

# KRISLOV & ASSOCIATES, LTD.

*Attorneys at Law*

CIVIC OPERA BUILDING, SUITE 1350  
20 NORTH WACKER DRIVE  
CHICAGO, ILLINOIS 60606

FAX (312) 606-0207  
TELEPHONE (312) 606-0500

January 22, 2013

## ***Retired Chicago Police Association Members and Officers:***

As you know, I have served as class counsel in keeping retiree health care coverage alive, since the *Korshak* case began in 1987.

### **Some History**

Under the plan in effect through 1987, annuitants had a fixed-rate health coverage plan provided jointly by the City and the four Annuity and Benefit Funds (Police, Fire, Municipal and Laborers). Annuitants were charged either \$55 or \$21 per month (depending on Medicare qualification), paid for by their Fund, and obligated to pay only for spouse and dependent coverage.

Launched by the Washington administration as an offset to the City's liability for converting tax receipts belonging to the Funds, the City in 1987 sued for a declaration that it was not obligated to provide retiree healthcare and to recover money it had spent on the programs. (The case acquired the "Korshak" name from the first named trustee defendant Marshall Korshak). We intervened as the Ryan intervenors for the participants, asserting that the Illinois Constitution's Art. XIII Section 5 prohibition against diminishing or impairing a benefit of participation, prohibited the City and Funds from adversely changing the health program for participants. After dismissing the City's recovery claim, the Circuit Court conducted a trial with testimony from City and Funds officials, as well as participants. Before the court rendered its decision, the City and Funds entered into a ten-year settlement, obligating the City to bear at least 55% of healthcare costs, fixed dollar subsidies by the Funds, with the annuitants paying the rest, with our rights to reinstate the case if no permanent resolution was achieved by the end of that settlement in 1997. (At the time, it was actually anticipated that the Healthcare changes being then pursued by Hillary Clinton would probably come to pass, providing a universal national health plan, rendering many private plans obsolete—although it did not pass.)

In any event, this first Korshak settlement was entered over annuitants' objections. However, the contemplated changes to the Illinois Pension Code were not actually enacted until August 23, 1989.

While Judge Green denied our effort to revive the case in 1998, the appellate court ordered our claims revived for participants. We reached another ten-year settlement in 2003, under which I am Class counsel for the "Korshak" class (retirees on 12/31/87) and the "Jacobson" or "Window period" class (coverage through a person who retired during the "window" period after 1987, but prior to the enactment of new legislation on August 23, 1989).

**The Current Settlement.** The current settlement, which expires June 30, 2013, provides, for most of you, that the City pays 55% of healthcare costs, the four City retirement Funds (Police, Fire, Municipal and Laborers) pay a fixed dollar subsidy amount by statute, and participants pay the rest, by withholding from your annuity check.

**The Participant Categories.** As we view this, there are, essentially, three categories of participants (you are in one of these categories):

**Category 1-Korshak and Jacobson Window retirees (pre-8/23/89 retirees)** have always been viewed as having the strongest claim to protection under the 1970 Illinois Constitution, Art. XIII, Section 5, making your benefits of participation in an Illinois government fund contract rights that may not be diminished or impaired.

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**Category 2 –participants via a person who began their participation in the pension fund** (that is, the date they began contributing to their Fund; meaning they day they *began* working for the City) **before August 23, 1989** (but retired later, or not yet) are, under most decisions, also usually held to be similarly protected against reductions in their retiree benefits. One “pension reform” group has circulated an opinion that the City or State could change retirement benefits for active employees by a contrived contractual modification theory; announcing a change in benefits, then treating people who continued working for the City as having tacitly agreed to the change, while people who don’t agree just stop working for the city. Whether this theory and contrivance would succeed or not is doubtful, but not impossible.

**Category 3-people who began working for the City**, and thus first became a participant in one of the Funds, **after August 23, 1989**. The problem for this group is that the August 23, 1989 statute explicitly declared that the group coverage plans “are not and shall not be construed to be pension or retirement benefits for purposes of” the Illinois Constitution’s Article XIII, Section 5. However, it has never been decided whether, despite the provision’s protection of benefits of participation in a plan, the legislature may create benefits of participation that are not protected.

### The City’s Retiree Health Benefits Commission and its Report.

Into this mix comes the City’s **Retiree Health Benefits Commission’s Report** issued January 11, 2013.

The RHBC was created by the Korshak settlement, with the purpose of making recommendations to the City administration for structuring the City’s retiree healthcare coverage after the settlement ends June 30, 2013.

The report, which is available on the city’s website, asserts that the costs of retiree healthcare, as currently structured, are “unsustainable”. Whether this is true, or just means “we don’t want to pay them this much”, the Report does not address how the Commission came to this conclusion. While \$194 million in retiree healthcare costs projected for 2014 may seem like a large number in isolation; it makes up only some 3% (three percent of the City’s annual corporate budget of \$6.6 Billion. Even then, the report’s Segal projections of 11% annual growth in retiree healthcare costs to \$504 million over the next decade may be highly overstated. The past Segal projections have virtually always turned out to be overly high, higher than actual experience. Indeed, the reconciliation process, which has just been concluded for the 2011 year, shows that annuitants’ premiums were generally overcharged by as much as 19-27%, resulting in refunds now being processed for that year. While overstated projections may ensure that employers set aside sufficient dollars to cover healthcare cost exposure, they may not be a fair basis for dumping costs onto retirees already on limited fixed incomes and paints an overly costly view of what actual costs are likely to be.

**The good news** is that the report recommends leaving the Korshak/Jacobson/Window class (i.e., pre-8/23/89 retirees) unchanged for the time being, suggesting changes to the subsequent retirees to drop the City’s costs by up to \$80 million or more.

**The bad news** is that the recommendations propose savings by reducing the City’s subsidy, reducing or eliminating dependent coverage, and other options that reduce the City’s expenditures.

Additionally, at least one of the RHBC’s members seems to support terminating the City’s plans, forcing them onto what she envisions as the federal plan to come (see Leemore Dafny’s op-ed piece in the January 22, 2013 SunTimes “Retirees May Not Need Health Insurance”). This is easy for someone who won’t be in that situation, and won’t have to bear the risk that things don’t turn out that way.



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**Here is the bottom line:**

➡ **At this time, the City has made no decisions, but certainly will before June 30, 2013.**

- **We are reviewing the situation as it proceeds to a City decision going forward.**
- **The Korshak settlement itself permits certain changes based on federal healthcare laws, and five to ten years will give us all a much better evaluation of how retirees' situations fit within the City's plan and the federal healthcare changes.**
- **We will continue to review the situation between now and June 30, 2013.**
- **And, we are of course willing to sit down with the City to negotiate an extension to the settlement, before once again reviving the litigation.**

➡ **Implementing the Commission's recommendations will substantially increase the annuitant healthcare costs for post 8/23/1989 retiree families.**

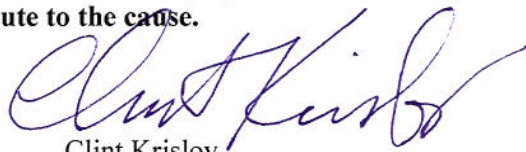
➡ **Also, the Funds have not indicated whether or not they will continue their subsidies past June 30, 2013, either.**

**If the Funds discontinue their payments, this would increase all annuitants costs by an additional \$95 or \$65 per month.**

➡ **Participant Annuitants and their families may wish to contact:**

- **Your Mayor, your Aldermen and your Fund Trustees to encourage them to continue the current program and subsidies for at least another 5-10 years, to give us all time for the federal healthcare changes to work their way through the system, so we can actually see how the City's retirees will actually be affected.**

**Finally, we are gearing up, should litigation be necessary again. This is a costly proposition, and we may need to request that retirees contribute to the cause.**



Clint Krislov  
Krislov & Associates, Ltd.  
Civic Opera Building, Suite 1350  
20 N. Wacker Drive  
Chicago, Illinois 60606  
Telephone: 312-606-0500  
Facsimile: 312-606-0207  
Website: [www.krislovlaw.com](http://www.krislovlaw.com)  
Email: [clint@krislovlaw.com](mailto:clint@krislovlaw.com)