

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

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

Record of proceedings had at the
hearing of the above-entitled cause, before the
Honorable NEIL H. COHEN, one of the Judges of said
Court, on August 9, 2016, in Room 2308, Richard J.
Daley Center, Chicago, Illinois, commencing at
10:30 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
 8 Mr. Kenneth T. Goldstein
 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
 16 Mr. Michael Layden
 mlayden@rjpltd.com,
 17 for the City;
 18 DAVID R. KUGLER & ASSOCIATES, LTD.
 19 6160 North Cicero Avenue
 20 Suite 308
 21 Chicago, Illinois 60646
 22 (312) 263-3020
 23 BY: Mr. David R. Kugler
 davidkugler@comcast.net
 24 for the Trustees of the Policemen's
 Annuity and Benefit Fund of Chicago;
 Annuity and Benefit Fund of Chicago;

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

1 THE COURT: Underwood versus City of
 2 Chicago.
 3 On behalf of Underwood.
 4 MR. KRISLOV: Good morning, Your
 5 Honor. Clint Krislov and with me, Ken Goldstein, on
 6 behalf of the plaintiffs.
 7 THE COURT: Hi, welcome. On behalf of
 8 the City of Chicago and the four funds.
 9 MR. KENNEDY: Good morning, Your
 10 Honor. John Kennedy with Cary Donham on behalf of
 11 the Laborers' Fund.
 12 THE COURT: Hi.
 13 MR. KUGLER: David Kugler, Your Honor,
 14 on behalf of the Policemen's Annuity and Benefit
 15 Fund.
 16 THE COURT: Welcome.
 17 MS. BOECKMAN: Good morning, Your
 18 Honor. Sarah Boeckman on behalf of the Municipal
 19 Fund and the Firemen's Fund.
 20 THE COURT: Welcome.
 21 MR. DONHAM: Cary Donham on behalf of
 22 the Laborers' Fund.
 23 THE COURT: Very good.
 24 MR. PRENDERGAST: Good morning, Your

1 Honor. Richard Prendergast and Michael Layden on
 2 behalf of the City.
 3 THE COURT: Hi. Welcome. So I have
 4 before me today for consideration, which I've already
 5 considered, but I'll listen to what folks have to
 6 say: Underwood's emergency motion, for one, a
 7 reconsideration/correction/clarification of my July
 8 21st order; a request for 304(a) findings so that Mr.
 9 Krislov can appeal; and, three, a renewed motion for
 10 the issuance of a preliminary injunction with regard
 11 to the pre-1989 claims and to enjoin the City and the
 12 Funds from implementing a reduction or a change -- of
 13 the change of terms -- or a change of terms as of
 14 June 30th, 2013.
 15 I've received nothing from the Funds.
 16 I've received nothing from the City in response.
 17 Did you file something that I just
 18 never got?
 19 MR. PRENDERGAST: No, Your Honor, we
 20 haven't filed it yet when we received it for a
 21 presentment.
 22 THE COURT: All right. And what is it
 23 you wish to do, Richard, on behalf of the City?
 24 MR. PRENDERGAST: Your Honor, it's a

1 little more complicated because the motion is really
2 three motions, and they involve different rulings by
3 the Court.

4 So, for example, on the motion for
5 injunctive relief, we believe that -- we would be
6 happy to brief it if the Court wants us to brief it,
7 but --

8 THE COURT: Well, I'll tell you, I'm
9 ready to rule on that today, but you do what you want
10 to do. I'm going to rule on that one way or the
11 other.

12 And however I rule, I will expect --
13 you know, we'll see what happens.

14 Go ahead. How about the motion for
15 reconsideration/correction/clarification of my June
16 21st order?

17 MR. PRENDERGAST: I'm prepared to
18 argue that today.

19 THE COURT: All right. So you don't
20 wish to submit anything on that in writing?

21 MR. PRENDERGAST: I don't think we
22 have to. It's just a fairly narrow --

23 THE COURT: And what is your position
24 about the request for the 304(a) findings so that Mr.

1 Krislov can appeal?

2 MR. PRENDERGAST: Our position is that
3 the Court should deny the motion.

4 THE COURT: And the reason?

5 MR. PRENDERGAST: Your Honor, I think
6 it's not an appropriate 304 finding because it
7 certainly --

8 THE COURT: Because it's a motion to
9 dismiss?

10 MR. PRENDERGAST: In part because it's
11 a motion to dismiss and in part because there's a
12 great deal of overlap between the disposition of that
13 motion and the matter that remained before the Court.

14 It's not a clear, distinct issue that
15 should go up on appeal. In fact --

16 THE COURT: Because it doesn't wish to
17 appeal all of the claims that are --

18 MR. PRENDERGAST: Well, no. It's not
19 -- a 304(a) finding anticipates that all of the
20 claims are not going to be appealed, but there has to
21 be a clear distinction between the claims that are
22 appealed under 304(a) and everything else in the
23 case.

24 And these --

1 THE COURT: But it's your feeling that
2 they're so inextricably intertwined that you can't
3 rule on one without the other?

4 MR. PRENDERGAST: That's right. That
5 is our view.

6 And it is also our view that based
7 upon the language of appellate court cases that deal
8 with 304(a), one of the things that the Court is
9 admonished to avoid is piecemeal litigation.

10 So we're staying down here on some
11 subclasses, going up on another subclass, but not all
12 the issues on that subclass, Your Honor. That is the
13 height of piecemeal litigation.

14 THE COURT: Well, the Court's July
15 21st order ruled specifically and narrowly, but I
16 think clearly, regardless of Clint's position
17 otherwise, with regard to the merits, with regard to
18 the 1983 and 1985 changes and who's entitled or not
19 to receive the benefit of those; did it not?

20 MR. PRENDERGAST: It did. But it's
21 not clear to me at all that his 304(a) motion is
22 designed to address that issue.

23 THE COURT: Okay.

24 MR. PRENDERGAST: The 304(a) motion,

1 it seems to me, is designed to address that issue
2 regarding the post -- the subclass four that deals
3 with those who were --

4 THE COURT: I ruled clearly on that
5 one as well, did I not?

6 MR. PRENDERGAST: You did. You did
7 rule clearly on that one.

8 But Mr. Krislov has brought this case
9 on behalf of four subclasses, all involving the same
10 clause of the constitution, all involving the same
11 history.

12 And the appellate court, in dealing
13 with those kind of issues, has spoken to that kind of
14 piecemeal litigation.

15 I can just give you a quote here.

16 THE COURT: Well, let me talk to you
17 about piecemeal litigation, and I'll listen to what
18 you have to say, Mr. Krislov, but, of course -- and
19 the funds, of course.

20 But in a very -- this is a class
21 action. And in a very true sense, there are four
22 distinct groups of folks whose healthcare benefits or
23 not, are being -- are in play here. But they're four
24 distinct classes, as everyone has agreed.

1 If I've already ruled with regard to
2 three of them, as I have, Korshak, Windows and
3 subclass four, there's nothing left, really. I
4 think, as Mr. Krislov suggested, even though he
5 disagrees with my ruling in some cases, there's
6 really nothing left to do with regard to those, and
7 there's nothing piecemeal about an appeal of those
8 four -- three out of four distinct groups.

9 And it seems to me, Richard, that it's
10 important for the -- we're talking about people. And
11 it's important for those people to know where they
12 stand so that they can make accommodations if
13 necessary.

14 Not so much with regard to the Korshak
15 and Windows class, because the City has agreed to
16 cover them, and I'm sure they've agreed to accept
17 that. But certainly with regard to subclass four,
18 which the City says it has no obligation to cover in
19 terms of healthcare benefits. And I've agreed with
20 you.

21 But in the meantime, it's nice that
22 I've agreed -- from Mr. Krislov's point of view, it's
23 nice that I've made that decision, even though he
24 disagrees with me, but it doesn't help those folks.

1 And as soon as it gets reviewed with a
2 final review, the better it is from those human
3 beings' point of view so that they can make those
4 accommodations or not. That's not piecemeal.

5 And maybe even if you were to think of
6 it as piecemeal, this Court's position -- at least
7 I'm waiting to hear from you again with regard to
8 what I say, it's only fair -- is that even though it
9 may be piecemeal as to those, they're a little
10 universe unto themselves, or a big universe unto
11 themselves. They have a right to know. You've won
12 on that, but they have a right to know whether I'm
13 right or not.

14 And extending the timeline during
15 which they're in limbo, so to speak, since I'm only
16 one guy, and I'm at the trial court level, it's
17 harmful and doesn't do what I want to be done and I
18 think what the law requires, which is to have some
19 finality over an important group of people who
20 deserve to know whether I'm right or I'm wrong.

21 I do believe I'm right. I think
22 Matthew says I'm right, and I said that before.
23 Clint thinks I'm wrong, and he's entitled to his
24 belief, and he's entitled to appeal my ruling.

1 So I don't see why there's any reason
2 to prevent them from going on and issuing 304(a)
3 language as to that group.

4 Tell me why I'm wrong about that, from
5 the City's point of view.

6 MR. PRENDERGAST: I'm looking at this
7 in terms of --

8 THE COURT: And, by the way, let me --
9 I'm sorry to interrupt you, hopefully, for the last
10 time, but I wouldn't bet on it.

11 It's important for the City to know
12 this too and to get final resolution just for that
13 subclass four so they know whether to raise my
14 property taxes some more or not. This is important
15 for everybody to know as soon as possible.

16 We're not talking about piecemeal
17 litigation in an amorphous way. We're talking about
18 dollars and cents and people's lives so they know
19 what they've got to do.

20 And so the City knows what it has to
21 do, even though I'm sure it loathes to raise any more
22 taxes here or there. Who wants to? But they're
23 going to have to if I'm wrong.

24 Wouldn't the City want to know that

1 sooner rather than later?

2 MR. PRENDERGAST: Your Honor, I think
3 that we're past the motions to dismiss in this case.
4 There's not a whole lot of discovery to be done in
5 this case. We're going to have -- if we can get this
6 case moving throughout this year.

7 When we talk about piecemeal
8 litigation in the context of this case, we're talking
9 about an appeal that is currently pending on the
10 injunction -- the denial for a preliminary injunction
11 for injunctive relief. Now, we're going to have
12 another appeal that pertains to one piece of this
13 litigation, pertaining to one portion of the
14 plaintiffs.

15 And what the appellate court has said
16 under those circumstances is that permitting separate
17 appeals in such a case would require the appellate
18 court to relearn, inefficiently, the same set of
19 facts when the case returns for a second appeal
20 following the final judgment on all of the claims.

21 That's a quote from Walters versus
22 Morton. I'd be happy to brief this issue, and I
23 understand your point.

24 THE COURT: It's factually intensive.

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1 I don't need the law. I know the law and you know
2 the law. And piecemeal litigation is not something I
3 haven't heard before.
4 MR. PRENDERGAST: Sure.
5 THE COURT: And you haven't uttered
6 before. So I'm aware of that.
7 But I -- it's factually intensive, and
8 that's the important thing here. And I don't want to
9 cut you off, so you may continue.
10 MR. PRENDERGAST: But you didn't cut
11 me off, Your Honor.
12 This is obviously an issue that falls
13 within the discretion of the Court. I respect the
14 Court's discretion. I think all the lawyers here do.
15 But I do believe that litigation that
16 constantly resurrects itself in an appeal on an
17 interlocutory basis, we have an interlocutory appeal
18 there now, and --
19 THE COURT: I want to talk to you
20 about that in a second, but go ahead.
21 MR. PRENDERGAST: We have an
22 interlocutory appeal there now. We're going to have
23 another one. We've had multiple motions for
24 injunctive relief in this case from the beginning,

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1 both in federal court and state court.
2 Every time Mr. Krislov experiences an
3 adverse ruling, we have an amended complaint or
4 appeal.
5 The piecemeal nature of this case has
6 really, I think, gotten out of hand. I think this is
7 the classic case in which the Court says, I'm going
8 forward with this case. We're going to proceed with
9 it, and the motions to dismiss are behind us. Let's
10 go.
11 THE COURT: Okay.
12 MR. PRENDERGAST: And that's my view.
13 THE COURT: What about the Funds?
14 Would the Funds like to chip in on this? I assume
15 you all endorsed Mr. Prendergast's point of view, and
16 if not, I would love to hear from you.
17 David, would you please state your
18 name, please.
19 MR. KUGLER: David Kugler for the
20 Policemen's Annuity Fund.
21 Your Honor, the Fund would abide by
22 Your Honor's ruling. On the 304 we don't see any --
23 we have no objection to it going forward on the 304
24 language.

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1 MS. BOECKMAN: Sarah Boeckman for the
2 Municipal and the Firemen's Fund.
3 We adopt Mr. Prendergast and the
4 City's position on both the 304, the motion to
5 reconsider, and the motion -- the injunction motion
6 -- the motion for injunctive relief.
7 THE COURT: Okay.
8 MR. KENNEDY: Good morning, Your
9 Honor. John Kennedy on behalf of the Laborer's Fund.
10 The Laborer's Fund also endorses Mr.
11 Prendergast's comments with respect to all three
12 motions.
13 THE COURT: Okay. Well, interesting.
14 Curious.
15 I'm going to hold my ruling on that in
16 abeyance, pending our discussion of other matters
17 today, and I'll give you my final ruling on that.
18 And, Clint, I would love to hear what
19 you have to say, but when I was a young prosecutor,
20 and when I was a defense counsel thereafter, both
21 civil and criminal, I learned one rule, which is when
22 you're winning, say nothing.
23 Are you with me on that?
24 MR. KRISLOV: I'm with you, Your

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1 Honor.
2 THE COURT: Is there anything you'd
3 like to say with regard to 304(a) only with regard
4 right now to subclass four?
5 MR. KRISLOV: Well, 304(a) is with
6 regard to everybody because your ruling is definitive
7 on the law with respect to everybody and subclass --
8 THE COURT: But it's not with regard
9 to subclass three, wouldn't you agree?
10 MR. KRISLOV: Oh, no. It is
11 definitive with respect to --
12 THE COURT: Well, then you do need a
13 clarification. It's not.
14 MR. KRISLOV: Okay.
15 THE COURT: Tell me how is it
16 definitive with regard to subclass three.
17 MR. KRISLOV: If your March --
18 THE COURT: It is not with regard to
19 the statute of limitations aspect.
20 MR. KRISLOV: Well, that's -- I
21 understand that part.
22 THE COURT: All right. Just so we
23 understand.
24 MR. KRISLOV: Yes. But with respect

5 (Pages 14 to 17)

1 for their entitlement, which you ruled in your -- I
2 believe it's the March clarification, you ruled that
3 the subclass three is entitled to just what the
4 statute provides. No more, no less. And that's a
5 matter of law, and that they're not entitled under
6 contract --

7 THE COURT: That's before Matthews
8 came down, and then when I said that it's time
9 limited. Yes?

10 MR. KRISLOV: Well, in that you said
11 that -- well, that was -- I guess that was before
12 Matthews came down.

13 But if your clarification in March was
14 that what they're entitled to is just what the
15 statute provides --

16 THE COURT: Yes.

17 MR. KRISLOV: -- that's a clear ruling
18 on the law, which, obviously, we disagree with.

19 THE COURT: Sure.

20 MR. KRISLOV: Your rulings on the law
21 were very clear. And while I disagree with you, I --
22 you know, I appreciate clear and definitive rulings.

23 And on the law, your rulings I think
24 are -- leave no -- there's no fuzzy area. I think

1 the statute of limitations issue will -- we think
2 will blow away clearly, but whatever.

3 THE COURT: Why?

4 MR. KRISLOV: Oh, because the clear
5 intent of the preservation of the reservation of
6 rights, which was in all the settlements, including
7 the one that expired in 2013, was everybody's rights
8 get reserved to revive the case if at the conclusion
9 of the settlement there has been no permanent
10 resolution.

11 That was in the '87 and codified in
12 the '89 agreement. That was in the '97 agreement,
13 which we were not parties to. That was in the 2003
14 agreement.

15 I think your first ruling rejecting
16 the statute of limitations, you know, I think that
17 will hold. But that sort of -- call that a side
18 issue, but on everything else, and even on that, I
19 think we will -- we will prevail in the appellate
20 court.

21 And it's time to get a second opinion,
22 if you will, on all these issues.

23 And the core group of class --
24 subclass three -- I mean, one of the difficult things

1 of this since you have refused at this point to
2 certify the case as a class action, but the case
3 definitively, and everybody agrees, should be -- is
4 treated for each class differently.

5 I think it's -- we would think it's
6 time to certify the class, but whatever.

7 The 304(a) findings are really to get
8 your clear decision to the appellate court. I'll
9 make Mr. Prendergast a deal, and I'll let the thing
10 take as long as it wants to get resolved at the trial
11 level as long as we reinstate the 2013 status quo,
12 because then the participants --

13 THE COURT: Well, you make any deal
14 you want outside the auspices of this Court. That's
15 not before me. We're not at marketplace here. So do
16 it on your own time, not mine.

17 MR. KRISLOV: I'm just saying,
18 procedurally, I would be willing to forego 304(a) and
19 let the whole thing play out, as long as the City was
20 willing to reinstate the 2013 status quo so that the
21 retirees can have their benefits continue while the
22 matter is being litigated.

23 THE COURT: Okay.

24 MR. PRENDERGAST: Your Honor.

1 THE COURT: Yes, please.

2 MR. PRENDERGAST: I beg your pardon.
3 First of all, I'm not making any deals
4 today.

5 Secondly, I think it's going to be
6 very interesting to see what this 304 language looks
7 like.

8 THE COURT: Yes, and I don't have --

9 MR. PRENDERGAST: Based upon what --
10 and he hasn't submitted anything.

11 THE COURT: I would need the 304
12 language that you suggest. Although, I do have the
13 normal language; is that what you meant?

14 MR. KRISLOV: That's all you want.
15 That's all we're asking for is that there's no just
16 cause to delay enforcement or appeal of the
17 decisions.

18 MR. PRENDERGAST: Decisions. You see,
19 the plural pops up.

20 Counsel forgets that the motion to
21 reconsider being ruled on had to do with your
22 interpretation of the '83 and '85 amendments.

23 THE COURT: Yeah.

24 MR. PRENDERGAST: That's what that has

1 to do.

2 THE COURT: Yeah.

3 MR. PRENDERGAST: What his motion for
4 a 304(a) is predicated on this. There is -- as you
5 have just addressed in your remarks, is addressed in
6 one group of people, particularly, the fourth
7 subclass, because they, as you put it, they don't
8 know what the future bodes for them.

9 What counsel really wants to do here
10 is off of a motion to dismiss, he wants to take a
11 full appeal of every issue in this case. That's what
12 he wants.

13 THE COURT: Yes.

14 MR. PRENDERGAST: And he's going to
15 call it a 304(a).

16 Your Honor, that's not what 304 is
17 there for. 304(a) is, for example, if there's one
18 party that has a complete adjudication of that
19 party's rights but the other -- but not an
20 adjudication of the other party's rights, then that
21 one party comes in and asks for a 304(a) finding so
22 they can get out of the litigation.

23 What we're trying to do here -- this
24 reminds me of the effort to go back a sentence or

1 two, is that Judge Green commented at one time or
2 another in the litigation. It always pops up in the
3 briefs. He wants to take an appeal of the entire
4 matter.

5 That's not appropriate in this case.
6 There are issues, as you pointed out, with respect to
7 subclass three that have yet to be adjudicated.

8 And subclass one and two, you're
9 right, the City has indicated that it's going to meet
10 its obligations and has met its obligations. It's
11 going to gratuitously extend the rights to them.

12 But he's going to be up there arguing
13 every one of the issues that we've spent all this
14 time arguing on the motion to dismiss. He wants to
15 take the shortcut, and that's not what 304(a) is for.
16 That's there for a very specific --

17 THE COURT: I understand. So let me
18 ask you this: I would like each party's point of
19 view on this, if I were to -- I feel as though I've
20 already denied the -- the motion to dismiss with
21 regard to the Korshak and Windows class is really
22 moot, is it not, Clint, because the City is doing
23 exactly what you want?

24 MR. KRISLOV: No, not exactly.

1 THE COURT: Tell me what you're
2 missing, what they're not doing that you want.
3 They're giving all the benefits they
4 would have otherwise gotten.

5 MR. KRISLOV: No, no. What they are
6 doing is instead of at least 50 percent, they are
7 saying they will do up to 50 percent. That's what
8 they said they would do.

9 They have made minor changes in the
10 amounts. It less impacts them than the group three
11 and four, but those people are not moot.

12 MR. PRENDERGAST: You see, that's the
13 whole point, Judge.

14 THE COURT: Well, if that's the case,
15 then isn't that something that I have to deal with on
16 summary judgment or trial? It's never going to get
17 to summary judgment -- I mean, to trial on that.

18 But summary judgment -- I just dealt
19 with a motion to dismiss, and I just ruled that
20 because they -- because they have offered to do that
21 which they are obligated to do -- obligated to do --

22 MR. KRISLOV: No. I disagree with you
23 on that.

24 THE COURT: Well, let me finish the

1 sentence before you disagree with me --

2 MR. KRISLOV: Sorry.

3 THE COURT: Just because it's
4 courteous.

5 MR. KRISLOV: I apologize. I
6 apologize.

7 THE COURT: That it's all mooted out.
8 If you feel it's not, then maybe 304(a) language is
9 not appropriate because there's other issues to be
10 resolved.

11 I thought it was. I thought they
12 acknowledged everything that they should be doing and
13 that they're doing it for the benefit of those folks.
14 And you think not, okay.

15 Then there's some factual issues to be
16 decided within those two subgroups that make 304(a)
17 language inappropriate because they're not done. I
18 thought they were.

19 And I would have given you 304(a),
20 just so the record is clear, because I thought they
21 were down. You say they're not. I'm surprised to
22 hear that. Okay. You got it. It's denied as to one
23 and two.

24 Would you agree -- I'm not done.

1 Would you agree with regard to subclass four where I
2 said that it is time -- well, it's time -- it was
3 time limited by its own terms, and I denied and I
4 granted the motion to dismiss? Would you agree that
5 that is done and subject to appeal, even though
6 Richard has said it would be a piecemeal appeal?

7 MR. KRISLOV: You've dismissed their
8 claim, the class four claim -- subclass four claim
9 entirely, yes.

10 THE COURT: Okay. I will grant 304(a)
11 language as to subclass four so those folks can know
12 one way or the other and have resolved as an
13 independent group of folk, although, under the
14 umbrella of the purported class, they can know what
15 they're supposed to do one way or another as soon as
16 possible in terms of modifying where they're going to
17 allocate their income or whatever funds they already
18 have.

19 So they should know, and the City
20 should know as well. Everybody should know.

21 I'll grant you 304(a) language as to
22 subclass four pursuant to Illinois Supreme Court Rule
23 304(a), I feel, as to that subclass. There's no just
24 reason to delay enforcement or appeal of my order

1 with regard to them.

2 Okay. What's your position with
3 regard to subclass three?

4 MR. KRISLOV: Your ruling was as a
5 matter of law, the governing law of the case. That
6 ruling governs how it plays out for everybody.

7 THE COURT: You're wrong, because you
8 misinterpreted my ruling. I didn't make any ruling
9 with regard to subclass three if you'll read my 721.

10 MR. KRISLOV: You ruled --

11 THE COURT: I'm not done, Clint.

12 MR. KRISLOV: I'm trying to answer
13 your --

14 THE COURT: I didn't ask you -- I'm
15 not asking you a question. I'm telling you what I
16 ruled, since you have misquoted me.

17 I ruled there is no way I can know
18 whether subclass three is covered or not, because I
19 don't know whether the statute of limitations applies
20 or not.

21 I don't know what they knew at the
22 time that -- they're participants. They're not
23 retirees. I don't know what they knew as of 1989 or
24 not. Certainly, they couldn't be part of the Korshak

1 litigation because they weren't even in existence
2 then.

3 So the only issue with regard to --
4 it's a separate and discrete group. And I can't say
5 whether the statute of limitations applies or not.

6 That's good for you.

7 If it couldn't have, then they're in.

8 If it does, if they did know what they could have
9 done in order to assert their claims, they're out.

10 But I don't know -- I don't have any facts that would
11 -- let me finish speaking, Clint.

12 MR. KRISLOV: I haven't said anything
13 yet.

14 THE COURT: I have received no facts
15 upon which I can make a judgment as to whether this
16 statute of limitations applies or not. So that was
17 my ruling with regard -- with regard to them.

18 Now, I also ruled about the time
19 limitation aspect that is time limited in the
20 amendment. It's true that I did make a ruling with
21 regard to that per Matthews, but there's another part
22 to that, and that's the statute of limitations.

23 And so subclass three is in a position
24 where it may be time limited, but there's no way they

1 ever could have asserted a claim, and I don't want to
2 kick them out of court. I don't want to limit their
3 ability to assert their claim if the statute of
4 limitations hasn't run.

5 I don't know. We'll see. But that's
6 not final yet. I just can't know.

7 MR. KRISLOV: But --

8 THE COURT: Go ahead.

9 MR. KRISLOV: Your ruling was that
10 subclass three were entitled to just their rights
11 under the -- to what was given to them under the
12 Pension Code statute.

13 THE COURT: True.

14 MR. KRISLOV: And you dismissed their
15 claims with respect to contract, estoppel, equal
16 protection, the whole schmear, everything except the
17 constitutional claim, which you defined in your
18 previous clarification as being limited to just what
19 the statute provides.

20 THE COURT: So you're arguing that the
21 statute of limitations -- that you're taking
22 Richard's point of view, that the statute of
23 limitations is irrelevant because it's either time
24 limited or it's not. Yes?

1 MR. KRISLOV: No. They're not time
2 limited. You held they're not time limited, but I
3 don't agree that they are entitled to no more, no
4 less than what just the Pension Code provides.

5 That's an issue of law. The whole
6 thing is an issue of law, and that's an issue which
7 the appellate court can and should rule on.

8 THE COURT: Okay.

9 MR. KRISLOV: And which the core --
10 the core people in category three, subclass three,
11 those are people who are, for the most part, not
12 covered.

13 Their city employment doesn't qualify
14 them for Medicare coverage no matter how old they
15 get. They are, for the most part, retired, although
16 there are some people who still haven't retired
17 because they started working before August 23 of
18 1989. They are in a very precarious situation.

19 THE COURT: I hear you. That's
20 another subject.

21 MR. KRISLOV: Well, but no, because
22 that's why granting the 304(a) language, just the
23 plain 304(a) language, to be able to take your
24 rulings on the law up and get it decided in a timely

1 fashion so these people can make their decisions
2 knowing what their rights actually are.

3 And it can't go to December 31st
4 because the sign-up date for Obamacare, they're going
5 to have see if they can buy Medicare. They have all
6 sorts of things.

7 The City loves this delay. They have
8 asked for and they have gotten the -- they love the
9 piecemeal. We're trying to get this all wrapped up
10 in a package.

11 And if it gets up -- and if you'll
12 give us the 304(a) findings, we will get it up
13 immediately to the appellate court, and we will get
14 the appellate court to deal with these questions of
15 law because if I'm right --

16 THE COURT: Well, before you get to
17 you being right, tell me, because I'm -- I may have
18 missed something. And I would like to hear what both
19 of you have to say about subclass three and where the
20 statute of limitations argument fits in.

21 And I'd like to start with you,
22 Richard.

23 We'll get back to you.

24 MR. PRENDERGAST: Your Honor --

1 THE COURT: What's your position about
2 that?

3 MR. PRENDERGAST: Your Honor, you
4 denied the motion to dismiss without prejudice on the
5 statute of limitations because you found that it was
6 a factual issue that needed to be developed here.

7 THE COURT: Yeah.

8 MR. PRENDERGAST: You denied the
9 motion to dismiss as to subclass three. How can
10 counsel talk about taking an appeal from the denial
11 of our motion to dismiss?

12 What he wants to do is to take every
13 issue in this case that is of interest to him and get
14 a whole fresh look from the appellate court on that.

15 But that's not what 304(a) is. 304(a)
16 deals with dispositive rulings because you cannot
17 have a 304(a) finding unless you have a final
18 judgment -- a final judgment within the case.

19 That's why a motion to dismiss with
20 prejudice, as you did with respect to class four, is
21 a final judgment, which meets one of the two prongs
22 for a 304(a) finding. And then we go on to the
23 discretionary issues of whether it is in the best
24 interest to allow appeal.

1 They're not past prong one because
2 they're -- what he wants to do is send up to the
3 appellate court a lot of interesting issues.

4 What he really ought to do, I suppose,
5 is file a 308 motion and ask you to certify 15
6 questions, because that's the only way you can get up
7 the appellate court on the specific issues where you
8 do not have a final judgment.

9 You didn't dismiss count three -- I
10 mean class three, so you can't make a three -- you
11 can't make a finding on 304(a) as to that.

12 THE COURT: Okay. And you get last
13 ups on that, Clint.

14 MR. KRISLOV: This is exactly what
15 304(a) is for. You have made rulings on controlling
16 issues of law that govern the rights of all four
17 classes. And that is, do I want a fresh look at the
18 appellate court? Absolutely. That is what 304(a) is
19 for.

20 And it is not -- it is not where you
21 get -- if you want to dismiss the whole case at this
22 point so we can get an appeal so we can get a fresh
23 look, I mean, I don't think you want to do it.

24 THE COURT: I understand why you want

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1 a fresh look. And, by the way, I'm not against that,
2 but I have to follow procedure and the right
3 procedure.
4 MR. KRISLOV: And this qualifies --
5 I'm sorry. I didn't mean it. I'm not trying to
6 interrupt.
7 THE COURT: It's okay.
8 MR. KRISLOV: This is what 304(a) is
9 there for.
10 And the cases -- the AT&T case, I
11 guess, is the governing -- the issue, is there
12 controlling law? The answer is, there is, your
13 determinations of law.
14 In fact, the statute of limitations is
15 not a factual issue, if you think about it.
16 THE COURT: Tell me.
17 MR. KRISLOV: Because we know exactly
18 what the situation was.
19 These people were participants by
20 definition on August 23 of 1989. And so the
21 reservation of rights protects them as well as people
22 who were retirees. They were participants --
23 THE COURT: The reservation of rights
24 in the settlement?

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1 MR. KRISLOV: No. The reservation of
2 the rights in the entitled, yes.
3 THE COURT: They weren't parties to
4 the settlement. There's no way they could have been
5 covered by that settlement. They were not a party to
6 it.
7 The reservation of rights, therefore,
8 as a matter of fact and law does not protect them.
9 It doesn't cover them. It can't. They -- no one
10 negotiated on their behalf. You didn't. They didn't
11 exist at the time.
12 So there's no way that their rights
13 are reserved by an agreement to which they were no
14 party. That's just, you know, logic.
15 Yes, the man in the striped tie.
16 MR. KRISLOV: They were -- they
17 existed then. The restoration --
18 THE COURT: Some of them did; some of
19 them didn't.
20 MR. KRISLOV: No. All of them
21 existed.
22 THE COURT: What was the date of the
23 agreement of the settlement?
24 MR. KRISLOV: The settlement agreement

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1 was not finalized, and it was eventually --
2 THE COURT: What's the date of the
3 settlement agreement?
4 MR. KRISLOV: The settlement agreement
5 started in 1987.
6 THE COURT: I know.
7 MR. KRISLOV: Sorry. In eighty --
8 THE COURT: Ken, do you know the date?
9 MR. GOLDSTEIN: I don't know the date.
10 MR. KRISLOV: It would have been,
11 like, fall of '88.
12 THE COURT: Okay. So some people were
13 in existence. Remember, we're talking -- that's the
14 problem with subclass three. It's really two
15 separate subclasses within it. There are some who
16 were in existence before the settlement agreement was
17 finalized, and there were some, i.e., participants,
18 people who were hired after the settlement agreement
19 was finalized, but before August 23rd, 1989, who were
20 not.
21 That's the problem with knowledge that
22 I talked about in the statute of limitations.
23 So there you go.
24 MR. KRISLOV: My turn?

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1 THE COURT: Please.
2 MR. KRISLOV: Those people existed at
3 that time.
4 THE COURT: Not all of them.
5 MR. KRISLOV: Oh, no. They existed.
6 THE COURT: Okay. We have a
7 disagreement --
8 MR. KRISLOV: Whatever.
9 THE COURT: -- that I just outlined.
10 MR. KRISLOV: Fine.
11 THE COURT: How about someone who came
12 to work for the City as a cop or as a fireman or
13 whomever after this final settlement was reached, but
14 before August 23rd, 1989? They didn't exist.
15 MR. KRISLOV: They get the benefit of
16 the settlement. Yes, they do, Your Honor.
17 And the reason why is because the
18 settlement restores -- gives the participants the
19 right to restore the litigation to --
20 THE COURT: Gives the party to the
21 agreement.
22 MR. KRISLOV: No.
23 THE COURT: Not people who no
24 longer --

1 MR. KRISLOV: Yes, it does.
 2 THE COURT: Excuse me. Not people who
 3 don't exist yet. It's impossible.
 4 MR. KRISLOV: It's not. I disagree,
 5 Your Honor. And it's a matter of law.
 6 THE COURT: What a surprise.
 7 MR. KRISLOV: Rule against me --
 8 rule --
 9 THE COURT: I did.
 10 MR. KRISLOV: -- against me on that.
 11 THE COURT: I did.
 12 MR. KRISLOV: And we'll take -- that
 13 is one of the issues we'll include.
 14 THE COURT: No.
 15 MR. KRISLOV: But it's a matter of law
 16 as to whether they're --
 17 THE COURT: No. There's a question of
 18 fact as to the statute of limitations issue.
 19 MR. KRISLOV: What is it that we could
 20 possibly show you that would -- they were on notice
 21 that the settlement existed?
 22 THE COURT: I don't know that. I
 23 don't know that. I don't even know that they knew
 24 anything before -- how would they know something

1 before they existed?
 2 And if they did know something, what
 3 did you do? Did you send them letters? That's
 4 interesting, Clint. Why don't you give us the
 5 evidence. Give it to them so we know.
 6 MR. KRISLOV: The City sent the
 7 notices.
 8 THE COURT: Okay.
 9 MR. KRISLOV: But the -- they get the
 10 benefit of restoring the litigation to what it was on
 11 October 19th, 1987.
 12 Yes, they do, Your Honor. And there
 13 isn't a fact that you need to decide that they
 14 were --
 15 THE COURT: Someone who doesn't exist
 16 gets the benefit of an agreement to which they were
 17 not a party. That's an interesting concept.
 18 I disagree with you, but we're not yet
 19 there because there's other factual issues to decide
 20 with regard to subclass three.
 21 MR. KRISLOV: Then, Your Honor, I want
 22 an immediate briefing schedule on the statute of
 23 limitations issues --
 24 THE COURT: You had it. You lost.

1 MR. KRISLOV: Well, then --
 2 THE COURT: Move on.
 3 MR. KRISLOV: Make them bound. Then
 4 give me --
 5 THE COURT: Clint, this is not take
 6 your ball and go home. You lost on that one.
 7 There's a factual issue. You didn't really lose
 8 yet --
 9 MR. KRISLOV: I didn't lose.
 10 THE COURT: You didn't really lose.
 11 It's a factual issue to be fleshed out.
 12 MR. PRENDERGAST: Which is exactly,
 13 Your Honor --
 14 THE COURT: So that's why you're not
 15 going to get 304(a) language with regard to subclass
 16 three.
 17 MR. KRISLOV: Your Honor, 304(a)
 18 language is not issue limited. 308 language is.
 19 THE COURT: You and I disagree about
 20 that as well.
 21 Your motion for 304(a) language with
 22 regard to subclass three is denied.
 23 MR. KRISLOV: Your Honor, then may we
 24 proceed to the preliminary injunction --

1 THE COURT: We will. Sure.
 2 Absolutely.
 3 But I just want to make sure your
 4 position with regard to the Korshak class and the
 5 Windows class is that there is a disagreement of
 6 facts with regard to those two classes and that which
 7 you believe they're -- the benefits they're entitled
 8 to.
 9 MR. KRISLOV: No. There is a
 10 disagreement of law.
 11 What they're entitled to -- Police,
 12 for one, were entitled to a premium and an amount and
 13 the police fund paying it. Firemen, same thing.
 14 THE COURT: Sure.
 15 MR. KRISLOV: Municipal and Laborers,
 16 different.
 17 THE COURT: The City has agreed to
 18 cover them, have they not?
 19 MR. KRISLOV: No, not in that fashion.
 20 THE COURT: Richard, tell me how it
 21 differs, just so everything is fair. I don't want to
 22 feel like I'm setting up anybody.
 23 MR. PRENDERGAST: I don't want to set
 24 up anybody.

1 THE COURT: This is for me to
2 determine whether I should give 304(a) language with
3 regard to the Korshak and Windows class. And I've
4 dismissed those classes.

5 MR. PRENDERGAST: You dismissed those
6 claims.

7 THE COURT: Those claims. But Clint
8 now says he didn't get -- you told me you were -- the
9 reason I did is not because of the statute of
10 limitations. I felt I didn't have to do that because
11 you -- I didn't even have to deal with it because you
12 told me the City was going to cover them.

13 I accepted that as to completely cover
14 them pursuant to the settlement agreement. Am I
15 wrong?

16 MR. PRENDERGAST: No, you're not
17 wrong, Your Honor.

18 THE COURT: Clint says I am.

19 MR. PRENDERGAST: I know Clint says
20 you are. And I can guarantee you whenever an issue
21 arises between the -- regarding the eighty --
22 regarding the Korshak or Windows classes with respect
23 to what they're getting, Clint will be back here to
24 tell you that we're not doing what he thinks we're

1 supposed to do.

2 But this is not the place to deal with
3 that negotiation. This is the place to deal with the
4 fact that you've dismissed that claim because we've
5 told you we're going to take care of the '83 and '85
6 classes.

7 THE COURT: Is there any reason to not
8 give 304(a) language as to that, if Clint wants to
9 disagree with you?

10 MR. PRENDERGAST: Well, that -- those
11 claims were dismissed on that basis. I don't see any
12 reason that -- I don't know what issues he thinks
13 he's going to raise on '83 and '85.

14 Does he think he's going to get for
15 '83 and '85 the rates that would apply to nineteen --
16 to 2016?

17 THE COURT: I don't know.

18 MR. PRENDERGAST: Because he wants to
19 go back to settlements? I mean, I don't know what
20 Mr. Krislov thinks that -- what he thinks he should
21 be entitled to.

22 We will work through with him. If
23 that's not the case, he'll be back in court on it. I
24 mean, we haven't agreed on anything in four or five

1 years, so...

2 THE COURT: Well, here's what I would
3 like to do. I will reserve my ruling on 304(a)
4 language with regard to Korshak and Windows class for
5 you all to discuss the matter and see whether you
6 have an agreement as to what the issue is on it or
7 not.

8 I have -- as I've told you, Clint, I
9 believe, the City has agreed to cover them entirely
10 pursuant to the agreement -- pursuant to the
11 settlement agreement. And you tell me that that's
12 not the case.

13 I'm going to ask you, please, to have
14 a conversation. Call it a 201(k) conversation, as
15 you wish, to see if they're -- to see what your
16 positions are.

17 If you're asking for something more
18 than that which was settled, what the agreement was,
19 you're not going to get that. If your position is
20 that regardless of the settlement, anything that was
21 given thereafter should enure to their benefit, which
22 may be your position, as I understand it now, then
23 you should -- we should know that and Richard should
24 know that, because, actually, I thought I granted you

1 everything you wanted with regard to Korshak and
2 Windows.

3 Now I'm not so sure because of what
4 you said, and I'd like you to make it clear to me.
5 So I will hold the 304(a) issue open with regard to
6 class -- I call them class one and class two in my
7 mind, but it's the Korshak and Windows class pending
8 your discussion. Fair?

9 MR. PRENDERGAST: Fair.

10 THE COURT: Fair?

11 MR. KRISLOV: Fair.

12 THE COURT: All right. Let me -- hold
13 on a second. You can't --

14 Yes, Clint, go ahead.

15 MR. PRENDERGAST: When I -- did you
16 want to go?

17 MR. KRISLOV: Yes, please. Your
18 ruling that -- I mean, this is when we get to the
19 equal protection.

20 This is the class three. The class
21 three has the same rights that class one and --

22 THE COURT: Yes. I disagreed with
23 you. I ruled against you. That was your motion to
24 reconsider.

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1 I think you're totally wrong. I think
 2 class three is in a distinctive group where from
 3 class one and class two.
 4 Further, I think there's a rationale
 5 basis for the City based upon its economic straits,
 6 et cetera, to have distinguished between class one
 7 and two on the one hand, class three on the other,
 8 class four on the other. All you need is a rationale
 9 basis when it comes to this. There is one.
 10 You can't for the sake of -- you've
 11 lumped them together for the purposes of a class
 12 action, and I understand that. You're allowed to and
 13 you should. I think they're in a distinctive
 14 position, separate from that of class one and class
 15 two and separate from that of class four as a matter
 16 of fact and as a matter of law.
 17 And I think the equal protection
 18 argument fails. You disagree. I disagree with you,
 19 and that's the way it is. But it's not yet ripe for
 20 304(a) language.
 21 MR. KRISLOV: Let me know if I
 22 understand you.
 23 Our argument for the equal protection
 24 is not that class four is being discriminated against

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1 vis-a-vis class three. Our argument is that you're
 2 holding that people who were participants on August
 3 23 of 1989 have permanent protected rights under the
 4 constitution.
 5 That applies identically to class one,
 6 two and three, because they all were participants
 7 prior to on or before August 23 or 1989.
 8 THE COURT: Yes.
 9 MR. KRISLOV: And so treating them
 10 differently --
 11 THE COURT: Who is "them"?
 12 MR. KRISLOV: Them, treating the
 13 people who retired --
 14 THE COURT: Who is them? Class three
 15 or --
 16 MR. KRISLOV: Class one and class two.
 17 THE COURT: Differently from class
 18 three.
 19 MR. KRISLOV: Differently from class
 20 three.
 21 THE COURT: Yes.
 22 MR. KRISLOV: Is a denial of equal
 23 protection, because they all have the permanent
 24 protection of the Constitution, per your ruling, and

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1 for the City to make a distinction between them in
 2 which it will grant permanent healthcare protection
 3 is a denial of equal protection --
 4 THE COURT: Yes.
 5 MR. KRISLOV: -- of the people who
 6 have the same benefit.
 7 THE COURT: I understand.
 8 MR. KRISLOV: The same rights.
 9 THE COURT: I disagree.
 10 MR. KRISLOV: Okay.
 11 THE COURT: And I've said that.
 12 MR. KRISLOV: Given that and
 13 everything else that --
 14 THE COURT: I'm not done. We're not
 15 there yet.
 16 MR. KRISLOV: Okay.
 17 THE COURT: I know where you're going,
 18 so --
 19 MR. KRISLOV: Okay.
 20 THE COURT: And we'll get there.
 21 MR. PRENDERGAST: Your Honor.
 22 THE COURT: What? Yes.
 23 MR. PRENDERGAST: In re Starke is a
 24 classic case for purposes of this motion.

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1 THE COURT: Which motion?
 2 MR. PRENDERGAST: The --
 3 THE COURT: Equal protection?
 4 MR. PRENDERGAST: The 304(a) part. It
 5 is one of the lead cases, Starke and Geier versus
 6 Hamer. And the requirement of those cases is
 7 twofold.
 8 For a 304(a) finding there must be a
 9 final judgment. And then there must be a -- there
 10 must be no just reason for delaying the appeal.
 11 As to count three, you denied our
 12 motion. That's the end of the discussion. And you
 13 granted the motion as to count -- as to class four,
 14 and you granted it with prejudice.
 15 Now, you have a final judgment there
 16 for purposes of --
 17 THE COURT: When you said count three
 18 just a moment ago, you meant class three?
 19 MR. PRENDERGAST: I meant class three.
 20 Thank you.
 21 And so there is a distinction between
 22 four and three that is not grounded in fact. It is
 23 not grounded in hardship. It's grounded in the law
 24 the specific requirements for a 304(a) finding.

1 I believe that if you made a 304(a)
2 finding on three, we would have that dismissed in the
3 appellate court.

4 THE COURT: I agree.

5 MR. PRENDERGAST: And so I agree with
6 your exercising your judgment -- your discretion with
7 respect to count four. I don't agree with it, but
8 I'm not going to argue with you on it. It's your
9 ruling.

10 But class three, no 304(a) finding.
11 Class one and two, no 304(a) finding. The City has
12 laid out in writing what they're going to do for the
13 Korshak and Windows classes. He's got everything
14 that's --

15 THE COURT: Well, Clint came up today
16 with a disagreement about class one and class two and
17 how the City's -- what he thinks -- what benefits he
18 thinks they're entitled to that he doesn't think the
19 City is going to give.

20 You'll have a conversation. You'll
21 see whether you agree or not, and you'll put it
22 before me, and we'll discuss it.

23 MR. PRENDERGAST: All right.

24 THE COURT: And that's the best I can

1 do with regard to that. I don't want to foreclose
2 access to the Court for Clint on that issue. If he
3 thinks that they're entitled to a benefit that's not
4 going to be given pursuant to the settlement
5 agreement, I want to hear about it.

6 So that's that. I'm holding that in
7 abeyance.

8 Subclass three, I agree with you, and
9 it hasn't been dismissed, and that's by definition,
10 from my understanding and my ruling today is that
11 304(a) does not apply to that. And, you know, a
12 ruling is a ruling.

13 MR. KRISLOV: But --

14 THE COURT: No, not a but. That's it.

15 MR. KRISLOV: No, I would like --

16 THE COURT: Stop.

17 MR. KRISLOV: I would like to make a
18 record. He cited Starke, and I can explain why that
19 is wrong.

20 THE COURT: My ruling was the same
21 before he cited Starke as it would be after. You may
22 argue about that later in another forum if you want
23 to, but not in front of me.

24 I'm not relying on Starke. I'm

1 relying upon what I relied upon earlier and what I
2 told you.

3 MR. KRISLOV: Could I just take a
4 minute of --

5 THE COURT: Yes, you can, of course.

6 MR. KRISLOV: 304 does not require a
7 final dismissal of all claims. That's 301. Mr.
8 Prendergast in the pension reform case -- and I
9 learned something from that. At least one count must
10 be dismissed with finality in the case wholly, and
11 you have done that. It only has to be --

12 THE COURT: Which count is that that I
13 dismissed?

14 MR. KRISLOV: You dismissed the claims
15 four -- class four entirely.

16 THE COURT: Which is a separate
17 universe from class three. You and I disagree about
18 that --

19 MR. KRISLOV: This is a -- sorry.

20 THE COURT: You and I disagree about
21 that. You can't say I've rendered a final decision
22 as to one subclass, therefore, it overlaps as to all
23 of them. That's not right. It's wrong. Otherwise
24 there wouldn't be subclasses.

1 Everything I ruled with regard to
2 subclass four has absolutely no bearing on my rulings
3 with regard to subclass three, subclass one, subclass
4 two.

5 MR. KRISLOV: Then certify the case
6 now because --

7 THE COURT: No.

8 MR. KRISLOV: Well, you can't pull --

9 THE COURT: I did because I disagree
10 with you. I think you're absolutely miserably,
11 utterly wrong on that. And what else can I tell you?
12 So that's that. You made your record.

13 Let's go to the issues raised by Clint
14 with regard to the issuance of a preliminary
15 injunction.

16 What is the nature of the
17 interlocutory appeal pending? I -- I don't know what
18 that is. Is it on my failure to grant an injunction
19 in the past?

20 MR. KRISLOV: It's on your failure to
21 grant the preliminary injunction based on the second
22 amended complaint, yes.

23 THE COURT: And is it -- let me ask a
24 question.

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1 Since the second amended complaint is
2 no longer viable, why is that appeal viable? It's
3 been superseded by a third amended complaint. Why
4 would that be even a viable appeal at this point?
5 Can you tell me?
6 MR. KRISLOV: Yes, because the claims
7 that were made in that, the assertions that were made
8 would support having a preliminary injunction.
9 THE COURT: But that complaint is
10 dead.
11 MR. KRISLOV: That's your ruling, Your
12 Honor.
13 THE COURT: Well, it is dead. It was
14 superseded. You filed an amended complaint to that.
15 MR. KRISLOV: Your Honor, we did. And
16 that's why we have not pushed that one for a time,
17 because the City has maintained that all that could
18 be done on that appeal was with respect to what was
19 in the second amended complaint.
20 THE COURT: I agree.
21 MR. KRISLOV: So we played out the
22 third amended complaint with all of the submissions
23 that --
24 THE COURT: So let me ask you a

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1 question.
2 MR. KRISLOV: Yes.
3 THE COURT: What is the nature of the
4 subject matter of the interlocutory appeal about my
5 refusal to grant an injunction with regard to which
6 classes? All of them?
7 MR. KRISLOV: All of them.
8 THE COURT: All right. Okay. So
9 thank you.
10 Now, we're left with your renewed
11 motion for a preliminary injunction for pre-1989
12 claims to enjoin the City and the Funds from
13 implementing a reduction of the change of terms as of
14 June 2013.
15 My feeling is -- and I will hold in
16 abeyance relative to your discussion, but prior to
17 hearing what you had to say that somehow there's
18 another benefit you should be getting for the Korshak
19 and Windows class that the City hasn't agreed to pay.
20 I don't know that to be the case. You two are going
21 to have to flesh that out to me so I understand it.
22 But before I heard you say that, I
23 would have -- I would have said there's nothing to
24 enjoin. It's moot. And I've said that in my opinion

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1 because the City is giving Korshak and Window class
2 everything they're entitled to, every benefit they're
3 entitled to in healthcare. That was my feeling.
4 So with regard to that, I would not
5 have granted a preliminary injunction, and I'll wait
6 to see. I still may not. We'll hold that in
7 abeyance pending your discussion with regard to what
8 benefits you think they're entitled to as a matter of
9 law, whether there's an agreement upon that.
10 I'll push that to the side for another
11 day.
12 With regard to the injunction with
13 regard to subclass four, injunctions are given when
14 you have at the least a fair question as to your
15 right to receive those benefits in this case.
16 Clearly, there's no adequate remedy at law. That's
17 why we're here. You're arguing there's irreparable
18 harm.
19 I understand your argument about that,
20 but I am as convinced as I can be, as I was before
21 Matthews and certainly since Matthews, that there is
22 no likelihood a fair question as to your success on
23 the merits with regard to subclass four.
24 So your request for an injunction with

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1 regard to them is denied.
2 I feel much differently, as you've
3 enunciated, Clint, and as I have enunciated, with
4 regard to subclass three. I think there are factual
5 issues that have to be fleshed out -- and fleshed
6 out, as I say.
7 So I'm concerned about them. I'm
8 concerned about them having to, as I said before, be
9 in limbo and not know whether they have to pay for
10 this -- these healthcare benefits or not. I didn't
11 dismiss the count. It's viable.
12 And so I would like to hear from you,
13 Richard, why I should not give a preliminary
14 injunction with regard to the pre-1989 claims as to
15 subclass three alone, which is, as I have suggested,
16 my predisposition.
17 MR. PRENDERGAST: Well, first of all,
18 Your Honor, there was a denial on the preliminary
19 injunction motion. It really does not have anything
20 to do with whether or not it was the first amended or
21 second amended or third amended complaint.
22 THE COURT: I know. But I'm
23 considering it again. I have now understood in
24 greater detail the facts of the case and the effect

1 it could have and the likelihood or fair question as
2 to subclass three's success on the merits. I can't
3 say, as I said in my July 21st, 2016, opinion what
4 you're going to be able to show about their ability
5 to have discovered or known or make a claim when they
6 could have.

7 This all evolves around the statute of
8 limitations issue as well. So I'm concerned about
9 that.

10 So tell me why is it I shouldn't give
11 an injunction and require the City to cover those
12 folks?

13 How many people are in this subclass,
14 do you know?

15 MR. PRENDERGAST: I do not.

16 THE COURT: Anybody? Mr. Goldstein,
17 do you know?

18 MR. GOLDSTEIN: I --

19 THE COURT: Clint?

20 MR. KRISLOV: It's probably about
21 10,000. It could be more. It could be fifteen. It
22 could be less. But it is the largest number, I
23 think, of people.

24 THE COURT: It is?

1 MR. KRISLOV: Yes.

2 THE COURT: The folks who are
3 participants -- not retirees, but participants in the
4 healthcare program as of August 23 --

5 MR. KRISLOV: No.

6 THE COURT: -- 1989.

7 MR. KRISLOV: The participants in the
8 Funds, in one of the four funds.

9 THE COURT: Yes.

10 MR. KRISLOV: Right.

11 THE COURT: For healthcare benefits?

12 MR. KRISLOV: No. Well, that they're
13 -- they -- for the people that you need an injunction
14 for, they must have retired now, because for the
15 people who are working now, they're still covered by
16 the City's employee plan.

17 While you're talking about people --

18 THE COURT: Okay.

19 MR. PRENDERGAST: Your Honor --

20 THE COURT: So tell me, Richard, why I
21 shouldn't grant an injunction.

22 MR. PRENDERGAST: I'm going to tell
23 you my view on that.

24 THE COURT: Please.

1 MR. PRENDERGAST: But I'm going to ask
2 the Court because of what's been said here to allow
3 us to brief that subject. We won't take a lot of
4 time.

5 THE COURT: Sure.

6 MR. PRENDERGAST: But I think you have
7 to start with this.

8 First of all, Your Honor, this was
9 your finding previously when you're talking about the
10 four elements. One of the elements had to do with
11 the adequacy of a remedy law.

12 THE COURT: Yes.

13 MR. PRENDERGAST: And you said the
14 case law as cited in the party's submissions to me,
15 especially the City's. And I have read it, and it's
16 actually true in Knott versus Illinois Racing Board,
17 the Court said the loss of income for a brief period
18 does not constitute irreparable harm.

19 We cited the Kurle case versus
20 Evangelical. And the bottom line is you found that
21 there was no -- there was inadequate remedy at law.

22 THE COURT: Okay.

23 MR. PRENDERGAST: And they had not met
24 that criteria.

1 THE COURT: Okay. So let me talk to
2 you about that. I'm aware I said that, but -- and
3 here's what I would like you to talk to me about in
4 your brief and your response in reply, which we will
5 do in short order because folks have to know.

6 It's not just a matter of money. If
7 it were just a matter of money, how much you owe, it
8 would be one thing. That's a one-dimensional view.

9 In this case we're talking about more
10 than just money. We're talking about everything that
11 is implied by the need to have the money to spend on
12 healthcare.

13 I note, for instance, that Land of
14 Lincoln just went under. I note that under the ACA,
15 affordable costs may not be that affordable, I'm
16 sorry to say, because everybody knows how I feel
17 about the ACA. I think it's a wonderful thing, but
18 they may be going up 45 percent.

19 Folks need to know how much they need
20 to put aside. It's not just a matter of money. It's
21 a matter of how they're going to live, and standard
22 of living, and where they're going to find their
23 insurance for health.

24 And healthcare is not just a matter of

1 money. It's a matter of everything, because as the
2 old expression goes, if you don't have your health,
3 you got nothing.

4 I don't mean to make light of it, but
5 it's true. And we all know this from our own family
6 experience. There isn't a person who hasn't been
7 touched by death or misery or illness. And it has an
8 impact on everything. So it's not just a matter of
9 money.

10 And that's why I said just a few
11 moments ago that I felt that money damages are not
12 adequate.

13 I'm going let you tell me why I'm
14 wrong, but I have reconsidered that because that's
15 what I'm supposed to do. And I've considered it in
16 terms of -- much broader terms than just the money.
17 But everything that that -- the need for money to be
18 spent implies.

19 So if you want to keep talking to me,
20 that's fine. I'd love to hear what you have to say,
21 but I also will, of course, give you an opportunity
22 to write.

23 MR. PRENDERGAST: Well, I'll give you
24 one point that I think needs to be considered here.

1 THE COURT: Yes.

2 MR. PRENDERGAST: The plaintiffs filed
3 a notice of appeal from your prior ruling.

4 THE COURT: Yes.

5 MR. PRENDERGAST: They briefed it.

6 THE COURT: Yes.

7 MR. PRENDERGAST: We briefed it. It's
8 fully briefed. It's pending in the appellate court.

9 The appellate court is going to
10 consider the very issue you just addressed. The
11 appellate court is going to address the likelihood of
12 success on the merits because that was another reason
13 why you determined that injunctive relief is not
14 appropriate.

15 THE COURT: Has the Court set it down
16 -- has anyone requested oral argument?

17 MR. KRISLOV: We have not. We
18 requested -- yes, we requested --

19 THE COURT: Has it been granted?

20 MR. KRISLOV: Not yet.

21 THE COURT: Has it been set for
22 decision, or do you know where it is?

23 MR. KRISLOV: No. It's fully briefed,
24 but they haven't done anything on it yet. And part

1 of the reason that we haven't pushed it was because
2 of the second complaint versus third complaint issue
3 and whether there was -- the submissions were part of
4 -- as you said, if they're not part of the complaint,
5 you're not going to rule anyway. That's why we went
6 through the third amended complaint.

7 THE COURT: Right. So let me ask you
8 another question before I let Richard go on. Forget
9 my discussion about the third amended complaint
10 versus second, since you have an appeal pending.

11 Doesn't that rob me of jurisdiction to
12 decide the issue?

13 MR. KRISLOV: No.

14 MR. PRENDERGAST: The answer is yes.

15 THE COURT: I think it does. If
16 you've appealed my refusal to grant injunctive
17 relief, I think I'm robbed of jurisdiction because
18 you've chosen to say, as is your want, Neil, you're
19 wrong. I'm right. And I'm going to take it to a
20 higher court, which is great. But you've done that.

21 So I'm wondering why I'm not robbed of
22 jurisdiction on that matter.

23 MR. KRISLOV: Because what was
24 appealed was that order based on that complaint.

1 THE COURT: Then why didn't you
2 withdraw the appeal if you don't want it to go?

3 MR. KRISLOV: That's not -- that's not
4 before you, Your Honor. That's not one of your
5 issues.

6 THE COURT: That may be so, but I'm
7 asking you --

8 MR. KRISLOV: Because we think that
9 based on what we show --

10 THE COURT: If you think it's a good
11 appeal, then I'm going to let them decide it. If you
12 think it's bad because that complaint has been
13 superseded, then I'll consider it.

14 Your call. What is it? Make a
15 decision.

16 MR. KRISLOV: We'll do it on this
17 complaint.

18 THE COURT: You're going to withdraw
19 that appeal?

20 MR. KRISLOV: Your Honor, you do not
21 have the right to require us to withdraw that pending
22 appeal --

23 THE COURT: True, I don't. I don't.
24 I'm going to hold consideration of injunction in

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1 abeyance pending the resolution of that appeal
2 therefore.
3 What's the next date you want to come
4 in for?
5 MR. KRISLOV: Your Honor, why don't
6 they brief it, and we can address that issue? I
7 don't think you're being fair with us on this one.
8 THE COURT: I know.
9 MR. PRENDERGAST: Your Honor, I think
10 you're being abundantly fair.
11 THE COURT: I know.
12 MR. PRENDERGAST: We've already had
13 six preliminary --
14 THE COURT: I know. It's on appeal
15 and my -- if you think that it's a viable appeal,
16 great. I'll go along with your judgment on that and
17 say that if you've appealed my refusal to grant an
18 injunction, it robs me of jurisdiction on that issue.
19 Therefore, your motion for -- your
20 renewed motion is wrong.
21 MR. KRISLOV: I'll offer this, Your
22 Honor.
23 THE COURT: No offer. We're not in
24 the marketplace.

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1 MR. KRISLOV: Your Honor, you are
2 requiring a marketplace thing where --
3 THE COURT: I know, but I'm not.
4 MR. KRISLOV: You are.
5 THE COURT: Okay. Again, we disagree.
6 MR. KRISLOV: You're saying we'll
7 withdraw our other appeal if you -- if we do -- if we
8 wish you to go forward, if we wish -- if you'll grant
9 the motions --
10 THE COURT: If you think that you have
11 a good appeal on the issue that you've just renewed,
12 then I'm robbed of jurisdiction on that.
13 MR. KRISLOV: We'll brief that.
14 THE COURT: No, we won't brief it.
15 That's my ruling.
16 MR. KRISLOV: Okay. Fine.
17 THE COURT: The next thing for you to
18 do is to have a discussion about 304(a) language, vel
19 non, with regard to the Korshak and Windows class
20 based upon the benefits you think you're entitled to
21 that you think the City is not going to give, or to
22 find out that they are.
23 How much time do you need to discuss
24 that?

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1 MR. PRENDERGAST: I'll have to check
2 with the Corporation Counsel's office.
3 THE COURT: Well, give me a date.
4 MR. PRENDERGAST: That's going to be a
5 meeting.
6 THE COURT: Sure.
7 MR. PRENDERGAST: I'll try to set
8 something up.
9 THE COURT: Sure. Okay. How much
10 time do you want?
11 MR. PRENDERGAST: I will set it up
12 within the next two weeks.
13 MR. KRISLOV: No, Your Honor. We
14 object to more than a week. The people need --
15 THE COURT: Your objection is
16 overruled. He wants to set up a meeting. In about
17 two or three weeks it's Labor Day.
18 When do you want to come back on that
19 issue to tell me that you've agreed or you haven't
20 agreed and tell me what benefits that you think you
21 are entitled to under the settlement that the City is
22 not going to give? That's all I want to know.
23 MR. KRISLOV: They're entitled to at
24 least --

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1 THE COURT: Not me. Talk to them
2 first, and tell me after your discussion.
3 MR. KRISLOV: Your Honor --
4 THE COURT: When do you want to come
5 back?
6 MR. KRISLOV: I want to come back
7 tomorrow.
8 THE COURT: That's not going to
9 happen, Clint.
10 MR. KRISLOV: Your Honor, they know
11 exactly what they're doing. They know exactly what
12 my position is. This doesn't take two or three weeks
13 to negotiate. This is a what they're willing to do
14 is up to 50 percent.
15 THE COURT: Sir --
16 MR. KRISLOV: Yes.
17 THE COURT: -- this is a 2013 case.
18 Whether they come back in three weeks or not is not
19 going to make or break this issue or your client's
20 interest.
21 MR. KRISLOV: It does, Your Honor.
22 THE COURT: No, it doesn't.
23 MR. KRISLOV: It does. They need to
24 have a decision in time to make their decisions

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1 regarding --
2 THE COURT: Yes, I know. And three
3 weeks is not going to make or break that.
4 MR. KRISLOV: Your Honor, we've been
5 down this road -- it's their doing. They removed it.
6 They got it piecemeal. They love to have it
7 piecemeal, and our client is --
8 MR. PRENDERGAST: I'm getting tired of
9 being called names.
10 THE COURT: It's okay. Please let Mr.
11 Krislov speak.
12 You're not going to get it tomorrow.
13 That's just the way it is. And I'm going to give
14 them three weeks.
15 So I'll make the decision if you guys
16 can't agree. You'll come back in approximately three
17 weeks. Let me take a look and see what date that is.
18 That's right before Labor Day. Today
19 is -- that's about the 30th.
20 MR. PRENDERGAST: 31st.
21 THE COURT: All right. 31st is good.
22 Is that good for you, Mr. Krislov?
23 MR. KRISLOV: What day?
24 THE COURT: Wednesday, August 31st.

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1 MR. KRISLOV: Yeah, I think so.
2 THE COURT: Okay. Let's do it at
3 10:30.
4 MR. KRISLOV: Okay.
5 THE COURT: Although I have 10:00
6 o'clock open if you like.
7 MR. KRISLOV: 10:30 is fine.
8 THE COURT: 10:30. Done. And I would
9 like some sort of understanding before then through
10 an agreed letter submitted by one or both parties
11 that you have an agreement as to what those benefits
12 are or not.
13 Fair? We can at least agree --
14 MR. KRISLOV: Understood.
15 THE COURT: -- that you'll tell me
16 whether there's an agreement or not?
17 MR. KRISLOV: Right.
18 THE COURT: Okay.
19 MR. KRISLOV: Do we have 304(a)
20 language with respect to the class four?
21 THE COURT: Yes, I gave it to you.
22 It's on the record.
23 MR. KRISLOV: Okay.
24 THE COURT: And if you'd give me a

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1 submission, which I'd like to have, and I think the
2 appellate court would like to have.
3 The City disagrees with my -- with my
4 ruling that on -- that they're -- that you're
5 entitled to that, but they understand it based upon
6 my ruling, and so it's over objection of the City,
7 your 304(a) language is granted.
8 MR. KRISLOV: With respect to four --
9 THE COURT: Subclass four.
10 MR. KRISLOV: Three is held in --
11 three is denied or held in abeyance?
12 MR. PRENDERGAST: How did that get
13 held in abeyance?
14 THE COURT: 304(a) language as to
15 three is denied.
16 MR. KRISLOV: Okay.
17 THE COURT: 304(a) language as to one
18 and two is held in abeyance.
19 MR. KRISLOV: Gotcha. I just want to
20 make sure we're drawing up the order that matches
21 what you did.
22 THE COURT: Sure.
23 MR. KRISLOV: Okay.
24 MR. PRENDERGAST: Your Honor, I

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1 understand --
2 THE COURT: What else?
3 MR. PRENDERGAST: -- that the
4 preliminary injunction motion has been denied?
5 THE COURT: It's denied.
6 MR. KRISLOV: Your Honor, can they
7 answer the complaint?
8 THE COURT: Without prejudice. But
9 that's because of the pending appeal.
10 MR. PRENDERGAST: Well --
11 MR. KRISLOV: That's the preliminary
12 injunction?
13 THE COURT: Yes.
14 MR. KRISLOV: So if I say we'll
15 withdraw the --
16 THE COURT: No, I can't do that,
17 because I'm putting you in an untenable position. I
18 don't want to do that.
19 MR. PRENDERGAST: May I make a
20 suggestion?
21 THE COURT: No marketplace.
22 MR. PRENDERGAST: May I make a
23 suggestion that if we're going to wait for the
24 appeal, and I think we should, certainly --

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1 THE COURT: On subclass four? That's
2 not going to hold up this case moving forward as to
3 the other --
4 MR. PRENDERGAST: I didn't mean on the
5 interlocutory appeal.
6 THE COURT: What do you mean?
7 MR. PRENDERGAST: On the denial of the
8 preliminary injunction request.
9 THE COURT: Yes.
10 MR. PRENDERGAST: One alternative
11 would be for you to enter and continue their motion
12 until the appellate court rules. That gives them --
13 that keeps their motion alive.
14 He's got his motion on file, and we'll
15 find out what happens with the appellate court.
16 THE COURT: I'm sure Mr. Krislov
17 appreciates you taking his point of view.
18 I will be happy to keep it alive until
19 the appeal is decided, if that's what you'd like.
20 MR. KRISLOV: No. We want it denied
21 then, Your Honor.
22 THE COURT: Done.
23 MR. KRISLOV: Finally, since we're at
24 the point the City should answer -- the City and the

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1 Funds should answer the complaint, the complaint has
2 been upheld for at least one count. They can respond
3 to it.
4 THE COURT: Any objection?
5 MR. PRENDERGAST: No objection to
6 answering what has not been dismissed. We'll do that
7 within 30 days.
8 MR. DONHAM: Yes, Your Honor. I mean,
9 obviously, we don't have to answer counts two through
10 whatever because those were dismissed. So we just
11 are answering count one, I assume?
12 THE COURT: Count one is the dec
13 action.
14 MR. DONHAM: Right. That's the one
15 you upheld the 1983 and the 1985.
16 THE COURT: Would you remind me what
17 count four was.
18 MR. PRENDERGAST: Count four, those
19 who were hired after August 23, 1989, and retired
20 after August --
21 MR. KRISLOV: No, that's --
22 THE COURT: That's class four. Count
23 four of the complaint.
24 MR. PRENDERGAST: Count four.

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1 THE COURT: Count one is the dec
2 action. Count two is the breach of contract that's
3 been dismissed. Count three is the equitable.
4 MR. KRISLOV: Count four they don't
5 have to respond. That's the federal --
6 THE COURT: Yes.
7 MR. KRISLOV: -- 1983 action.
8 THE COURT: Just to go through them
9 again.
10 Count one is the dec action. Count
11 two is the breach of contract that's been dismissed.
12 Count three is the equitable estoppel turned into a
13 promissory estoppel in oral argument, which has been
14 denied -- dismissed. Count five is the impairment of
15 contract count, which has been dismissed. Count six
16 is the equal protection count, which has been
17 dismissed. Count seven is the special legislation
18 count, which has been dismissed.
19 The only viable count now is the dec
20 action count, count one. And all the defendants are
21 to answer that count in 28 days, by September 8th.
22 MR. KRISLOV: Okay. We'll try to --
23 oh, can we have at least everybody's agreement that
24 we can certify the case as a class case since we're

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1 doing this by classes, and we're dealing --
2 THE COURT: You know, you can talk to
3 them without bouncing it off me. Just have a
4 conversation.
5 MR. KRISLOV: We've filed the motion.
6 If they want to oppose it, they should file --
7 THE COURT: All right. Well, then all
8 the defendants are to answer the motion for class
9 certification.
10 You're going to do that also by
11 September -- well, let's do it by August 31st so that
12 I can take it up on September -- that's wrong. Hold
13 on a second.
14 8-31 for the parties to come back with
15 regard to the benefits in question for the Korshak
16 and Windows class. That's first.
17 The parties are to answer count one by
18 9-8. The parties are to file an answer with regard
19 to the motion for class certification that's pending
20 by 9-8. And I'll give you another -- is everyone
21 going to be here on 8-31? All the Funds?
22 MR. KENNEDY: Yes, Judge.
23 THE COURT: All right. Let's just do
24 it that way, and I will give you another date on 8-31

1 for me to deal with the answers for the class
2 certification motion and to make sure that everyone
3 has answered the complaint.

4 MR. KRISLOV: Could I ask that they
5 file their answers by the 31st, because --

6 THE COURT: You can, but it's denied.

7 MR. KRISLOV: We'd be in a position to
8 the handle things, and they've only had 30 years
9 to --

10 THE COURT: Yes. It's denied. Okay.

11 Give me an order reflecting today's orders.

12 (Proceedings adjourned at 11:55 a.m.,
13 August 9, 2016.)
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1 REPORTER'S CERTIFICATE.

2 I, GAY DALL, CSR and RPR, doing
3 Business in the City of Chicago, County of Cook and
4 State of Illinois, do hereby certify that I reported
5 in computerized shorthand the foregoing proceedings
6 as appears from my stenographic notes.

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

11 IN WITNESS WHEREOF, I hereunto set my
12 hand as Certified Shorthand Reporter in and for the
13 State of Illinois on August 17, 2016.

14 
15 Gay Dall, CSR RPR
16 License Number: 084-001169
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