEPARTMENT OF FINANCE
CITY OF CHICAGO

May 15, 2013

IMPORTANT NOTICE – PLEASE READ CAREFULLY

Dear City of Chicago Annuitant:

I am writing to update you of developments regarding retiree healthcare benefits. Under the Korshak Settlement Agreement, the City of Chicago agreed to provide support for healthcare coverage to annuitants through June 30, 2013. The Settlement Agreement also required that the City establish a Retiree Healthcare Benefits Commission (“RHBC”) that, among other duties, was to make recommendations on the state of retiree healthcare benefits, their related cost trends, and issues affecting the offering of retiree benefits after July 1, 2013. Earlier this year, the RHBC fulfilled its duties and provided Mayor Emanuel with its report. Those recommendations can be found online at <http://www.cityofchicago.org/city/en/depts/fin/provdrs/ben.html>.

After reviewing the findings of the report, and after hearing many of the concerns expressed by retirees, employee representatives and industry experts, the City has decided the following:

1. The City will extend current coverage and benefit levels through December 31, 2013. This additional time will allow retirees to maintain coverage for a full plan year, recognizing what we heard from many retirees who have planned deductible and out of pocket expenditures based on an expectation of full year coverage. The City will, however, adjust the benefit levels provided under the current plan starting January 1, 2014.
2. After January 1, 2014, the City will provide a healthcare plan with a continued contribution from the City of up to 55% of the cost for that plan for their lifetimes to the City retirees who are members of the Korshak and “Window” Sub-Classes, meaning those City annuitants who retired prior to August 23, 1989. In short, the City will continue to substantially subsidize these retirees' healthcare plan as it does today.
3. For all annuitants who retired on or after August 23, 1989, in light of the evolving landscape of national healthcare and challenges faced by Chicago taxpayers, the City will need to make changes to the current retiree healthcare plan. These changes will likely include some adjustments in premiums and/or deductibles, some benefit modifications and, ultimately, the phase out of the plan by the beginning of 2017. The City expects to announce the details of this revised structure this summer, so that all retirees, current and future, will have all the information they need to appropriately prepare for this important component of retirement planning. With the changes taking place in the national healthcare market, we will ensure retirees have the information needed to navigate the options available for their healthcare needs going forward, both for Medicare and non-Medicare eligible retirees. As you know, retirees who are eligible for Medicare will continue to receive Medicare coverage, and supplemental Medicare plans are available from many insurance companies – as there are today – for retirees who wish to purchase additional coverage. And retirees who are not eligible for Medicare will have a broad range of healthcare plan options available to them as the Illinois health insurance exchange goes into effect in 2014.

One additional note – as you may know, the current retiree healthcare subsidy provided by the four Chicago pension systems is set to expire on June 30, 2013. If this subsidy is not reauthorized, retirees will likely be responsible for bearing any additional cost for their healthcare plan that is currently borne by their respective pension funds.

We look forward to working with you in the coming months to ensure you have all the information you and your family will need to make sound decisions regarding your retiree healthcare.

Respectfully,

Amer Ahmad, City Comptroller