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

CITY OF CHICAGO, a municipal corporation,	)	
Plaintiff-Counterdefendant,	)	
v.	)	**No. 01 CH 4962**
MARSHALL KORSHAK, et al,	)	**Calendar 5**
Defendants-Counterplaintiffs,	)	
and	)	
MARTIN RYAN, et al,	)	
Intervening-Plaintiffs.	)	

SECOND AMENDED OPINION AND MEMORANDUM OF LAW

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

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

HISTORY

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

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

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

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

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

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

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

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

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

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

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

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

TERMS OF THE SETTLEMENT

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

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

The City will pay at least:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATION OF CLASS

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

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

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

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

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

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

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

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

NOTICE OF THE PROPOSED SETTLEMENT

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

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

THE SETTLEMENT CLASS

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

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

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

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

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

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

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

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

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

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

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

EVALUATION OF THE SETTLEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) The opinion of competent counsel.

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

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

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

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

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

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

IT IS, THEREFORE, ORDERED AS FOLLOWS:

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

ENTERED

JUL 31 2003

JUDGE DEBORAH MARY DOOLING-1591

Deborah Mary Dooling
Circuit Court Judge
Chancery Division

July 30, 2003