

No. 122673
In the Supreme Court of Illinois

Michael W. Underwood , Joseph M. Vuich,)	
Raymond Scacchitti, Robert McNulty, John E.)	
Dorn, William J. Selke, Janiece R. Archer, Dennis	)	From the Illinois Appellate
Mushol, Richard Aguinaga, James Sandow,	)	Court, No. 16-2356
Catherine A. Sandow, Marie Johnston, and 337	)	(Consolidated with 16-2357)
other Named Plaintiffs listed in Exhibit 23,)	
Plaintiffs,)	
vs.)	
CITY OF CHICAGO , a Municipal Corporation,	)	From the Circuit Court of
Defendant,	)	Cook County, Chancery
and	)	Division
Trustees of the Policemen's Annuity and Benefit)	
Fund of Chicago;	)	Case No. 2013 CH 17450
Trustees of the Firemen's Annuity and Benefit	)	Calendar No. 5
Fund of Chicago;)	
Trustees of the Municipal Employees' Annuity	)	Judge: Hon. Neil H. Cohen
and Benefit Fund of Chicago; and	)	Previous Nos. in Cook County
Trustees of the Laborers' & Retirement Board	)	Circuit Court
Employees' Annuity & Benefit Fund of Chicago	)	01 CH 4962
Defendants.	)	87 CH 10134
)	

**Plaintiffs-Appellants-Petitioners' Reply in Support of Their
Petition for Leave to Appeal**

Clinton A. Krislov
Kenneth T. Goldstein
KRISLOV & ASSOCIATES, LTD.
20 North Wacker Drive, Suite 1300
Chicago, Illinois 60606
Tel.: 312-606-0500
Fax: 312-739-1098
Clint@krislovlaw.com
Ken@krislovlaw.com

E-FILED
11/14/2017 11:18 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

The City's Answer continues its decades-long effort to prevent these retirees from having this Court address the important unresolved issues in adjudicating the rights of 30,000 City of Chicago retirees, whose core claims are for promised lifetime healthcare coverage for the last group of City employees whose City work did not qualify them for coverage under the federal Medicare program.¹

The City's Answer (i) ignores the never disputed allegations of the complaint at issue; instead asserting just an alternative story, (ii) mischaracterizes the holding below, which conflicts with this court's *Kanerva v. Weems*, 2014 IL 115811, direction to interpret liberally in favor of retirees, and (iii) asserts that every favorable outcome to it is merely the application of "settled law", when they clearly are not.

Ignoring the allegations of the Complaint at issue, the City's Statement of Facts is an artfully cherry-picked story. On a 2-615 motion to dismiss, the court is to accept the allegations in the Plaintiffs' Complaint, not an alternative story proffered by the City Defendant.

Moreover, the City's alternative story is both highly selective and wrong. Among the fictional facts submitted by the City are:

1. That the City speakers at the Pre-retirement seminars are not identified. The fact is, the Complaint (at Exhibits 18 and 19) does identify some of the people who spoke at the pre-retirement seminars, actually including their depositions from the Korshak litigation.

2. There is no basis for the City's assertion that it launched this litigation over the Funds' refusal to deduct "the premium amounts that exceeded the funds' subsidies" (City at 3). Rather, the actual evidence cited in the Complaint (at ¶12 and Exhibits 1, 9) uncontestably shows that the City launched the litigation as part of a "game plan" to offset its liability for converting Pension Tax levies belonging to the Funds.

¹ Local government employees hired before April 1, 1986 (federal Combined Omnibus Budget Reconciliation Act of 1985 ("COBRA," PL 99-272 § 13205(a)), do not accrue qualifying quarters for federal Medicare coverage, regardless of their age or length of service.

3. Omits the Pension Funds' original contract-based counterclaims (Complaint Exhibit 3) against the City, asserting that it had made lifetime retiree healthcare a term of employment.

4. The first three settlements were not by "the parties"; they were by the City with the Funds, and were approved over participants' objections (the 1988 Settlement) or without even apprising them, and the *Korshak* and subsequent Settlements explicitly obligated the City to negotiate in good faith to reach a permanent resolution, and preserving participants' rights to restore their claims—obligations the City has repeatedly refused to fulfill. (Complaint, Exhibits 10, 11, 12 and 13).

5. The most recent 2003 Settlement was not a *final* settlement (City Answer at 4); it was instead the most recent of four settlements, all of which explicitly declare participants' rights to restore the original *Korshak* litigation and assert their claims. (Exhibits 10, at ¶J and 13, at ¶J).

6. The City's description (City at 5) of the "current litigation" also omits any acknowledgement of its opposition to having this case referred to this Court for adjudication of these issues back in 2013.

7. The City's citation to the discredited "Retiree Health Benefits Commission" and the RHBC's concocted "recommendations" omits mention that (1) they were not binding; and (2) erroneous on their own face, because the report's own charts show the plateauing of retiree health benefits because the core group here (not Medicare qualified because they began working for the city prior to April 1, 1986) are a finite number continuously being replaced by subsequent Medicare qualified retirees at one third of the cost.

8. Omitting any mention of the lower court's entertaining every City request for delay, diversion or denial, or the determination of the Circuit Court's "linear" determination to address every City and Funds challenge, refusing to even order the City to answer or respond, deferring class certification and its protections until after deciding the merits of the claims in violation of ILCS 5/2-802 determination of a class "[a]s soon as practicable".

All of which brings us back to the fundamental problem, that the core group of people here (people who began working for the City prior to April 1, 1986) are the last group of City employees who did not accrue Medicare coverage from their City work, and so reasonably relied on the promises made to them that lifetime healthcare was a permanent benefit for being a city retiree. This is itself the factor which was never an issue in either *Kanerva* or *Matthews*, and deserves this court's consideration now.

Argument in Reply: The City's Argument is no more honest than its fact statement.

I. The City's Misrepresentation of *Kanerva*, *Matthews* and the Seventh Circuit's Rulings.

The misstatements regarding the litigation and the Settlements.

The most important misstatements are the City's mischaracterization of the Settlements as *ended* or "final" (City Answer at 4), omitting that the Settlements explicitly obligated the City to negotiate in good faith for a permanent resolution, and explicitly stating the participants' rights to restore the litigation and assert their rights to lifetime healthcare.

The City has obdurately refused to honor that obligation, obstructed that effort, and complied only when Ordered by the Illinois Appellate court. The City successfully forced participants to file a new complaint, which the City then removed to federal court, into a multi-year boondoggle, and blocked Plaintiffs' efforts to have these issues referred to this court, only to return to the state court, and forced to begin anew. In short, despite Petitioners' efforts to address the important issues of retirees' promised lifetime healthcare benefits on an expeditious basis, the City (now joined by the Funds) has devoted itself to delay and diversion; running out the clock to deprive the retirees of having this court actually adjudicate these important issues for the last group of retirees whose City employment left them without coverage under the federal Medicare program.

The Illinois Constitutional, contract, and estoppel issues arising from that interplay have not been addressed by any Illinois court; not by *Kanerva*, nor *Matthews v. CTA*, 2016 IL 117638. The City's dismissing this as not material (City Answer at 19) is ridiculous, **because it is at the core of why these people reasonably relied on the**

City's promises, because they uniquely would not earn qualifying Medicare quarters, regardless of how long they worked for the City, nor what age they reached; and why they are at such peril right now.

And, this is compounded by the fact that those who availed themselves of the City retiree plan past age 65 cannot even buy their way into Medicare coverage without paying substantial penalties for life. As we calculate this, many would incur annual costs exceeding \$1,000 per month before even qualifying to buy, at yet further monthly costs for a Medicare supplement, which most others see as their sole premium cost. The Court should grant this PLA to reach these important and material unresolved issues of law.

The City's footnote 6, at page 19, goes well beyond anything in the record, but also omits things that are actually in the record, showing that the options actually available for non-Medicare-eligible retirees have extremely high premiums, and the ACA policies preclude treatment coverage for doctors at the major provider groups in Chicago, excluding doctors at University of Chicago, Northwestern, NorthShore, Advocate, and Rush (Testimony by City Benefits Manager Nancy Currier). In short, the City's statements that these retirees have many equivalent options is simply untrue. The City's dispatching its retirees to inferior plans, at huge cost, under which they can no longer be treated by their existing providers, as applied to retirees in senior years with real health challenges, is perhaps the most quintessential situational definition of unfeeling irreparable harm, since Marie Antoinette. The Court should grant this PLA to reach and resolve these hurtful actions by the City against its Retirees.

The City's expressed concern for the retirees' situation, at 13, that it has arranged to sponsor a retiree healthcare plan, omits the facts that the BCBS plan premiums (\$1496

or \$1514 per month for an individual, \$2696 for a couple and over \$3700 each month for a family²) are a nearly unbearable 30 to 60% of most annuitants' annuities; in one case constituting 150% of the persons monthly annuity.

The idea that the guaranteed benefit is just the statutory subsidy, and only in the statutory amount, ignores the Circuit Court's declaration that the statute obligates the Funds to provide *Plans* to cover their annuitants' healthcare costs, reads the statute narrowly, violating *Kanerva*. And, whether it reflects the Seventh Circuit "musings" (City Answer at 11) or its own narrow holding, the Appellate Court below utterly contradicts *Kanerva's* direction to interpret pension benefits liberally in favor of retirees. Interpreting the benefit as purely limited to the statutes, and ignoring the contract and estoppel claims originally made by the pension funds themselves, ignores what even the pension funds asserted; i.e. that they had an agreement with the City for the City to provide the coverage as the insurer. Thus, the Court should grant the PLA to reinforce that *Kanerva* is not mere window dressing.

At 14, the City's gloss over the Appellate Court's clear error in picking a protected class date as the date of *execution* of the 2003 agreement, ignoring that it would not become *effective* until subsequent *approval* by the court, and calls it a "final" settlement, ignoring that the Settlement explicitly preserves the retirees' restoration rights and the inclusion of the protected rights for all those who become or became "future annuitants" (i.e., hired) by the Agreement's *June 30, 2013* expiration date.

At 15, the City acknowledges that its authorization to alter or terminate plans was limited to *additional plans* created by the City; rather than the Appellate Court's totally

² See attached October 25, 2017 transcript at 34-35.

baseless interpretation that the 2003 agreement conceded the City's authority to end all healthcare plans at the end of the Agreement; again ignoring (though we sought rehearing on most of these issues) that this Agreement, like its predecessor Agreements, all explicitly preserved the retirees' rights to reassert their claims as they were when the *Korshak* case was first launched.

The City's footnote 6 at 19, asserting that we have not yet demonstrated how many class members lack access to Medicare benefits, ignores that we are still at the Complaint stage, without any discovery of the demographics since 1988, ignoring that at the complaint stage our allegations must be taken as true; indeed the Circuit Judge has refused to order the City or the Funds to Answer the Complaint, let alone provide the number of people who are or are not Medicare qualified; all despite the fact that these numbers are totally within the City and Funds' possession, because they know how many of the class IIIA people are under age 65, and those who have been on the City or the Funds' nonMedicare rates. Regardless, the idea that some of the people actually do qualify for Medicare just makes the City's cost of providing coverage to nonMedicare retirees that much cheaper. Nor has anyone suggested that people who do qualify for Medicare would conceal the fact in order to opt for a more expensive NonMedicare plan, rather than just buying an easily affordable supplement.

II. Class Certification was not Addressed Below, and the Decision Rendered Without Oral Argument.

This PLA should be granted to reign in the Due Process problem of rendering class wide decisions before a Class is certified and give notice that their rights are being decided.

The Circuit Court's refusal to certify the class let alone notify the 20,000+ participants that this litigation is pending is unfair; violating 735 ILCS 5/2-802 and 803 by depriving the class of notice of the issues that are being decided over their rights. The City's footnote 6 defense, that "the Circuit Court has indicated its intention to address class certification promptly *after* this case is remanded to it" highlights the problem; namely, that the class' rights on the merits of their claims are being determined without their input or assistance. While this Court has permitted the deferral of class certification until after an initial motion to dismiss, the idea that the case would go on for more than four years and actually adjudicate the merits of the claims without notifying the class makes a mockery of due process.

It might well be different if this was a case in which there were factual differences between participants within each subclass. Here the determinations have been, and continue being made, as purely legal issues based on the objective facts defining the classes and subclasses, based on Date of Hire, Date of Retirement, dates of statutes, and their legal effect. The nonsense of deferring class certification here is only underscored by the context here, that the courts are deciding the rights of these nearly 30,000, and defining them as classes and subclasses; just without certifying the case to proceed with the protections required by 2-801ff.

Additionally, the Appellate Court's determination to repeatedly decide important public issues without a public hearing at Oral argument adds to the perception of indifference to these 30,000 City retirees. These issues and litigants deserve to be heard in public, not decided only on the papers.

III. The Circuit Court's Accommodation to the City.

Indeed, the Circuit Court's willingness to indulge the City and Funds in every aspect of their defense, written or verbal, while refusing to afford the most minimal protections of the class' healthcare interests are highlighted by the court's most recent rulings: refusing to order the City to provide [Plaintiffs' counsel] copies of its mailings to annuitants, refusing to allow plaintiffs' counsel stuffer access to the City and Funds' mailings to the annuitants, along with the judge's refusal to actually enforce its own rulings that the Funds are required to provide an affordable health care Plan to their participants, or even to contribute their statutory subsidies while the case pends (despite the fact that neither the City nor any of the Funds appealed the Circuit Court's declarations that the subsidies are for life, and the Appellate Court's ruling that it applies for all persons hired by mid-2003), all display a lack of due process, let alone humane consideration for people whose healthcare premiums now amount to 30 to 60% of their annuities, in some cases 150% of their annuities. These actions by the City and treatment by the Court takes this case out of a mere money damages situation. Even Judge Green, 30 years ago, enjoined the City from adversely changing the terms of the Plans while the case was pending.

But it gets worse still. The Funds and the City are holding even the meager 1983 and 1985 subsidies hostage to lever Plaintiffs into dropping this Petition. *See* attached October 25, 2017 transcript at 22:3-25:24, where the City and Funds make it clear that they will consider paying the subsidies if Plaintiffs drop this Petition, "If you dismiss the PLA and this case come back to you, we'd be subject to the appellate court order. *Id.*, at 23:23-24:2.

And the Circuit Court recognizes that for the tactic it is, but without forcing them to continue the subsidies he held they owe, or for the Funds to provide a Plan/subsidy as he and the Appellate Court held. Thus, what the annuitants are faced with is essentially extortion.

From the beginning of the restoration that began in 1998 and returned most recently in 2013, the City, now joined by the Funds, has done whatever is needed in order to drag this out, delay, frustrate, and prevent this court from ever addressing the retirees' claims. While we join the Circuit Court's professed desire that this court take the case³, it is only by this Court's actually granting review, that retirees' claims may finally be heard.

The one thing on which we agree with the Circuit Court -- that this Court should grant review for these participants.⁴

IV. There is Nothing Settled About the Law on Breach of Contract and Estoppel as Applied Here.

As to breach of contract, the Funds themselves originally asserted that the City, in Agreement with them, had made lifetime healthcare coverage a term of employment to City employees. Indeed, on this the Funds should have been precluded from changing their position on this contract claim.⁵ The "mend the hold" doctrine precludes a party

³ "I hope they do.", October 25, 2017 transcript at 25:18.

⁴ See attached transcript October 25, 2017, at 27-28. "Personally, ...I think the PLA should be accepted and be dealt with, and we should get an answer on this, not only for this situation, but future situations where this might arise."

⁵ *Israel .v National Canada Corp*, 276 Ill App 3d 454, 462 (1996) (holding that a party must stand by the first defense raised once litigation has begun), and see: Sitkoff, "Mend the Hold" and Erie: *Why an Obscure Contracts Doctrine Should Control in Federal Diversity Cases*, 65 University of Chicago L. Rev. 1059: "Under the Illinois (minority) version of the rule, absent a good faith justification for a change in position, a defendant in a breach of contract action is confined to the first defense raised once the litigation is underway."

pleading one position in a contract action from later repudiating it in another. *Trossman v. Philipsborn*, 373 Ill. App. 3d 1020 (1st Dist. 2007).

V. Estoppel

Neither *Matthews* nor *Patrick Engineering Inc. v. City of Naperville*, 2012 IL 113148, precludes estoppel where, as here, over a number of years, City presenters (and we did identify presenters; *see* Complaint exhibits 18 and 19) were authorized. Nonetheless, even if we hadn't identified them, this is at the complaint stage prior to discovery (in the Korshak litigation, no one disputed that the City had made such promises). The City has not even answered the complaint to deny that such promises were given.

VI. Equal Protection and Special Legislation Issues Have Not been Addressed by this Court.

A. Equal Protection with Pension Protection

Nor has this court addressed the equal protection legality of the City's honoring its healthcare promises based on retirement date, rather than participation date. The fundamental distinction here is that the City is recognizing its obligation to provide lifetime coverage for only those who retired by August 23, 1989, while disavowing any obligation for those annuitants who, because they were participants by August 23, 1989, have the same rights. *Buddell v. Bd of Trustees*, 118 Ill 2d 99 (1987). No decision deals with that issue. *Kanerva* addresses all identical rights under a statute, and *Buddell* makes it clear that the Constitution protects all persons who were participants on the applicable date, not just retirees at that date.

B. Special Legislation.

As to special legislation, a statute identifying benefits as “by reason of employment by [a named city]” has never been upheld by this court.

C. Time Delimited Benefits.

The Circuit Court and Appellate Court’s declaration that the 1989, 1997, and 2003 Pension Code amendment statutes (Complaint, Exhibits 8B-D) created benefits that were time delimited, has also never been addressed. That is, whether the Pension Protection Clause of our Constitution protects against reducing those benefits in subsequent years.

CONCLUSION

In short, the City’s assertion that the favorable decisions below are all “settled law” is no more honest than its recitation of fact, and is simply the continuation of its decades-long determined efforts to prevent these retirees from ever having their substantial and unique claims adjudicated by this Honorable Court.

It is time for these loyal City servants to finally have their day before this court.

For this, the last group of City retirees whose City work did not qualify them for federal Medicare coverage, this Court should grant leave to appeal, order briefing, hear oral argument, reverse the decisions below, and order the Circuit Court to issue a Preliminary Injunction, restoring coverage under the City’s Annuitant healthcare Plan, and restore the rates and/or the appropriation to the 2013 levels, until this litigation has concluded, and make the following declarations of law and directions on remand to the Circuit Court:

- A. **Certify the case as a class action** for City of Chicago Retiree Healthcare Plan Participants, with the following proposed subclasses (each of i, ii, and iii, with sub-sub class of pre-4/1/1986 hires):
- i. Korshak subclass-12/31/1987 annuitant participants,
 - ii. Window subclass-retired Post-Korshak, but pre-8/23/1989,
 - iii. Pre-8/23/1989 Hireses,
 - iv. Participants –First hired date after 8/23/1989;
- all represented by undersigned Counsel;
- B. Declare the pre 8/23/1989 retiree participants’ entitlement, the 8/23/1989 terms of the City of Chicago Annuitant Medical Benefits Plan, is a benefit protected by 1970 Illinois Constitution, Article XIII, Section 5, and Order resumption of the fixed-rate subsidized \$55/\$21 monthly premium retiree healthcare plan, fully subsidized by the Funds;
and/or
- C. Declare that retirees vest for life in the retiree healthcare terms at the best of their hire or retirement date;
- D. Declare that the 1989 and later statutory annuitant healthcare statutory amendments are invalid, for (i) unconstitutionally purportedly stripping the benefits of the protections of Article XIII, Section 5, (ii) invalidly diminishing their benefits by their time limitations, and (iii) invalidly limiting their benefits to persons who are annuitants “by reason of employment by the City of Chicago”.
- E. Enjoin 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 and order the City to restore the appropriated funds for annuitant healthcare to their 2013 levels pendent lite or permanently;
- F. Order the City to restore the post-2013 premium rates charged back to the levels charged in the lowest levels for any participant, and refund all premiums collected in excess of those amounts
- G. Award Plaintiffs’ Attorneys fees and costs;
- H. Any and all other relief the Court deems just and proper.

Dated: November 7, 2017

By: /s/Clinton A. Krislov
Attorney for Plaintiffs,

Participants-Appellants

Clinton A. Krislov, Esq.
(clint@krislovlaw.com)
Kenneth T. Goldstein, Esq.
(ken@krislovlaw.com)
KRISLOV & ASSOCIATES, LTD.
Civic Opera Building
20 North Wacker Drive, Suite 1300
Chicago, Illinois 60606 (312) 606-0500

Certification of Compliance

I certify that this brief conforms to the requirements of Rule 315 and 341, the length of this brief, excluding the cover, Proof of Service and Certificate of Compliance, is 13 pages.

s/Clinton A. Krislov

Clinton A. Krislov
Kenneth T. Goldstein
KRISLOV & ASSOCIATES, LTD.
20 Wacker Drive, Suite 1300
Chicago, IL 60606
(312) 606-0500
Clint@krislovlaw.com; ken@krislovlaw.com

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

CITY OF CHICAGO a municipal)	
corporation,)	
)	
Plaintiff,)	
	)	No. 01 CH 4962
vs.)	
	)	(Originally
MARSHALL KORSHAK, et al.,	)	87 CH 10134)
)	
and)	
)	
UNDERWOOD, et al.,)	
)	
vs.	)	No. 13 CH 17450
)	
CITY OF CHICAGO, et al.)	

Record of proceedings had at the
 hearing of the above-entitled cause, before the
 Honorable NEIL H. COHEN, one of the Judges of said
 Court, on October 25, 2017, in Room 2308, Richard J.
 Daley Center, Chicago, Illinois, commencing at 10:25
 a.m.

1 APPEARANCES
 2 KRISLOV & ASSOCIATES, LTD.
 3 20 North Wacker Drive, Suite 1300
 4 Chicago, Illinois 60606
 5 (312) 606-0500
 6 BY: Mr. Clinton A. Krislov
 clint@krislovlaw.com,
 7
 Mr. Kenneth T. Goldstein
 8 ken@krislovlaw.com
 for the plaintiffs;
 9
 10 RICHARD J. PRENDERGAST, LTD.
 11 111 West Washington Street, Suite 1100
 12 Chicago, Illinois 60602
 13 (312) 641-0881
 14 BY: Mr. Richard J. Prendergast
 rprendergast@rjpltd.com,
 15 for the City
 16 -and-
 17 LANER MUCHIN, LTD.
 18 515 North State Street
 19 Chicago, Illinois 60654
 20 (312) 467-9800
 21 By: Ms. Jennifer A. Naber
 jnaber@lanermuchin.com
 22 for the City;
 23
 24

1 APPEARANCES (Continued)
 2 DAVID R. KUGLER & ASSOCIATES, LTD.
 3 6160 North Cicero Avenue
 4 Suite 308
 5 Chicago, Illinois 60646
 6 (312) 263-3020
 7 BY: Mr. Justin Kugler,
 justinkugler@comcast.net
 8 for the Trustees of the Policemen's
 Annuity and Benefit Fund of Chicago;
 9
 10 BURKE, BURNS & PINELLI, LTD.
 11 Three First National Plaza, Suite 4300
 12 Chicago, Illinois 60602
 13 (312) 541-8600
 14 BY: Mr. Edward J. Burke
 eburke@bbp-chicago.com,
 15
 Ms. Sarah Boeckman
 16 sboeckman@bbp-chicago.com,
 for the Trustees of the Firemen's Annuity
 17 and Benefit Fund of Chicago;
 18 TAFT, STETTINIUS & HOLLISTER, LLP
 19 111 East Wacker Drive, Suite 2800
 20 Chicago, Illinois 60601
 21 (312) 836-4038
 22 BY: Mr. Cary E. Donham
 cdonham@taftlaw.com,
 23 for the Trustees of the Laborers' &
 Retirement Board Employees' Annuity and
 24 Benefit Fund of Chicago.

1 THE COURT: Underwood versus City of
 2 Chicago.
 3 MR. PRENDERGAST: Good morning, Your
 4 Honor. Richard Prendergast for the City.
 5 MR. KRISLOV: Good morning, Your
 6 Honor. Clint Krislov, and with me, Ken Goldstein on
 7 behalf of the participants, many of whom are here
 8 today.
 9 MR. GOLDSTEIN: Good morning, Your
 10 Honor.
 11 THE COURT: Yes. Welcome everybody.
 12 MS. NABER: Good morning, Your Honor.
 13 Jennifer Naber on behalf of the City.
 14 MR. DONHAM: Good morning, Your Honor.
 15 Cary Donham on behalf of the Laborers' Fund.
 16 MS. BOECKMAN: Good morning, Your
 17 Honor. Sarah Boeckman on behalf of the Municipal
 18 Fund and the Firemen's Fund.
 19 MR. BURKE: Ed Burke, law clerk.
 20 (Laughter.)
 21 MR. KUGLER: Justin Kugler on behalf
 22 of Policemen's Annuity and Benefit Fund.
 23 THE COURT: All right.
 24 MR. PRENDERGAST: Your Honor, I assume

1 you've received the correspondence.
 2 THE COURT: I received the
 3 correspondence. I've been in -- I haven't read it in
 4 total. I read it in part. And I've been involved
 5 with a three-week trial that ended Monday.
 6 And yesterday, I had a very long,
 7 until 7:00 o'clock, TRO dealing with the Palatine
 8 School District. So there you are.
 9 But I have read it, just not in as
 10 much detail as you would want me to or I would want
 11 myself to.
 12 But talk to me.
 13 MR. PRENDERGAST: Your Honor, as you
 14 recall, the last time we were here, you told us to
 15 meet.
 16 THE COURT: Yes.
 17 MR. PRENDERGAST: We met for three
 18 hours at the Taft Law Firm. The purpose of the
 19 meeting was set forth in a letter. We covered a
 20 variety of subjects, some -- all of which were
 21 discussed, some of which we continue -- most of which
 22 we continue to disagree on.
 23 But as the letter -- you know, it was
 24 one meeting.

<p style="text-align: right;">Page 6</p> <p>1 THE COURT: I understand. 2 MR. PRENDERGAST: As I think our 3 letter ends -- and I don't have it in front of me, 4 but I think as it ends, it expresses some hope that 5 we'll continue to meet and try to work out our 6 differences. 7 And any assistance the Court can give 8 us if that doesn't work out without adult supervision 9 will be gladly accepted. 10 THE COURT: I can't give you any 11 advice right now. These are really crucial, 12 important issues, and I haven't digested them. So I 13 don't have a view. 14 And, you know, to be quite honest, at 15 some point, I can't give you -- I can't do that. I'm 16 the judge. I call balls and strikes. I know I've 17 been acting as a mediator, trying to in the last 18 couple sessions. But at some point I have to resume 19 my role as judge. 20 So -- but I'm not conversant, really, 21 with what you wrote to me. I'm just not. I'm sorry. 22 MR. PRENDERGAST: No, that's no 23 problem, Judge. You've been on trial, and -- 24 THE COURT: You can blame Ed Joyce and</p>	<p style="text-align: right;">Page 8</p> <p>1 we face right now -- and I can vouch for the fact 2 that probably most of the people who came this 3 morning are in the category 3A. It's not all of them 4 by any means. There's lots of them, but we haven't 5 gotten -- we have no way of communicating with most 6 of them. 7 The critical problem involves the 8 category 3A people who do not qualify for Medicare. 9 THE COURT: For Medicare. 10 MR. KRISLOV: And their rates are as 11 high as 35 to 60 percent of their monthly annuity. 12 For those people, their only choices are to either 13 live, some of them destitute, but certainly 14 constrained. 15 If your pension is between 4,000 and 16 6,000 a month, and you have to pay 1500 for yourself, 17 2696 for you and your spouse, that leaves you a 18 subsistence amount, which the City's position is, 19 well, you can always get an Obamacare policy. 20 But the Obamacare policies are much 21 less in terms of their benefits and who you can see. 22 THE COURT: I thought the City's 23 position -- well, is that, but also that they're not 24 obligated to do anything. They're trying to come up</p>
<p style="text-align: right;">Page 7</p> <p>1 John Cullerton, because they were going at each 2 others' throats. 3 MR. PRENDERGAST: Well, that, plus you 4 had a preliminary injunction. 5 So if you want to give us a date after 6 you've had a chance to review those, if they spark 7 any reason for you to have any further discussion, 8 that's fine. 9 THE COURT: Well, I will give you a 10 date, but I also would like to hear what you have to 11 say. I'm sure you have something to say, and you'd 12 like to illuminate me as to what you think the issues 13 are. 14 I put you over twice because of my 15 trials, and so I reserved this morning, the rest of 16 the morning for you to -- and, I'm sorry, I'm just 17 not prepared. But I'd love to hear what you have to 18 say, and that will help illuminate what I read. 19 So it might be putting the cart before 20 the horse, but at least we'll find some way of 21 getting them back together. 22 Mr. Krislov. 23 MR. KRISLOV: Your Honor, the most 24 important thing, the most -- the biggest problem that</p>	<p style="text-align: right;">Page 9</p> <p>1 with some plans. They've suggested three plans. 2 I reserved ruling on Class 3, as I 3 recall, and everyone agrees Class 4 is not involved. 4 MR. KRISLOV: I don't agree. I just 5 know that's your ruling. 6 THE COURT: Fair enough. 7 So Class 3 is in limbo, essentially, 8 as I recall. And what -- what is the City's 9 position -- so go on with what you're going to say. 10 MR. KRISLOV: So where we are is that 11 the PLA is pending with the Supreme Court. We will 12 reply -- 13 THE COURT: Have you told the Supreme 14 Court everything you're telling me, how important it 15 is for them to take the PLA and get it and do it soon 16 because of the condition these folks are in? 17 MR. KRISLOV: I believe so. 18 THE COURT: Good. 19 MR. KRISLOV: But the problem is, in 20 the interim -- and as you know, the appellate court 21 has expanded the class of the people who are 22 protected. 23 And I understand your ruling that the 24 funds are primarily responsible to provide a plan.</p>

<p style="text-align: right;">Page 10</p> <p>1 They are not doing that. They disavow such 2 obligation.</p> <p>3 And they did not appeal from either 4 your ruling that they are obligated to the protected 5 class on the subsidies for life or the appellate 6 court's ruling that they are obligated to the subsidy 7 for life for the expanded class of everybody who 8 became a participant by mid 2003.</p> <p>9 At the very least, the Funds could pay 10 their subsidies for these people -- for the -- 11 whether the expanded class, the narrow class, the 3A 12 is the critical point.</p> <p>13 And it's of the 3A people who do not 14 qualify for Medicare, and so they are subjected, if 15 they want to go to their doctor at Northwestern or 16 University of Chicago, they have to either pay the 17 Blue Cross plan, which the City will tell you is a 18 non-sponsored plan, and this is -- it's a 19 non-sponsored plan. It's just a plan that is very 20 expensive, and the City provides them no help.</p> <p>21 We could, during this interim period 22 while waiting --</p> <p>23 THE COURT: What do you mean, 24 non-sponsored? You mean the City's not --</p>	<p style="text-align: right;">Page 12</p> <p>1 contracted for these people to be Medicare qualified 2 back when they -- back when they were working for the 3 City, but the City chose not to.</p> <p>4 And so the critical problem --</p> <p>5 THE COURT: If I were to order that, 6 that would go against the previous rulings that I 7 made. And I understand the position these folks are 8 in, and I'm sympathetic to it. This isn't my way of 9 saying but, but what can I do as matter of law that's 10 right? And I'm not sure that I can do anything.</p> <p>11 You seem to think I can. You'd like 12 me to become a pirate --</p> <p>13 MR. KRISLOV: No.</p> <p>14 THE COURT: -- and go against the law.</p> <p>15 MR. KRISLOV: No.</p> <p>16 THE COURT: Not only go against the 17 law, but go against my own rulings.</p> <p>18 MR. KRISLOV: No -- well --</p> <p>19 THE COURT: Well, yes.</p> <p>20 MR. KRISLOV: Well, no.</p> <p>21 THE COURT: In the interim, you say. 22 In the interim.</p> <p>23 But you have appealed my rulings. 24 They're on appeal. You disagree with them, and</p>
<p style="text-align: right;">Page 11</p> <p>1 MR. KRISLOV: The City disavows having 2 anything to do with it, other than they call the --</p> <p>3 THE COURT: The City's position is 4 they don't have to.</p> <p>5 MR. KRISLOV: I understand that.</p> <p>6 THE COURT: Okay. That's nothing new.</p> <p>7 MR. KRISLOV: We disagree with that, 8 and the -- you know, the Funds --</p> <p>9 THE COURT: That's on appeal.</p> <p>10 MR. KRISLOV: It's on appeal.</p> <p>11 THE COURT: Okay.</p> <p>12 MR. KRISLOV: But for the interim, 13 which Judge Green granted to protect the status quo 14 rather than let the City cut everybody off. And the 15 City has announced to everybody it's not going to 16 have any plans after 2017. That's what it tells all 17 of its employees, and that's what its issued to its 18 retirees. The City has no plans.</p> <p>19 You could, Your Honor, order the Funds 20 to, in the interim, resume their subsidy, you could 21 order the City to cover the difference between the 22 non-Medicare and Medicare costs.</p> <p>23 The City could pay for these people to 24 be Medicare qualified. The City could have</p>	<p style="text-align: right;">Page 13</p> <p>1 that's fine. I understand that.</p> <p>2 But that's -- I've lost jurisdiction 3 over that issue. That's on appeal.</p> <p>4 I am loath to do an interim order, as 5 you call it, a bridge order, when, (a), I don't have 6 jurisdiction do so, with all due respect to me; and, 7 (b), it would go against the substance of the order I 8 entered before.</p> <p>9 So how did I get around that?</p> <p>10 MR. KRISLOV: How you get around that 11 is that the issues are certainly in play. And we may 12 well prevail in the end. We think we're going to. 13 There is at least a reasonable basis to believe that 14 we may prevail.</p> <p>15 We may disagree over your holdings to 16 date. That's how this process works. But in the 17 interim, you could reserve the retiree situation -- 18 before the City was allowed to just turn them off, 19 you could preserve it. You can preserve that status 20 quo for the interim while the matter is pending.</p> <p>21 Because the hardship we have --</p> <p>22 THE COURT: Did you file a motion 23 asking me to do that? 24 MR. KRISLOV: We did that in the past,</p>

4 (Pages 10 to 13)

<p style="text-align: right;">Page 14</p> <p>1 and it was denied. I acknowledge that. 2 We have a pending motion for a 3 preliminary injunction to force the Funds to provide 4 a plan. 5 If you wish, I will amend to add that, 6 to restore the status quo -- 7 THE COURT: Yeah, well, I don't wish 8 anything. I wish everybody were covered. That's 9 personally. But I don't wish anything. 10 As I told you before I even heard what 11 you had to say, I just call balls and strikes. I'm 12 not the litigator. 13 MR. KRISLOV: But you can preserve -- 14 where it causes extreme hardship to parties, you can 15 restore the status quo to before that hardship -- to 16 what it was before that hardship began for the 17 pendency until these issues play out. 18 And I ask you to do that, because 19 these people -- 20 THE COURT: Put it in writing. I'll 21 consider it. I'm going to hear from the other side. 22 I don't even know if they even knew what you were 23 going to say today. 24 MR. KRISLOV: Oh, I'm sure -- that</p>	<p style="text-align: right;">Page 16</p> <p>1 And that's not -- look, he's -- I 2 understand. He's trying to protect his clients, and 3 I think his clients should be protected. 4 However, wanting it doesn't make it 5 so. The laws are the laws, and I can't change them 6 just because my heart tells me that should happen. 7 MR. PRENDERGAST: I mean, you have 8 held, the appellate court has held many of the legal 9 arguments that he's making now and has made in the 10 past are not sufficient. You ruled against him. 11 THE COURT: Maybe so, but I'm not 12 going to stop him from filing anything he wants to 13 file. 14 MR. PRENDERGAST: Oh, no. Anybody can 15 file anything they want, and we'll file a response to 16 it. 17 But in the interim -- he talks about 18 this interim period or something as if there is some 19 kind of an interim period. 20 The PLA that's pending is the PLA he 21 filed. He can dismiss it anytime he wants, and then 22 there's nothing on appeal. This can come back, and 23 you'll have jurisdiction to entertain any motion he 24 wants to make, even one that reiterates the very</p>
<p style="text-align: right;">Page 15</p> <p>1 one, they won't express surprise, I don't think. 2 THE COURT: Well, I'm surprised. But 3 that's okay. I'll consider it and hear from the 4 other side. 5 Did you want to say something now, Mr. 6 Prendergast? 7 MR. PRENDERGAST: Mr. Krislov is 8 perfectly free to file whatever motion he wants. 9 THE COURT: Sure. 10 MR. PRENDERGAST: I do not understand 11 how he would make an argument for the kind of relief 12 he's asking since one of the criteria would be that 13 the Court would have to find a likelihood of success 14 on the merits. 15 What he's asking you to do is exactly 16 the opposite of what you ruled. There's no such 17 thing as interim relief just because it's not the 18 relief -- it's the relief he wanted in the first 19 place and was denied. 20 THE COURT: Well, he's asking me to 21 admit that there's a fair question, which is really 22 the standard, that I could be wrong and that the 23 status quo should be kept intact while the superior 24 courts of review deal with it.</p>	<p style="text-align: right;">Page 17</p> <p>1 relief you denied him in the past. 2 But to ignore the fact that this is on 3 appeal and to talk about the status quo as if there 4 haven't been rulings in the meantime is just 5 incorrect. 6 He's got to have a legal basis for the 7 relief he's seeking, and the arguments he's making 8 have been made several times. They've been rejected 9 by you, and they've been rejected by the appellate 10 court. 11 All of the issues, by the way, you've 12 ruled on all those other issues, equal protection and 13 the like, they were all taken on appeal. They were 14 all rejected. He's still got those in the PLA. 15 So, you know, if he wants to dismiss 16 his PLA and bring this back to the circuit court, he 17 can do that, but he hasn't done that. And he knows 18 what he can do and what he has yet to do. 19 That he can pursue this thing on 20 appeal and get the relief he's seeking on appeal here 21 is just not feasible, in our judgment. 22 Now, again, he can file whatever he 23 wants to file. The letter that we sent you was a 24 great example of how many lawyers does it take to</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 screw in a light bulb. 2 We met, and then we went back and 3 forth with one version of this after another -- 4 THE COURT: Yes, I read that part. 5 MR. PRENDERGAST: Finally, we had to 6 decide to submit this, but it does have a lot of 7 things in it that you want, and then he submitted his 8 own letters. 9 THE COURT: In your opinion, Clint, 10 have you moved forward at all in terms of reconciling 11 your difference with the iron heel over here? 12 MR. KRISLOV: I wouldn't call them 13 that, but I would say that we -- I believe that the 14 dialogue should continue, but -- and I think progress 15 was made, discussions -- there was -- I don't think 16 we got commitments on anything. I think there was an 17 effort to get me to commit to things, but whatever. 18 I have no problem going forward, and 19 the language that suggests that we should continue 20 discussion I think started with me, because I think 21 it is important to have those discussions continue. 22 That said, the most important thing 23 for the Court to address right now -- 24 THE COURT: No, no. Keep the eye on</p>	<p style="text-align: right;">Page 20</p> <p>1 THE COURT: Okay. 2 MR. PRENDERGAST: -- etcetera. 3 So we're not only saying it on the 4 record. We've said it in writing to you. We'll be 5 glad to meet and -- we have no problem meeting and 6 talking. 7 It's just that this is a -- there are 8 fundamental disagreements here, and they are all on 9 issues of law. And many of those issues of law have 10 been ruled on, and much of what Mr. Krislov said this 11 morning suggests that he wants those rulings ignored 12 and in the interim do exactly the opposite. 13 I just don't think there's any 14 possible legal basis for doing that. But if he wants 15 to file -- 16 THE COURT: Well, that was my response 17 to him earlier today. But I'm not going to prevent 18 him from filing that which he needs to file and 19 thinks is appropriate to file. And I will consider 20 it. 21 That's all I can say. 22 MR. KRISLOV: The pending preliminary 23 injunction motion deals with the Funds who you 24 directly held are -- have the primary obligation to</p>
<p style="text-align: right;">Page 19</p> <p>1 ball I just threw, not yours. We're not moving over 2 here. I just asked you whether it's important, 3 whether going forward there's going to be some reason 4 to have a dialogue on this. 5 And then we'll talk about what you 6 want to raise again. 7 MR. KRISLOV: Yes. In fact, I had 8 suggested another meeting before the Court today, but 9 that didn't work out. 10 THE COURT: Okay. And does everyone 11 agree? 12 MR. DONHAM: As far as meeting again? 13 THE COURT: Yes. 14 MR. DONHAM: Certainly, yes. I can 15 say that for the Laborers' Fund, absolutely. 16 MR. PRENDERGAST: Well, the letter we 17 submitted speaks for all of us. It says while we 18 have been unable to reach agreement with respect to 19 many of the issues involved in the Underwood and 20 Korshak litigation, the meeting among the parties 21 began discussions which should continue. 22 The parties will be prepared to 23 address any questions Your Honor may have with 24 respect to the items contained in this Court's --</p>	<p style="text-align: right;">Page 21</p> <p>1 provide plans for their annuitants. You can ask all 2 four of them. They'll tell you they're not. 3 And number two, your ruling squarely 4 was that the subsidies that they pay are lifetime 5 subsidies, and they're bound to con- -- they're bound 6 to continue those for the lifetime -- 7 THE COURT: Class 1 and Class 2. 8 MR. KRISLOV: Class 1 and Class 2. 9 And the appellate court ruling would include Class 3 10 and Class 4, all the way up to everybody who became a 11 participant by mid 2003. 12 THE COURT: They're entitled to their 13 opinion. 14 MR. KRISLOV: Yeah, but they have -- 15 they're entitled to their opinion, but they didn't 16 appeal your ruling, and they haven't appealed the 17 appellate court -- they haven't filed anything on the 18 appellate court's ruling. 19 THE COURT: Yes. 20 MR. KRISLOV: So they have no basis 21 for even saying that they're not going to do the 22 subsidy in the meantime. They say nothing. They 23 just disavow -- and they say, and Mr. Prendergast 24 focuses on the issue that what their positions are,</p>

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<p style="text-align: right;">Page 22</p> <p>1 if you drop the PLA, we'll comply with the appellate 2 court's order.</p> <p>3 So they want to hold that hostage in 4 order to get the subsidies.</p> <p>5 THE COURT: I think what they're 6 saying -- I don't know. I wasn't there.</p> <p>7 I understand the import of what you 8 say in terms of practical dynamics between you all. 9 But what they're saying is that it's not the law, and 10 they don't have to follow it until it's decided based 11 upon the PLA that you filed, and they didn't. And if 12 you drop the PLA, then the mandate will issue, and 13 they'll have no choice but to follow it.</p> <p>14 That's how I understand it.</p> <p>15 MR. KRISLOV: I didn't appeal --</p> <p>16 THE COURT: Is that wrong?</p> <p>17 MR. KRISLOV: I didn't PLA their 18 obligation to provide a plan or provide subsidies for 19 life. That's -- you know, what they're saying is, 20 well, we can always come in -- if the Supreme Court 21 takes it, we can always assert these things in the 22 future.</p> <p>23 I mean, that's nice. But on an 24 interim basis for what we do to get through this</p>	<p style="text-align: right;">Page 24</p> <p>1 appellate court order. There's no question about 2 that because that would be the decision of the 3 court --</p> <p>4 THE COURT: Is the issue that 5 Mr. Krislov just raised, about the subsidies by the 6 Funds on appeal, on review through the PLA?</p> <p>7 MR. PRENDERGAST: He's -- I mean, I 8 let him summarize his own PLA.</p> <p>9 But he's raised every issue that he 10 raised on appeal from your ruling, and there was no 11 subclass or purported class 3A. That 3A is sort of a 12 shorthand we're using because of the language of the 13 appellate court appeal. When that comes back, we'll 14 have to deal with what that means.</p> <p>15 But until it comes back, there's no 16 point in dealing with it because he has chosen to 17 take it to a higher court. And while it's sitting up 18 there, it is, I would say, at best, inappropriate, 19 and I think, frankly, jurisdictional, that this Court 20 will be addressing the very issues of the Supreme 21 Court is being reviewed.</p> <p>22 They're going to review all these if 23 they take this case. And by the way, if we're not 24 totally happy with the appellate court opinion, if we</p>
<p style="text-align: right;">Page 23</p> <p>1 period, they can and should pay those subsidies. 2 That would provide at least a small reduction in what 3 our participants, especially the 3As who do not 4 qualify for Medicare, what they're going through.</p> <p>5 THE COURT: Well, am I wrong, 6 Mr. Prendergast? Is that not the position you're 7 taking with regard to -- and the Funds, until this is 8 resolved by the Supreme Court, that you don't feel 9 that you have to follow any mandate that hasn't 10 issued?</p> <p>11 MR. PRENDERGAST: Well, number one, 12 there is no mandate to follow; and, number two, this 13 is a jurisdictional issue, because he's got this up 14 on appeal.</p> <p>15 THE COURT: Yeah, I understand that.</p> <p>16 MR. PRENDERGAST: And it is kind of 17 having your cake and eating it too.</p> <p>18 THE COURT: I understand that part. 19 But I just want to know what your stance is, for the 20 record, so that Mr. Krislov hears it, I hear it, and 21 the record is clear.</p> <p>22 MR. PRENDERGAST: I think you've 23 summarized it correctly. If you dismiss the PLA and 24 this case came back to you, we'd be subject to the</p>	<p style="text-align: right;">Page 25</p> <p>1 can't say that we're totally happy with it, if the 2 PLA is granted, it's my understanding we can 3 cross-appeal. We can --</p> <p>4 THE COURT: An issue for better minds 5 than mine.</p> <p>6 MR. PRENDERGAST: Mine as well, but I 7 think --</p> <p>8 MR. BURKE: And I think, Judge, if I 9 may.</p> <p>10 THE COURT: Yes, Mr. Burke.</p> <p>11 MR. BURKE: We would have the right, 12 also, and we would be happy to cross-appeal all 13 issues that are pending in this Court's 14 jurisdiction --</p> <p>15 THE COURT: Yeah.</p> <p>16 MR. BURKE: -- before the appeal.</p> <p>17 THE COURT: That's my understanding, 18 but we'll see what happens. First, they may not be 19 important. They may not take it. I hope they do.</p> <p>20 MR. BURKE: And having said that, we 21 are definitely in accord with further discussions to 22 resolve all these issues.</p> <p>23 THE COURT: All right. So I think you 24 should remember that it was your plaintiff plea,</p>

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<p style="text-align: right;">Page 26</p> <p>1 Mr. Krislov, which led to me exhorting, urging you 2 all to get together to deal with these issues. 3 My take is, and my ruling has been and 4 will be, that I don't have jurisdiction to do that 5 which you want, but I will, of course, will allow you 6 to file anything you want. 7 "Allow" is the wrong word. I will 8 deal with whatever you file. You don't need my 9 permission to file anything. 10 But it was my hope that you could all 11 get together to arrive at some sort of understanding, 12 extrajudicially, to cover the terrible circumstance 13 your clients are facing. 14 Now, that is going to be achieved, if 15 it is achieved, through communication, meaning, yes, 16 bargaining. That's just the way of the world. 17 Do you not want to do it? Then don't. 18 No one's forcing you to do it. But I asked for you 19 all to get together to do that, dropping the umpire's 20 garb, in order to see if that situation could be 21 resolved so that there isn't a gap period for these 22 folks. 23 MR. KRISLOV: And you also -- and you 24 also -- if I would remind Your Honor, you also said</p>	<p style="text-align: right;">Page 28</p> <p>1 the PLA should be accepted and be dealt with, and we 2 should get an answer on this, not only for this 3 situation, but future situations where this might 4 arise. But that's just me. 5 I'm not sure that I do have the power 6 do anything that you want me to do, regardless of my 7 heart and how I feel about the matter. But I will 8 hear what you have to say. I will look at your 9 preliminary injunction motion. I'll look at anything 10 else you want to file, and we'll take it up. 11 We're going to be revisiting this. 12 Obviously, we have to if I'm going to be considering 13 anything you do file. But the motion you've already 14 filed, there's no way of avoiding it, and it's going 15 to rely at first blush on jurisdiction, my ability to 16 order anything. 17 MR. KRISLOV: And they need to 18 respond -- I would ask that they have to respond to 19 our motion. 20 THE COURT: If you wish. I think 21 that's not a bad idea. I think that's a good idea. 22 I'd like you to respond. 23 How much time would you like? 24 MR. PRENDERGAST: 30 days, Your Honor.</p>
<p style="text-align: right;">Page 27</p> <p>1 you would not leave the retirees without coverage, 2 and the Funds -- 3 THE COURT: Yes, I know that you say I 4 said that, and that is exactly what I would like to 5 not be, that they're not without coverage. I would 6 like them to be covered. 7 MR. KRISLOV: Your Honor, if you're 8 not going to order the Funds to follow -- 9 THE COURT: I'm going to do what I am 10 going to do. 11 MR. KRISLOV: I understand. 12 THE COURT: And I'm not going to be 13 threatened. 14 MR. KRISLOV: I'm not threatening you, 15 Your Honor. 16 THE COURT: I'm telling you what my 17 take is on my jurisdiction to do anything, and I 18 don't believe I have that, as I've told you. And 19 that's because of the PLA. 20 Now, I'm not telling you to withdraw 21 the PLA. Do what you want to do. Do what you think 22 is right. But I don't have the jurisdiction without 23 that having been done to deal with anything. 24 Personally, just personally, I think</p>	<p style="text-align: right;">Page 29</p> <p>1 MR. KRISLOV: We cannot have this go 2 on for 30 days. We're near the end of the year. 3 These people need to know what their coverage is for 4 2018. 5 A week would be -- 6 THE COURT: I'm not going to be here, 7 Clint. It doesn't really matter. 8 MR. KRISLOV: I understand that. But 9 then we would have to reply to what they file. We 10 need to have answers before the end of the year, long 11 before the end of the year. 12 MR. PRENDERGAST: Excuse me, Judge. 13 We're not talking about 2018 coverage. 14 That's not what this motion's about. This motion's 15 about requiring the funds to fund at the '83 and '85 16 level. 17 MR. KRISLOV: No. 18 MR. PRENDERGAST: I read it. I don't 19 know if I read it wrong, but that's the way I read 20 it. 21 MR. KRISLOV: It is to provide the 22 plans that you have ruled that they have an 23 obligation to provide, and the subsidies. 24 MS. BOECKMAN: I mean, but what has</p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 30</p> <p>1 changed between now, October 2017, and February 2017? 2 The plans have not provided -- the Funds have not 3 provided a plan for the entire 2017; neither has the 4 City.</p> <p>5 You indicated that the City said that 6 it was ceasing healthcare plans for 2018. That's not 7 true. There were no healthcare plans, with the 8 exception of Korshak and Windows for 2017, except for 9 the Blue Cross Blue Shield plans. Those are 10 continuing to be offered next year.</p> <p>11 So, really, I don't think a lot has 12 changed between February and October of this year. 13 And, really, your preliminary injunctions that you've 14 already filed and have been denied by this Court and 15 upheld by the appellate court really haven't changed.</p> <p>16 All you've asked now is, instead of 17 maintaining the status quo with the City continuing 18 to provide the plan that it did in 2016, you're now 19 requesting that we change the status quo, and the 20 Funds do something that they have not done for the 21 entire 2017 or predating this time.</p> <p>22 So I guess I understand the urgency 23 with respect to individuals need to figure out what 24 they want to do for 2018, but nothing has changed in</p>	<p style="text-align: right;">Page 32</p> <p>1 MS. BOECKMAN: Those options are being 2 offered. You know, there's the Blue Cross Blue 3 Shield plan, and then for the Firemen's Fund, there's 4 also an Aetna plan that's being offered.</p> <p>5 They're not sponsored by the Funds, 6 but those are retiree healthcare group coverage plans 7 that are available to retirees.</p> <p>8 THE COURT: And just so I know, what 9 is the level of premiums required?</p> <p>10 MS. BOECKMAN: Ms. Naber would 11 probably be best suited to answer for Blue Cross Blue 12 Shield.</p> <p>13 But with respect to the Aetna plan, 14 it's just a plan for those who are Medicare eligible, 15 and --</p> <p>16 THE COURT: What about the 17 non-Medicare eligible folk?</p> <p>18 MS. BOECKMAN: Their options are 19 through Blue Cross Blue Shield.</p> <p>20 MR. KUGLER: I just wanted to comment 21 on that.</p> <p>22 THE COURT: Yes, Justin.</p> <p>23 MR. KUGLER: So with respect to the 24 Policeman's Fund, similarly to what Sarah just</p>
<p style="text-align: right;">Page 31</p> <p>1 the course of this year, with the exception that 2 rates may have gone up for plans that are available 3 for 2018.</p> <p>4 The Fund is not going to be able to 5 control rates regardless. So when it's selecting a 6 plan, we don't have control over the rates that you 7 mentioned, Mr. Krislov, that the 3A group is going to 8 have to deal with regardless.</p> <p>9 So I think -- I mean, the benefit that 10 you're seeking from the Funds via this healthcare 11 plan isn't going to solve the problem that you've 12 articulated so well on behalf of your clients 13 repeatedly, which is that the rates for that 3A group 14 are extreme. That's not going to be addressed by the 15 Funds providing the healthcare plan.</p> <p>16 THE COURT: They are if they include 17 the subsidies, and that's what he's talking about as 18 well.</p> <p>19 MR. PRENDERGAST: I think it's --</p> <p>20 MR. KRISLOV: Or whatever plans are 21 available. At the moment, we --</p> <p>22 THE COURT: What happened with the 23 idea that the Funds were going to be, last time we 24 talked, giving three different options or --</p>	<p style="text-align: right;">Page 33</p> <p>1 articulated, the FOP has sponsored a plan, Medicare 2 eligible only.</p> <p>3 And we also have the Sergeant 4 Association has sponsored a plan through United 5 American, Medicare eligible only. For non-Medicare 6 eligible retirees, their plan that is offered to them 7 is the Blue Cross Blue Shield plan sponsored by the 8 City.</p> <p>9 THE COURT: Well, let me hear about 10 this. You know, it's fine to offer Medicare-eligible 11 folk a plan because it supplements the Medicare and 12 the costs are going to be much lower.</p> <p>13 I'm not really worried about those, 14 and I'm not going to make any statement that 15 Mr. Krislov will consider to be an order. But I am 16 concerned about these folks who are in the gap, in 17 limbo. Not only these folks, but all folks these 18 days in our country who fall within that gap.</p> <p>19 I'm not -- I don't have jurisdiction 20 over all the folks, and, apparently, I don't have 21 jurisdiction even over these folks right now.</p> <p>22 But what are the numbers, Ms. Naber, 23 for the Blue Cross policy for the gap folks? 24 MS. NABER: So to clarify --</p>

9 (Pages 30 to 33)

<p style="text-align: right;">Page 34</p> <p>1 THE COURT: I'm standing not because 2 to emphasize anything, but just to give my back a 3 chance to live. 4 MS. NABER: Understood. 5 For 2018 the City is the sponsor for a 6 fully insured Blue Cross Blue Shield plan. Blue 7 Cross Blue Shield sets the rates, and they 8 establish -- 9 THE COURT: What does that mean, 10 practically, to say that you're the sponsor of? 11 MS. NABER: They needed a name on it, 12 and then they -- when they set it up, the City was a 13 conduit for giving them the participants. 14 THE COURT: I see. 15 MS. NABER: But beyond that, now they 16 deal directly with the participants. The 17 participants sign up with them. The City doesn't 18 even know who's on the plan, who's not on the plan. 19 And we work with them on the rates 20 each year. 21 THE COURT: I understand. 22 What are the numbers? 23 MS. NABER: They offer two 24 non-Medicare plans. For a single, the higher priced</p>	<p style="text-align: right;">Page 36</p> <p>1 who are pretty much 55 to 80 plus. So the rates are 2 going to be high. These plans are also very special. 3 You cannot get these plans out in the marketplace. 4 They're the equivalent of what we call Cadillac 5 plans. They allow you to go to the University of 6 Chicagos, the Northwesterns. And they have low 7 deductibles and high payouts, and low copays. 8 So they're very lucrative plans. 9 THE COURT: Is there a Yugo plan in 10 there? 11 MS. NABER: They're not offering one, 12 but there is -- and I know Mr. Krislov is adverse to 13 it, but some of these people probably should 14 investigate their options on the exchange -- 15 THE COURT: Marketplace. 16 MS. NABER: In the marketplace. 17 Because given their income -- and we can't look at 18 that, because each individual annuitant is different. 19 When he talks about the 3A people, they also 20 include -- many of those people are under 65. 21 So whether they got credits or not, 22 they're still not Medicare eligible anyways, and they 23 certainly have other avenues to get Medicare 24 eligibility.</p>
<p style="text-align: right;">Page 35</p> <p>1 one is 1514 and -- 2 THE COURT: A month? \$1514 a month, 3 for a single person? 4 MS. NABER: For a single. And then 5 there's a lower -- 6 THE COURT: What about for a family? 7 MS. NABER: Family -- a couple is 8 2696. 9 MR. KRISLOV: And a family is? 10 MS. NABER: \$3700, approximately. 11 THE COURT: A month. 12 MS. NABER: A month. 13 THE COURT: 4,000 a month for a 14 family. 15 MS. NABER: Yes. If I -- 16 (Noise from the gallery.) 17 THE COURT: Enough already. Please be 18 quiet. 19 MS. NABER: If I may explain, Your 20 Honor. 21 THE COURT: Of course. 22 MS. NABER: These plans are just for 23 retirees, so they're limited to who they cover. 24 So the rates are set based on people</p>	<p style="text-align: right;">Page 37</p> <p>1 But those over 65 who are not -- 2 THE COURT: Well, I'm worried about 3 the non-Medicare eligible folks. 4 MS. NABER: Who are over 65, much 5 smaller group. Whether they're in these Blue Cross 6 Blue Shield plans or not, I don't know. 7 But if their income is that low, the 8 ACA gives you a whole host of choices if you're a 9 lower income. At certain points, they can get 10 subsidy benefits, they can get out-of-pocket 11 benefits. And it goes by the federal poverty level 12 as you go up. 13 So that there are subsidies in 14 everything that goes all the way up to 400 percent of 15 their income. 16 Now, when Mr. Krislov talks about 17 their annuity checks, yes, if they retire at 55 or 18 retire early, their annuity check might be low. But 19 they have other jobs, otherwise -- 20 THE COURT: Maybe yes, maybe no. 21 We're not going to be condescending about that. 22 MS. NABER: I shouldn't make that 23 assumption. 24 No, what my explanation is, until you</p>

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<p style="text-align: right;">Page 38</p> <p>1 know that full package, you don't know what the best 2 option is for that person. 3 So although -- 4 THE COURT: Well, and that's for them 5 to decided. It's not for a government to decide what 6 an individual should do with their money. 7 MS. NABER: Exactly. So these plane, 8 while they're great, because the participants' age is 9 limited, so the expense is higher, the ACA, you're 10 going to have people who are 20 years old, and people 11 who are over 60, and I believe even in the ACA, once 12 you're over 60, they can't price you any higher based 13 on your age. 14 So there are options out there. I 15 can't decide who -- 16 THE COURT: What's the Funds' -- just 17 so I understand the state of things -- the Funds' 18 position on subsidies of these folk? 19 MR. DONHAM: Your Honor, for the 20 Laborers' Fund, what you said was exactly it. We're 21 waiting for the mandate to come back, at which point, 22 we'll have the authority to provide it, subject to 23 what I explained last time, the other provisions that 24 talk about paying it to the underwriter, which means</p>	<p style="text-align: right;">Page 40</p> <p>1 I'm sure -- 2 THE COURT: It's your understanding, 3 without a commitment, that even if they get a policy 4 under Obamacare -- I like to say that -- you will 5 help subsidize that? 6 MR. DONHAM: We will work to subsidize 7 that, yes. 8 MR. KRISLOV: Here's the problem with 9 that. 10 THE COURT: That's pretty good, isn't 11 it? 12 MS. GOING: What Mr. Donham doesn't 13 tell you is that their statute was crafted -- I 14 didn't know this until after the meeting -- that's 15 what Mr. Donham added is in the letter, that their 16 Fund is only by the way that their law is written -- 17 THE COURT: The '85 statute. 18 MR. KRISLOV: I don't think it's the 19 '85 -- 20 THE COURT: But go ahead. By the way 21 the statute's written -- 22 MR. KRISLOV: Whatever, for laborers, 23 their statute was crafted so that the only company 24 they could approve would be Blue Cross. They could</p>
<p style="text-align: right;">Page 39</p> <p>1 that something would have to be worked out with, in 2 this case, the current case, Blue Cross Blue Shield, 3 to make sure that the annuitants get the benefit of 4 the subsidy. 5 Because right now, the statute doesn't 6 allow us to pay the subsidy directly to the 7 annuitant, the 1985 annuitant. 8 THE COURT: Yeah. It would have to go 9 straight to the underwriter. 10 MR. DONHAM: And you don't want the 11 underwriter to keep that \$25 and not reduce the rate. 12 So that's why I said last time, these 13 are things that will need to be worked out -- 14 THE COURT: Can you explain to me, if 15 they get a policy under the ACA, how that would work 16 in terms of subsidizing? 17 MR. KRISLOV: It doesn't. 18 MR. DONHAM: The way I would read it, 19 I'm confident that our board would figure out a way 20 that that person could benefit from the subsidy if 21 they meet the requirements of being 65 or older -- 22 THE COURT: All other things being 23 equal. 24 MR. DONHAM: Other things being equal.</p>	<p style="text-align: right;">Page 41</p> <p>1 not subsidize anybody else. 2 I think Mr. Donham will agree that -- 3 THE COURT: Now, that's interesting, 4 but -- 5 MR. DONHAM: May I respond, Your 6 Honor, to that -- 7 THE COURT: Yeah. 8 MR. DONHAM: -- because it's -- number 9 one, this was a section that was added back in 1963. 10 It was not part of the 1985 law. It predated it. 11 THE COURT: And it's your position 12 that that doesn't hold, that it wouldn't -- 13 MR. DONHAM: That law was amended 14 effective July 6th, 2017, to remove the group 15 nonprofit language, which I explained that to 16 Mr. Krislov. 17 THE COURT: That's a good thing, 18 Clint. No limitation. 19 MR. KRISLOV: I'm all for them 20 subsidizing -- 21 THE COURT: That's a good thing. 22 MR. KRISLOV: I'm all for them 23 subsidizing any plan that an annuitant comes up with. 24 And as I understand it, from the one</p>

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<p style="text-align: right;">Page 42</p> <p>1 thing that did get advanced during our meeting, is 2 that I understand Police and Fire will process 3 through the deduction and, eventually, the subsidy, 4 if the subsidy holds, for any legitimate plan that an 5 annuitant comes up with. 6 THE COURT: That's right. 7 MR. KRISLOV: But here's the problem 8 in the meantime. 9 THE COURT: What about you all? 10 Hold on. 11 MS. BOECKMAN: Well, Mr. Krislov is 12 accurate that currently, right now, the Firemen's 13 Fund does process deductions to insurance carriers in 14 addition to Blue Cross Blue Shield and Aetna. 15 There's a third carrier that annuitants requested and 16 the board approved. 17 With respect to subsidies, I think to 18 Cary's point, we're going to have to, as a group, 19 when the proceedings are eventually remanded back to 20 Your Honor, we are going to need to work out the 21 mechanics, because the plain language of the '83 22 amendment for Police and Fire would not currently 23 allow us to do that. 24 THE COURT: I understand. You recall</p>	<p style="text-align: right;">Page 44</p> <p>1 can't -- 2 THE COURT: Well, that's not quite the 3 same thing as the subsidy. 4 MS. BOECKMAN: Exactly. 5 MR. DONHAM: It's not. 6 MS. BOECKMAN: And that's why I'm 7 saying, so from a deduction perspective, all four 8 Funds now have the authority to deduct to any 9 carrier. 10 THE COURT: What I'm interested in, 11 and pursuant to what the appellate court asked me to 12 do, is to see what kind of subsidies we can get that 13 are rational, reasonable, helpful so that they're not 14 bound to attach themselves to these very extremely 15 high rates that are being charged by Blue Cross but 16 can avail themselves of what's available on the -- 17 I'm not done -- 18 MR. KRISLOV: No, I'm -- 19 THE COURT: -- in the marketplace, 20 have a subsidy, and it's never going to be great. 21 We're not in 2007 anymore. 2008 has happened. We 22 all have to be realistic about that. 23 But it sounds to me like this is a 24 good work in progress. But I want the ACA to be able</p>
<p style="text-align: right;">Page 43</p> <p>1 that the appellate court, before the mandate was 2 stopped by the PLA, sent it back to me to kind of 3 work this out, which is why I said last time, let's 4 start now. Let's see what kind of progress we can 5 make. 6 So with regard to you all, that's 7 going to be a problem, and because we want to do this 8 legally. 9 MS. BOECKMAN: Correct. 10 THE COURT: But because there's a 2017 11 amendment that applied to you that took away the 12 requirement of Blue Cross -- 13 MR. DONHAM: It did in that -- 14 THE COURT: -- which you could get. 15 MS. BOECKMAN: He's talking about -- 16 there's sort of two sections of the code that we're 17 talking about right now. One is specific to 18 deductions, just allowing the Fund to be able to 19 deduct if authorized by the annuitant, take a portion 20 of their annuity, and pay it to a health insurance 21 carrier. 22 THE COURT: I see. 23 MS. BOECKMAN: Because the pension 24 code does have a provision that say an annuitant</p>	<p style="text-align: right;">Page 45</p> <p>1 to be -- I want them to be able to use the ACA and 2 still be subsidized, if possible, assuming that's 3 what -- assuming the Supreme Court doesn't screw 4 things up. 5 MR. KRISLOV: Or fix them. I do have 6 one thing Ms. Naber said -- 7 THE COURT: Go ahead. 8 MR. KRISLOV: -- I think is the focus 9 of why we have the problem that we have. 10 And that is because the City -- and I 11 can show you -- the City's position is retiree health 12 plans ended 2016. This is from the City's 13 presentation to retirees. I got copies for 14 everybody. This is what -- the City retiree health 15 plans ended. 2016 was the last year the City offered 16 a retiree health plan. City retiree plans will not 17 be available in 2017 and beyond. 18 This is what they're giving the 19 people, and we get them -- we got them from -- 20 THE COURT: So what? 21 MR. KRISLOV: So here's the thing. 22 What Ms. Naber told you is that the 23 reason the rates are so high for these people -- 24 THE COURT: From Blue Cross.</p>

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<p style="text-align: right;">Page 46</p> <p>1 MR. KRISLOV: Anybody -- is that they 2 have sectored themselves into a -- the City has 3 sectored them into a closed block. 4 Pricing in insurance blocks is based 5 on the demographics of the blocks that you're looking 6 at. 7 And so when the City previously had 8 Blue Cross administering a City overall plan, the 9 rates were based on the demographic which would 10 include people who are age 20 and age -- up to age 11 80. 12 And so the blend of all of them gives 13 a loss experience which keeps premiums down or under 14 a stable construct for everyone. 15 If you take out -- and Ms. Naber spoke 16 about this closed block issue before when we were 17 talking about the 55 percent of cost versus 18 55 percent of the plan. 19 If you take these retirees and you 20 say, look, I'm just not going to cover you guys 21 anymore, you're all in a separate block, have a nice 22 day. 23 THE COURT: Then everything zooms up. 24 MR. KRISLOV: Everything zooms up, and</p>	<p style="text-align: right;">Page 48</p> <p>1 the City doesn't have to do that. But, actually, 2 they don't have to do what you want. 3 MR. KRISLOV: We don't know that yet. 4 THE COURT: Yes, we know that. It 5 just hasn't been reviewed to your satisfaction. We 6 know that. 7 And I think that it's important -- far 8 be it from me to tell people how to live their lives, 9 but I always, in my family, based upon the way I was 10 raised, we always look at the worst-case scenario, 11 and we cover for it. 12 And what I'm trying to do right now -- 13 if the good stuff comes in, great. But we should be 14 -- they're not going to do what you want. They don't 15 have to. It hasn't been finally determined, but it's 16 been semi-finally determined, and we should be 17 thinking about covering these folks under the 18 worst-case scenario legally, so that at least they're 19 covered. 20 You talked about the urgency of making 21 sure they're covered, and I agree with you. So let's 22 take the worst-case scenario, which is you're not 23 going to prevail in the Supreme Court on this issue. 24 Again, if you do, great.</p>
<p style="text-align: right;">Page 47</p> <p>1 it continues to go up as people become necessarily 2 older and sicker, because it doesn't work in the 3 reverse. 4 And the result is that the City has 5 caused this by closing that block and saying, we're 6 not covering you anymore. 7 The City could easily have those 8 people back in the fold, price based on the same way 9 that it does for everybody else that it covers, and 10 that would keep the rates down. 11 THE COURT: But hasn't it been ruled 12 that they don't have to? 13 MR. KRISLOV: Well, that hasn't been 14 finally determined yet. That part is certainly 15 before the Supreme Court. 16 THE COURT: Well, there's nothing 17 about what you say that's untrue in terms of weighted 18 risk, which is what Blue Cross considers in terms of 19 premium. They're essentially booking a risk. And 20 the larger the population, the lower the premiums, 21 because the risk can be spread out across a larger 22 population, and that's great. That's what you were 23 talking about. 24 But what you're also talking about is</p>	<p style="text-align: right;">Page 49</p> <p>1 But the worst-case scenario is that 2 you don't. Then what do we do? We have to cover the 3 folks, make sure that at least there's some system, 4 some process that's in effect so that folks can be 5 covered. 6 And that's what I'm trying to do here 7 through the subsidies and the ACA. Because, clearly, 8 Blue Cross, you know, is not -- Blue Cross is out for 9 Blue Cross, let's just put it that way. 10 MS. NABER: Actually, it's the 11 industry. Many of the carriers don't want to offer a 12 non-Medicare retiree plan, plus the ACA -- 13 THE COURT: More argument for single 14 payer and for everybody being covered by every -- 15 MR. KRISLOV: But here's the problem, 16 Your Honor. 17 You have ruled that the Funds have a 18 primary responsibility to provide plans for their 19 annuitants. 20 They haven't looked at different 21 plans. They haven't explored plans to cover their 22 annuitants. The Police and Fire, their statute says 23 they're obligated to do that. They're fiduciaries. 24 They're not just here to just pay their lawyers and</p>

<p style="text-align: right;">Page 50</p> <p>1 do nothing.</p> <p>2 THE COURT: But I didn't rule that</p> <p>3 with regard to Class 3. I did that with regard to</p> <p>4 Korshak and Windows. Yes? Yes.</p> <p>5 Class 3 is up in the air, man.</p> <p>6 MR. KRISLOV: No, your ruling would</p> <p>7 cover everybody who was a participant in 1983 or '85.</p> <p>8 The people who were participants in</p> <p>9 1983 and '85 would be covered by those statutes for</p> <p>10 life. And Police and Fire, it says those trustees</p> <p>11 are supposed to provide plans. And for Municipal and</p> <p>12 Laborers', it says that the participants may elect to</p> <p>13 participate in a plan.</p> <p>14 THE COURT: I'll have to look and see</p> <p>15 what my ruling said about that. I don't necessarily</p> <p>16 agree or disagree. I just have to refamiliarize</p> <p>17 myself with that portion. I apologize.</p> <p>18 MR. KRISLOV: I would suggest that we</p> <p>19 have -- that they respond to our preliminary</p> <p>20 injunction motion, and they do it quickly, and that</p> <p>21 we set up hearing on this for as quickly after you're</p> <p>22 back as we can.</p> <p>23 THE COURT: Well, I'll tell you</p> <p>24 something. I'm going to give them the opportunity to</p>	<p style="text-align: right;">Page 52</p> <p>1 road, we gave you law. We could provide more or the</p> <p>2 same in the same amount of time that they respond.</p> <p>3 THE COURT: Okay. Well, what I'll do</p> <p>4 is, I'll ask the City and the Funds to respond in 14</p> <p>5 days, and seven for you all. So that brings us to 21</p> <p>6 from today, which will bring us to around November</p> <p>7 15th.</p> <p>8 May I see the red book, please. I'll</p> <p>9 have to read it and do whatever thinking about it my</p> <p>10 brain will allow me to think.</p> <p>11 And I'm on trial the last few days of</p> <p>12 that week. The 22nd is blocked off, and so is</p> <p>13 Monday the 20th.</p> <p>14 The best I can do is give you either</p> <p>15 right after Thanksgiving, or the 21st at about</p> <p>16 2:00 o'clock in the afternoon. But I can't tell you</p> <p>17 that -- that's what I can tell you.</p> <p>18 MR. KRISLOV: I'll take the 21st.</p> <p>19 MS. NABER: I'm not available on the</p> <p>20 21st, Your Honor.</p> <p>21 THE COURT: You're not? All right.</p> <p>22 Then let's go to -- I can't do it on the 28th. I</p> <p>23 believe I can do it on the 27th, Monday the 27th,</p> <p>24 following Thanksgiving, or Wednesday the 29th.</p>
<p style="text-align: right;">Page 51</p> <p>1 respond.</p> <p>2 Forget about them and whether I tell</p> <p>3 them to respond by tomorrow or next year. Your</p> <p>4 biggest hurdle is jurisdiction. You're going to have</p> <p>5 to give me law that says I can consider this while</p> <p>6 you have this PLA pending.</p> <p>7 I understand that while a case is</p> <p>8 going on appeal, there's certain things I can do.</p> <p>9 But this goes -- not the core issues that are on</p> <p>10 appeal. I certainly know the law about that. I</p> <p>11 can't do that. I believe the law is that if it's</p> <p>12 ancillary and not affected by the core issues on</p> <p>13 appeal, then I can deal with it.</p> <p>14 This seems to me to be core, the core</p> <p>15 of issues that are raised by the PLA, as I understand</p> <p>16 your PLA. Mr. Prendergast, I think, said you've</p> <p>17 thrown everything in there.</p> <p>18 But there's some core issues that you</p> <p>19 raise.</p> <p>20 So it's my understanding I lack</p> <p>21 jurisdiction.</p> <p>22 Is that wrong?</p> <p>23 MR. GOLDSTEIN: I believe that we've</p> <p>24 given you -- when the last time we started down this</p>	<p style="text-align: right;">Page 53</p> <p>1 Those are two days that I can give</p> <p>2 you.</p> <p>3 MR. PRENDERGAST: Your Honor, I think</p> <p>4 I'm going to be in Michigan with family -- the</p> <p>5 27th is the day after Thanksgiving, I think.</p> <p>6 THE COURT: It is. How's the 29th?</p> <p>7 MR. PRENDERGAST: 29th is fine.</p> <p>8 MR. KRISLOV: We have a hearing at</p> <p>9 10:30 --</p> <p>10 THE COURT: 2:00 o'clock on the</p> <p>11 29th?</p> <p>12 MR. KRISLOV: 2:00 o'clock would be</p> <p>13 fine.</p> <p>14 THE COURT: All right. Great.</p> <p>15 Is that all right for you, Sarah?</p> <p>16 MS. BOECKMAN: It is, Your Honor.</p> <p>17 THE COURT: Mr. Kugler.</p> <p>18 MR. KUGLER: That's fine.</p> <p>19 MR. PRENDERGAST: Your Honor, can I</p> <p>20 ask --</p> <p>21 THE COURT: Go ahead.</p> <p>22 MR. PRENDERGAST: -- just because of a</p> <p>23 bit of a backlog --</p> <p>24 THE COURT: Go on.</p>

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<p style="text-align: right;">Page 54</p> <p>1 MR. PRENDERGAST: If you can make that 2 21 and 7, we're still going to keep the date. 3 THE COURT: Sure. As long as we have 4 that date. The date's stone, so just work on the 5 briefing schedule within that. 6 MR. PRENDERGAST: 21 days to file a 7 response, seven days for a reply. 8 THE COURT: Sure. 9 MR. PRENDERGAST: The hearing at 10 2:00 p.m. on the 29th. 11 THE COURT: Yes. 12 MR. PRENDERGAST: Thank you, Your 13 Honor. 14 MR. KRISLOV: And, Your Honor -- 15 THE COURT: Yes, Clint. 16 MR. KRISLOV: I would ask that you 17 order us to sit down and continue our discussion -- I 18 mean, I think it's within your authority to order 19 people to meet and discuss. 20 MR. PRENDERGAST: You don't have to 21 order it. We'll be glad to do that. 22 MR. KRISLOV: Okay. We'd also like if 23 the corporation counsel himself could be present, 24 because one of the problems of not having --</p>	<p style="text-align: right;">Page 56</p> <p>1 continue. As I said last time, I'm just getting a 2 jump on what the appellate court told me to do, and 3 everyone's doing it by consent, which is much better 4 than being ordered by some member of the government, 5 whichever branch. 6 So there you go. 7 MR. KRISLOV: We have a couple of 8 other issues that -- 9 THE COURT: Go ahead. 10 MR. KRISLOV: -- that we should deal 11 with. 12 One is, we have proposed a single-page 13 notice to annuitants to go out with either the insert 14 to the City's -- to the reconciliation letters and 15 checks, or/and the letters that the Funds send out to 16 their annuitants. 17 It is appropriate, especially if 18 they're doing mailings now, to include a single-page 19 notice to annuitants so that the people whose rights 20 are being affected by all this have some notice that 21 the litigation exists and who to contact and what 22 they can do to affect their rights, and that's -- 23 THE COURT: I understand. 24 What's the City's point of view?</p>
<p style="text-align: right;">Page 55</p> <p>1 THE COURT: His authority? Well, take 2 my word for it. The mere fact that you're the 3 corporation counsel of the City of Chicago doesn't 4 give you authority at all, so... 5 MR. KRISLOV: It gives us one-hop 6 authority. 7 THE COURT: I'm not ordering -- is it 8 -- what's his name? 9 MR. KRISLOV: Siskel. 10 MS. NABER: Ed Siskel. 11 THE COURT: Mr. Siskel to -- who seems 12 to be a pretty nice guy and very smart -- I'm not 13 ordering him to take a part in this. 14 The City will take care of itself, and 15 you'll take care of yourself. And they'll send their 16 representatives to the meeting that they think are 17 best able to negotiate with you. 18 And if something comes out of it 19 they'll take it up. I bet -- I'm a betting man, and 20 my bet is that they've already taken it up, and 21 there's already conversations in the City, and 22 they're considering all permutations, as they should, 23 as you should, as everyone should. 24 I'm not ordering these meetings to</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. PRENDERGAST: We're opposed to 2 that. 3 THE COURT: Reason? 4 MR. PRENDERGAST: The notice that goes 5 out is a joint notice, which Mr. Krislov's -- it's 6 been the same notice that's gone out on these matters 7 all the time, throughout the settlements. It's the 8 same form notice. 9 Now what he wants to do is add a 10 stuffer, or language to our actual notice that will 11 tell them who he is and what he's doing and what 12 they're seeking to do -- 13 THE COURT: I understand what it is. 14 MR. PRENDERGAST: All right. The 15 purpose of that notice has nothing to do with either 16 giving notice to a class that has never been 17 certified or promoting litigation on behalf of the 18 plaintiffs. 19 We're absolutely opposed to that. 20 I've never been involved in a case where the 21 defendant is corresponding and has to put in the 22 correspondence some pitch from the plaintiff's bar on 23 the pending litigation. 24 If he wants to communicate, to the</p>

<p style="text-align: right;">Page 58</p> <p>1 extent that he can do so ethically, with -- 2 THE COURT: He's trying to save 3 himself the cost of a mailing. 4 MR. PRENDERGAST: Yes. 5 THE COURT: I understand. 6 MR. PRENDERGAST: Yes. He's doing a 7 little more than that, because -- 8 THE COURT: Well, he's -- 9 MR. PRENDERGAST: -- you get this 10 mailing from the City, the City mailing pursuant to 11 the whole process here, it has a certain imprimatur 12 to it. 13 THE COURT: I understand. 14 MR. PRENDERGAST: So we're opposed to 15 it. 16 MR. KRISLOV: There is law. We're 17 glad to provide law where the defendants are in 18 regular communication with class members that we 19 can -- that we should be allowed to include a stuffer 20 that won't cost any additional postage. 21 THE COURT: Then I'll hold it abeyance 22 until the 27th, and I'll take a look at the law. 23 Because my previous position is that 24 to each his own, and they don't have to use their</p>	<p style="text-align: right;">Page 60</p> <p>1 City's one or the joint letter's one page and the 2 check will not bring the mailing above one ounce. 3 So that we would -- 4 THE COURT: They're not concerned 5 about that. They're concerned about the substance of 6 the letter. 7 Is that right? 8 MS. NABER: The substance. And 9 there's extra cost of stuffing the envelopes and the 10 printing. 11 But just so you know, Your Honor, this 12 reconciliation that we're talking about -- 13 THE COURT: Well, what's the -- I'm 14 sorry. What's the letter? I don't have a copy of 15 the purported letter. I have a copy of your notice 16 that we just talked about. 17 MR. KRISLOV: Why don't we submit -- 18 because there's forms of both what Ms. Naber proposed 19 initially and what we responded. 20 THE COURT: Sure. I can't rule on it 21 in a vacuum. I need to see that -- 22 MR. KRISLOV: We'll present both 23 copies -- 24 MS. NABER: If I may speak to this,</p>
<p style="text-align: right;">Page 59</p> <p>1 mailing to push your business, to be straight about 2 it. 3 Not that you shouldn't have business. 4 You're great at what you do. But I don't think it's 5 their burden, or duty, or responsibility. Or let me 6 be more exact. The citizens of the City of Chicago 7 shouldn't have to necessarily pay for it. 8 But I will look at your law, and if 9 that law says what you say, I will change my mind. 10 But I haven't yet ruled. I'll keep my 11 mind open to it, and we'll hold it in abeyance. 12 Please get it to me before the 29th. 13 MR. KRISLOV: Okay. That will also 14 bring up the other one that Ms. Naber's going to talk 15 about, which is what goes into -- there is a joint 16 letter that goes out with the reconciliation. 17 And we have proposed changes -- they 18 have rejected almost all of them -- on the form of 19 the notice that goes out to annuitants with a refund 20 check if they get it or just the joint letter. The 21 joint letter is part from me too, so it's not just 22 the City's letter. 23 We had proposed changes. We do know 24 that the weight of the one page added to either the</p>	<p style="text-align: right;">Page 61</p> <p>1 Your Honor. 2 THE COURT: Sure. 3 MS. NABER: This is part of the 2008 4 reconciliation process in Korshak, not Underwood. 5 The appellate court ordered us to do 6 the last six months of 2013. The City completed that 7 at the end of June. We've been waiting now to issue 8 the refund checks to the Medicare people. There were 9 no refunds for non-Medicare. 10 THE COURT: Yes. 11 MS. NABER: We're still waiting, 12 Mr. Krislov has -- 13 THE COURT: Why? What are you waiting 14 for? 15 MS. NABER: -- told us that we cannot 16 send those out because, one, he won't agree to the 17 joint letter, which has been used for almost a 18 decade -- 19 THE COURT: Uh-huh. 20 MS. NABER: -- that the Court 21 originally approved, and now he wants to make changes 22 to add his slant of things. 23 Which I understand why he wants to do 24 it, but we -- this was a hard-fought letter that</p>

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<p style="text-align: right;">Page 62</p> <p>1 we've been using with no changes -- 2 THE COURT: Well, I don't have time to 3 take a look at this and get back to you quickly. 4 MS. NABER: But if we're waiting -- 5 THE COURT: But the money has to go 6 out to these people. 7 MR. KRISLOV: Here's the problem that 8 we have on the money. 9 THE COURT: So -- 10 MR. KRISLOV: Here's the problem that 11 we have -- 12 THE COURT: Here's your problem. I'm 13 ordering the money to go out. 14 MR. KRISLOV: Wait, Your Honor. 15 THE COURT: Hold on a second. I'll 16 wait when I'm done. I want the money to go out. 17 MR. KRISLOV: So do I. 18 THE COURT: I want it to go out now. 19 MR. KRISLOV: Here's the problem. 20 THE COURT: So you -- talk to me about 21 it. 22 MR. KRISLOV: Here's the problem. 23 THE COURT: What? 24 MR. KRISLOV: The auditor's notes --</p>	<p style="text-align: right;">Page 64</p> <p>1 allocated to penalty amounts which the City took for 2 itself and did not allocate. 3 That \$2.4 million is a substantial 4 amount, especially considering that the refunds that 5 the City is making for the second half of 2013 are 6 only \$123,000, and so it results in not very much to 7 anybody. 8 But if those penalty payments were 9 allocated among the City and the annuitants, that 10 would be about triple that would allocate to the -- 11 THE COURT: And? 12 MR. KRISLOV: And that would result in 13 much more refunds -- 14 THE COURT: And? 15 MR. KRISLOV: And we could -- 16 THE COURT: And? 17 MR. KRISLOV: And so we asked the City 18 to see the agreement, and the City refuses to divulge 19 the agreement. 20 And that's the -- 21 THE COURT: And that's how law cases 22 are born. 23 I am not going to rule on something 24 that has not been litigated or put before me.</p>
<p style="text-align: right;">Page 63</p> <p>1 according to the auditor's notes -- 2 THE COURT: Yes. 3 MR. KRISLOV: The auditor's notes say 4 that he was informed by Sulan -- what's Sulan's last 5 name? 6 MS. NABER: I'm not telling you 7 because -- 8 THE COURT: Oh, come on. 9 MS. NABER: -- I have never seen this 10 auditor's note. I just give the information. You 11 don't have to use names. 12 MR. KRISLOV: Here's what happened. 13 The City entered into a settlement 14 with Blue Shield for ten years of the administration. 15 And according to the auditor's notes 16 as related to me by the auditor -- wait -- there was 17 a total payment of \$10.5 million made from Blue Cross 18 to the City, of which 8.1 was for compensation that 19 was allocated, crediting about 85 percent to active 20 accounts, about 15 percent, I think, to retiree 21 accounts. That resulted \$1 million credit for 22 annuitants. 23 There was also, apparently, a 24 \$2.4 million credit which the City -- which was</p>	<p style="text-align: right;">Page 65</p> <p>1 You are assuming you're going to win. 2 You may very well win on that, but it's not something 3 that they agree with. 4 So I want this money that has been 5 agreed to, that has been allocated, to go out, and 6 you're not going to stop it. 7 MR. KRISLOV: I'm not trying to stop 8 it? 9 THE COURT: Yes, you are. 10 MR. KRISLOV: No, I'm not. 11 THE COURT: Yes, you are. 12 MR. KRISLOV: No, Your -- 13 THE COURT: You're delaying it. 14 MR. KRISLOV: No. Your Honor, I am 15 trying to make sure that -- in the reconciliation and 16 audit process, I'm involved in, and I have to sign 17 off on it, and I have to know that the right amounts 18 are being credited to the retirees -- 19 THE COURT: And you have a difference 20 of opinion as to what the right amounts include, but 21 you do agree that the amounts that they have should 22 be given to these folks, yes? 23 MR. KRISLOV: Yes, as long as it's 24 not --</p>

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<p style="text-align: right;">Page 66</p> <p>1 THE COURT: You just think there 2 should be more. You just think there should be more. 3 File a lawsuit. 4 MR. KRISLOV: No, Your Honor. It's 5 part of the Korshak reconciliation. 6 THE COURT: Bring it before me in 7 writing. 8 MR. KRISLOV: That's what I did in my 9 letter. That's why I explained to you in my letter 10 what the -- 11 THE COURT: Please. That's not a 12 letter. Not a letter. Bring it to me in a motion -- 13 MR. KRISLOV: Okay. 14 THE COURT: -- and we'll deal with it. 15 But in the meantime, it goes out. 16 MS. NABER: And just for your 17 information, Your Honor -- 18 THE COURT: And if they have had to 19 spend money to send out another one with a bigger, 20 fatter check to more people, that's on them. 21 MR. KRISLOV: That's fine. 22 THE COURT: Okay. Done. Send that 23 out. 24 MR. KRISLOV: Also, I do not want the</p>	<p style="text-align: right;">Page 68</p> <p>1 Give everybody the facts, and that's that, without 2 anyone telling why they should get it or shouldn't 3 get it. 4 MR. KRISLOV: I think we can do a 5 brief joint letter on those terms. I think we can do 6 that pretty easily. 7 MR. PRENDERGAST: No, we don't think 8 we can at all. 9 MS. NABER: Your Honor, if I may just 10 speak for a moment, because I've offered -- Clint has 11 this information. 12 Even -- first of all, I disagree with 13 most everything he said. The confi- -- summary of 14 the letter is confidential. The City has to honor 15 that agreement. We are prepared to show it to you in 16 camera today. 17 Blue Cross Blue Shield, I gave them 18 notice. They have agreed to show it to you in 19 camera. 20 So it eliminates everything he just 21 said. 22 THE COURT: I'm gone by 2:00. 23 MS. NABER: And I understand that, 24 Your Honor.</p>
<p style="text-align: right;">Page 67</p> <p>1 notice to go out indicating it's a final -- this is a 2 joint letter that goes out with checks. 3 If they just want to send out the 4 checks for those interim amounts without a letter, 5 that's fine. 6 But the joint letter that they propose 7 made it clear that this is final, this is the end, 8 there's no further. 9 MS. NABER: Your Honor, we made 10 changes. We agreed to take out the final, although 11 we believe it is. So what I suggest is we propose 12 our competing letters to you. 13 Mine follows the language that we 14 used -- 15 THE COURT: I want the money to go out 16 while I'm away. I want it to go out now. 17 MS. NABER: Okay. 18 THE COURT: And I want the letter to 19 reflect that this is exactly what it is, and leave 20 out the word "final," and then say there is a 21 conflict as to whether more is going to be coming or 22 not, which will be brought -- which will be dealt 23 with in front of the Court. 24 That's accurate. Those are the facts.</p>	<p style="text-align: right;">Page 69</p> <p>1 My concern is that what we're talking 2 about is additional moneys to non-Medicare. 3 So we can send out the Medicare 4 checks. There's no more money going to the Medicare 5 people. This involves non-Medicare. 6 For the year that we're talking about, 7 the non-Medicare people were undercharged between 8 800,000 to a million dollars, meaning the City picked 9 up that money. 10 Even if we add in whatever Mr. Krislov 11 says should be added in with this story that he just 12 said, it makes no difference. They get no more 13 money. So I hate to get their hopes up that there's 14 something else coming, when I've explained this to 15 Mr. Krislov. 16 He can talk to the auditor and see 17 where the funds were applied to the claims of the 18 non-Medicare, and we can be done with it. 19 THE COURT: All right. Well, then, 20 you can put in the amorphous language that there's an 21 argument as to whether there are any more funds 22 available and whether they will be disbursed. That's 23 all. 24 Do not add the "don't get your hopes</p>

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<p style="text-align: right;">Page 70</p> <p>1 up," or "it's coming and don't worry about it." 2 Either way, just a general -- an accurate notice that 3 there is -- the game is afoot but that it hasn't been 4 resolved. One line, maybe two. Nothing more. 5 MR. PRENDERGAST: Your Honor. 6 THE COURT: Yes. 7 MR. PRENDERGAST: We're going to take 8 it right out of the transcript from what you just 9 said. 10 THE COURT: Okay. 11 MR. PRENDERGAST: Without the 12 shorthanded -- 13 MR. KRISLOV: Your Honor, could we at 14 least -- 15 THE COURT: Without the Sherlock, the 16 Conan Doyle in it. 17 MR. KRISLOV: I think we can do a 18 reasonably -- 19 THE COURT: Hold on, Clint. The man's 20 talking, man. 21 MR. KRISLOV: Yeah, I know, but -- 22 THE COURT: Well, that's good. You 23 know, then stop. Let him finish, like I ask people 24 not interrupt you.</p>	<p style="text-align: right;">Page 72</p> <p>1 look at it. 2 MR. KRISLOV: I understand. 3 THE COURT: Why are you asking me 4 again? 5 MR. KRISLOV: I'm just asking -- well, 6 for that letter -- 7 THE COURT: You can ask me 17,000 more 8 times. The answer's going to be the same. I've 9 already ruled on it, Clint. Why do you raise it 10 again? The answer is no. Not until I see case law 11 saying I must allow it. 12 MR. KRISLOV: Okay. 13 THE COURT: The City of Chicago is not 14 going to pay for you to put in your position on the 15 citizen's dime. 16 MR. KRISLOV: I'm not putting in my 17 position, Your Honor. 18 THE COURT: Yes, you are. 19 MR. KRISLOV: No. I am -- the 20 one-page letter -- the one-page notice that I 21 suggested just advises them of the pendency of the 22 litigation. 23 THE COURT: I do understand that. 24 MR. KRISLOV: And that's --</p>
<p style="text-align: right;">Page 71</p> <p>1 MR. PRENDERGAST: The reason I'm 2 saying this, Judge, is that when you write the order 3 for today, we're going to get the transcript. We're 4 going to ask the court reporter to expedite it. 5 We'll have that language in the letter. 6 If Mr. Krislov wants to sign off on 7 it, he doesn't want to sign off on it, fine. We'll 8 send it without his signature. But we do want to get 9 these checks out, you want to get these checks out, 10 and they want to receive these checks. 11 There's no reason for -- 12 THE COURT: It's not a lot of money, 13 but they're entitled to whatever it is, and we're not 14 going to let the good thoughts of anybody stop them 15 from getting that which is due. 16 So that's the first thing. 17 Go ahead. 18 MR. KRISLOV: Then we got to figure 19 out where they are on the other years. 20 THE COURT: Yeah. I'll deal with that 21 on the 29th. 22 MR. KRISLOV: May we have our one-page 23 notice go in with that joint letter? 24 THE COURT: No. No. I said I would</p>	<p style="text-align: right;">Page 73</p> <p>1 THE COURT: You can spend money and do 2 it yourself until you see -- if it's that urgent, I 3 suggest you do. 4 If you want to wait until you show me 5 case law, and I'll review it before the 29th, I'll 6 be happy to do that. 7 MR. KRISLOV: I'll send you over case 8 law before you leave. 9 THE COURT: I doubt it, because I'm 10 leaving. 11 MR. KRISLOV: I understand. 12 THE COURT: And so are you. 13 Good-bye, everybody. 14 MS. NABER: Thank you, Your Honor. 15 (Proceedings concluded at 11:35 a.m., 16 October 25, 2017.) 17 18 19 20 21 22 23 24</p>

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1 REPORTER'S CERTIFICATE

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3 I, JERRI ESTELLE, CSR, RPR, doing
4 business in the City of Chicago, State of Illinois,
5 do hereby certify that I reported in computerized
6 shorthand the foregoing proceedings as appears from
7 my stenographic notes.

8 I further certify that the foregoing
9 is a true and accurate transcription of my shorthand
10 notes and contains all the testimony had at said
11 proceedings.

12 IN WITNESS WHEREOF, I hereunto set my
13 hand as Certified Shorthand Reporter in and for the
14 State of Illinois on October 31, 2017.

15 
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17 Jerri Estelle, CSR, RPR
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