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

**Jerry Williams and Larry Whitehead,)
Individually and on Behalf of All Others)
Similarly Situated; and Stewart F. Cooke, III,)
as Special Representative of the Estate of)
Stewart Cooke,)**

Plaintiffs,)

v.)

**Retirement Plan for Chicago)
Transit Authority Employees;)
Board of Trustees of the)
Retirement Plan for Chicago)
Transit Authority Employees;)
Retiree Health Care Trust; and)
Board of Trustees of the)
Retiree Health Care Trust,)**

Defendants.)

**Case No. 11-CH-15446
Calendar 9
Hon. Cecilia A. Horan**

**MEMORANDUM IN SUPPORT OF CLASS COUNSEL'S
APPLICATION FOR AWARD OF ATTORNEYS' FEES AND
COSTS AND CLASS REPRESENTATIVE SERVICE AWARDS**

Firm I.D. 15479
C. Philip Curley
Alan F. Curley
Alan R. Dolinko
Robert L. Margolis
ROBINSON CURLEY P.C.
200 North LaSalle Street, Suite 1550
Chicago, Illinois 60601
(312) 663-3100 – Telephone
(312) 663-0303 – Fax
pcurley@robinsoncurley.com
acurley@robinsoncurley.com
adolinko@robinsoncurley.com
rmargolis@robinsoncurley.com

Class Counsel

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INTRODUCTION

Robinson Curley P.C. (“RC” or “Class Counsel”) has petitioned the Court for an award of attorneys’ fees and costs and Class Representative Service Awards (“Fee Application”) from the common fund created as the result of the Class Action Settlement Agreement (“Agreement”) reached in this case (Exhibit 1 hereto).¹ RC has written retainer agreements with Plaintiffs and has been appointed Class Counsel in this case. The Fee Application is also filed on behalf of (1) Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich LLP (“Dowd”), (2) Klausner, Kaufman, Jensen & Levinson (“Klausner”), and (3) attorney Mark W. Solock (“Solock”) (RC, Dowd, Klausner, and Solock are collectively referred to as “Counsel”), who also have written retainer agreements with and represented individual plaintiffs at different times prior to class certification and, along with Class Counsel, contributed substantially toward creation of the common fund in this case.²

The Settlement, if approved by the Court, will resolve this litigation in its entirety in exchange for a non-reversionary cash payment of \$80,000,000³ as well as significant non-monetary relief to a Class of 6,354 Chicago Transit Authority (“CTA”) retirees (the “Class”). As detailed in Plaintiffs’ separate Memorandum in Support of Motion for Final Approval of Class Action Settlement filed contemporaneously herewith (“Final Approval Memorandum”), this represents an exceptional result for the Class, providing substantial and valuable relief, certainty, and closure. The benefits of the Settlement are particularly outstanding considering the significant risks of the litigation, which existed and were apparent from the outset. Those risks created the

¹ Capitalized terms not defined herein are used as defined in the Agreement.

² Class Counsel is not aware of any other law firms or attorneys that had written retainer agreements with any plaintiffs in the case.

³ The Settlement Amount has already been paid into an interest-bearing account (“Escrow”) pending the outcome of the Motion for Final Approval.

very real possibility that Counsel would spend thousands of hours of attorney time and advance hundreds of thousands of dollars of litigation costs without ever being compensated or reimbursed.

As compensation for the extraordinary efforts that resulted in the Settlement, and in light of the significant risk of nonpayment faced in bringing this difficult and hotly contested case on a contingent basis and diligently prosecuting it over the course of fifteen years, Counsel seek an award of attorneys' fees in the amount of 33 $\frac{1}{3}$ percent of the Settlement Fund, which is \$26,666,667, plus interest on that amount accrued since creation of the Escrow (as provided in the Agreement). This is lower than the 40 percent contingent fee the Class Representatives agreed to in their retainer agreements with Counsel. Curley Dec., ¶ 91. It is also well within the range of fees that courts in Cook County and other Illinois and federal courts have awarded on a percentage basis in comparably complex cases, including those involving the recovery of retirement benefits.

The Fee Application also seeks reimbursement of Counsel's reasonable costs advanced on behalf of Plaintiffs and the Class necessary for successful prosecution of the case, totaling \$485,682.42. Finally, approval of Class Representative Service Awards for Jerry Williams, Larry Whitehead, and Stewart Cooke, in a combined total of \$75,000, is also sought for their efforts assisting in the investigation and prosecution of this case. The requested Service Awards in total represent 0.09 percent (nine hundredths of one percent) of the Settlement Amount, consistent with service awards in other class action litigation.

The Notice mailed on June 23, 2023, in compliance with this Court's Order of May 25, 2023 ("Preliminary Approval Order"), advised Class Members that an application for attorneys' fees and costs and Service Awards would be submitted to the Court as requested herein. Curley Dec., ¶¶ 108, 116, 121; *see also* Notice (Ex. B to Agreement), p. 3. While the deadline set by the Court for Class Members to object to the requested attorneys' fees and costs and Service Awards

(September 25, 2023) has not yet passed, as of this filing (two weeks before that deadline), no objections to these amounts have been received. Curley Dec., ¶ 108.

In light of the excellent result obtained by the Settlement, the extraordinary time and effort Counsel devoted to the case over fifteen years, the skill and expertise required of Counsel, the quality of the work performed, the wholly contingent nature of the representation, and the extensive risk that Counsel undertook with the very real possibility of ultimately receiving no compensation, the requested fee award is reasonable and warrants approval. The costs advanced are reasonable and were necessarily incurred in the prosecution of the case and should be approved as well. Finally, because the Service Awards are well within the range typically allowed, they too should be awarded.

BACKGROUND

I. Disputed Issues and Plaintiff's Claims

Plaintiffs contend that under the language of the operative Retirement Plan Agreement for Chicago Transit Authority Employees (“RPA”), each Class Member is entitled to lifetime, premium-free retiree health coverage. Beginning July 1, 2009, however, (1) the Trust Defendants began charging the Class monthly premiums for retiree health coverage, and (2) the Plan Defendants deducted those premiums from certain Class Members’ pension payments and sent them to the Trust. Plaintiffs contend that in doing so Defendants breached the RPA and violated Article XIII, Section 5 of the Illinois Constitution (“Pension Protection Clause”). Defendants claim that Class Members are not entitled to lifetime, premium-free retiree health coverage, and contend that they at all times acted in accordance with the RPA and the Pension Protection Clause. Curley Dec., ¶¶ 5-6.

For those Class Members who participated in the Trust's health plan, Plaintiffs sought as damages the amount of premiums they have paid since July 1, 2009. For those Class Members who did not participate in the Trust's health plan, Plaintiffs sought as damages the value of the coverage that should have been provided to them. Plaintiffs also requested a constructive trust, pre-judgment interest, and injunctive relief preventing Defendants from charging the Class for retiree health coverage going forward. Throughout this litigation, Defendants have denied, and continue to deny, any and all allegations of fault, liability, wrongdoing, and damages. *Id.*, ¶¶ 7-8.

The primary issue presented is the interpretation of Section 20.12 of the RPA, which Defendants contend by its express language either terminated the Class's right to retiree health coverage altogether on December 31, 2003 ("termination argument"), or at a minimum caps the Class's damages at the cost of coverage on December 31, 2003 ("cap argument"). Plaintiffs argue (1) the Illinois Supreme Court has already decided the termination argument in Plaintiffs' favor, and (2) Section 20.12 is ambiguous and extrinsic evidence confirms Section 20.12 provides lifetime, premium-free retiree health coverage without any cap. *Id.*, ¶¶ 9-10.

At the time the parties agreed to settle, cross-motions for summary judgment and summary determination were pending as to the interpretation of Section 20.12, as well as several other issues. The cross-motions concerning Section 20.12 raised both the termination and cap arguments. If Defendants were to prevail on their termination argument in the cross-motions, it would be fully dispositive of the case in their favor and the Class would recover nothing. If the Plaintiffs were to prevail on the termination argument, but Defendants nonetheless prevailed on the cap argument, the Class's damages, according to Defendants' damages expert, would be far less than the \$80,000,000 Settlement Amount. *Id.*, ¶¶ 45, 63.

II. Class Certification and Class Counsel

RC is a boutique civil litigation firm with decades of experience in complex state and federal lawsuits, including class actions and similar litigation. Curley Dec., ¶ 93. Dowd has substantial experience representing labor unions, including public sector unions, in connection with matters related to collective bargaining agreements and retirement benefits, and participated in the case from its outset on behalf of individual plaintiffs, until it withdrew in May 2017 as a result of a conflict that developed after the *Matthews* remand. *Id.*, ¶ 95. Klausner practices in the area of employee benefits, and represented individual plaintiffs prior to class certification during the Illinois Appellate Court and Illinois Supreme Court proceedings. *Id.*, ¶ 96. Solock represented individual plaintiffs for a brief time very early in the case. *Id.*, ¶ 96, n. 2.

Thus, by May 2017, RC was sole Counsel for Plaintiffs. On July 7, 2020, Judge Valderrama certified the following Class:

All CTA retirees who were hired on or before September 5, 2001, retired from the CTA before January 1, 2007, and were eligible for retiree health benefits on July 1, 2009.

Judge Valderrama found that RC “has the qualification and skill to represent the class,” thus appointing RC sole Class Counsel. *See* Memorandum Opinion and Order, July 7, 2020, pp. 24-25; Curley Dec., ¶¶ 25-26. The attorneys’ fees sought are for RC, Dowd, Klausner and Solock together. Pursuant to a written agreement entered into among them and approved by Plaintiffs, they have agreed to an allocation of the requested fee award. Curley Dec., ¶ 97.

III. Procedural History and Counsel’s Efforts on Behalf of Plaintiffs and the Class

The Curley Declaration (Exhibit 2 hereto) and the Final Approval Memorandum chronicle the fifteen-year history of this lawsuit, during which time Counsel represented Plaintiffs and the Class diligently on a fully contingent basis and advanced almost a half-million dollars of out-of-

pocket costs. Class Counsel's records reflect that over 500 documents have been filed in this case with this Court alone. *See* Final Approval Memorandum, pp. 5-10; Curley Dec., ¶¶ 11-49, 103.

The case began with a class action complaint filed on December 30, 2008, by certain active employees and retirees of the CTA, including Jerry Williams, in the United States District Court for the Northern District of Illinois, styled *Matthews, et al. v. Chicago Transit Authority, et al.*, No. 08-cv-7418. That complaint alleged, *inter alia*, that charging retiree premiums violated the United States Constitution, the RPA, and the Pension Protection Clause. After the federal court dismissed the federal claims and declined to exercise supplemental jurisdiction over the state law claims, certain active employees and retirees of the CTA, again including Mr. Williams, reasserted their state law claims by filing this lawsuit in the Circuit Court of Cook County. Curley Dec., ¶¶ 11-12.

On September 21, 2012, Judge Franklin Valderrama dismissed the claims of active employees for lack of standing and the claims of retirees for failure to state a claim. Plaintiffs appealed to the First District Court of Appeals and then the Illinois Supreme Court, ultimately securing a decision on May 5, 2016 that reinstated the claims of the Class. *Matthews v. Chicago Transit Authority*, 2016 IL 117368 ("*Matthews*"). The Supreme Court held that Williams (and the Class) have a vested right to retiree health benefits and stated a claim against Defendants for breach of the RPA and violation of the Pension Protection Clause. *See Matthews*, ¶¶ 84, 104; Curley Dec., ¶¶ 12-14. For nearly seven years between the remand and when the settlement in principle was reached in March 2023, Class Counsel actively and aggressively litigated the nature and extent of the Class's vested benefits against well-financed and highly competent defense counsel. *Id.*, ¶ 17.

During that time, Class Counsel:

- filed several amended complaints, culminating in Plaintiffs' Third Amended Class Action Complaint (Curley Dec., ¶ 15);

- survived motions to dismiss that would have been fully dispositive of all claims if granted (*Id.*, ¶ 16);
- conducted extensive fact discovery, including exchanging multiple sets of document requests and interrogatories with Defendants' counsel, issuing dozens of third-party subpoenas, conducting or defending 32 depositions of fact witnesses, and reviewing hundreds of thousands of pages of documents produced by Defendants and third parties (*Id.*, ¶¶ 18-22);
- retained and worked with their damages expert to tender an expert report (updated several times) on highly complex issues, produced supporting documents on damages, and defended the expert's deposition (*Id.*, ¶ 24);
- reviewed and analyzed the expert report and supporting documents from Defendants' damages expert (working with Plaintiffs' expert in the process), and conducted his deposition (*Id.*);
- after prolonged opposition, successfully obtained certification of the Class on July 7, 2020, and provided notice of Class certification to all Class Members (*Id.*, ¶¶ 25-27);
- filed four motions for summary determination and opposed four motions for summary judgment and summary determination filed by Defendants, comprising hundreds of pages of briefing and hundreds of exhibits, the cumulative effect of which was to raise all issues related to liability, and prevailed on all such motions before Judge Allen Walker while he was still presiding over the case (*Id.*, ¶¶ 29-31);
- spent months preparing for and conducted most of a scheduled three-day damages hearing, including drafting multiple motions in limine which were effectively summary determination motions on key damages issues and defenses, and drafting findings of fact and conclusions of law comprising 227 paragraphs addressing damages issues and defenses; the hearing included live testimony from Plaintiffs' expert and cross-examining Defendants' key fact witness (*Id.*, ¶ 32);
- addressed issues raised by Judge Walker recusing himself under Illinois Supreme Court Rule 63(c) (*Id.*, ¶¶ 43-44);
- prepared for the reargument of all summary judgment motions after Judge Walker's prior substantive rulings were vacated (*Id.*, ¶ 45); and
- conducted settlement negotiations between August 2022 and March 2023, followed by negotiations over the ensuing weeks to document the Settlement's terms, and took the lead in drafting the Settlement Agreement (*Id.*, ¶¶ 46-48).

IV. The Settlement

Counsel's efforts, summarized above and set forth more fully in the Final Approval Memorandum and the Curley Declaration, culminated in the Agreement the Court preliminarily approved on May 25, 2023. The Settlement provides substantial monetary and non-monetary relief to the Class. It requires Defendants to pay \$80,000,000 to create the Settlement Fund. Notice and Administration expenses, taxes and tax expenses, Service Awards, and attorneys' fees and costs will be deducted from the Settlement Fund. The remaining Net Settlement Fund will be paid to Class Members on a *pro rata* basis in accordance with the proposed Plan of Distribution set forth in the Notice. The average net recovery to Class Members is estimated to be in excess of \$8,000. Curley Dec., ¶ 52. No portion of the Settlement Fund will be returned to Defendants. The Settlement also provides significant anti-discrimination protections going forward, guaranteeing that Class Members, their dependents, and surviving spouses will not in any way be discriminated against, singled out, or treated differently from comparable non-Class retirees, their dependents, or surviving spouses. *See* Agreement, ¶ 2.12.

Also pursuant to the Settlement, Class Counsel, with the assistance of actuarial experts, developed the proposed Plan of Distribution and calculated each Class Member's distribution from the Net Settlement Fund. Curley Dec., ¶ 102.

V. Notice Has Been Provided to the Class Consistent With the Court's Preliminary Approval Order.

Class Counsel solicited bids and ultimately hired Kroll Settlement Administration, LLC, as Claims Administrator. Notice to the Class Members was provided by the Claims Administrator consistent with the Court's Preliminary Approval Order. The Notice informed Class Members of the attorneys' fees and costs and Service Awards now being sought by counsel, and provided

instructions on how to file objections to those amounts. Curley Dec., ¶¶ 80-81; Notice (Ex. B to Agreement), pp. 4-5,7.

Class Counsel and the Claims Administrator have also maintained separate websites with Settlement information and links to Settlement-related documents, and have spoken with hundreds of Class Members seeking information about the Settlement. Curley Dec., ¶ 84; Kroll Dec. (Exhibit 3 hereto), ¶¶ 5-6. To date, no Class Members have submitted objections to the requested attorneys' fees and costs or Service Awards that are the subject of this Fee Application. Curley Dec., ¶ 87.

Class Counsel will also defend the Settlement against any objections, including filing a reply memorandum in support of Plaintiffs' Final Approval Motion, and appearing at the final approval hearing. In the event the Court grants final approval of the Settlement, Class Counsel will continue to work with the Claims Administrator to handle matters related to Settlement administration and the ultimate distribution of the Net Settlement Fund to the Class Members. Curley Dec., ¶ 89.

ARGUMENT

I. The Requested Attorneys' Fees Should Be Awarded.

The United States Supreme Court has long recognized that “a litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Illinois Supreme Court agrees. *Scholtens v. Schneider*, 173 Ill. 2d 375, 385 (1996) (quoting *Boeing*). “The underlying justification for reimbursing attorneys from a common fund, as explained by the United States Supreme Court in three early cases, is that, unless the costs of litigation are spread to the beneficiaries of the fund, they will be unjustly enriched by the attorney’s

efforts.” *Id.*, Awarding attorneys’ fees from a common fund “serve[s] to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes or persons, and to discourage future misconduct of a similar nature.” *In re FLAG Telecom Holdings, Ltd. Sec. Lit.*, No. 02-CV-3400, 2010 U.S. Dist. LEXIS 119702, *68 (S.D.N.Y. Nov. 8, 2010) (internal quotations omitted).

“The Illinois Supreme Court has adopted the approach taken by the majority of federal courts on the issue of attorney fees in equitable fund cases.” *Baksinski v. Northwestern Univ.*, 231 Ill. App. 3d 7, 13 (1st Dist. 1992). Where, as here, “an equitable fund has been created, attorneys for the successful plaintiff may directly petition the court for the reasonable value of those of their services which benefitted the class.” *Id.*, at 13-14. Counsel took this case on a contingent basis, fought on behalf of Plaintiffs and the Class for fifteen years against highly skilled and well-funded adversaries, and advanced hundreds of thousands of dollars of costs, all without any guarantee of compensation for their work.

Now that the Settlement has been achieved, Counsel seek an award of attorneys’ fees equal to 33½ percent of the Settlement Fund. This is well within the range of fee awards in class actions in Illinois and elsewhere, including class actions seeking benefits for retirees, and is particularly merited here given the risks and duration of this litigation and the outstanding result achieved. The request for attorneys’ fees of 33½ percent was included in the Notice sent to all Members, is fair and reasonable, and should be approved.

A. The Court Should Award Attorneys’ Fees Using the Percentage-of-Recovery Method, Because it Is the Favored Method and Reflects the Agreement Between Plaintiffs and Counsel.

The Court should award attorneys’ fees under the percentage-of-recovery method, which reflects Plaintiffs’ agreement with Counsel and is consistent with the well-established preference

in Illinois and other courts in common fund cases like this. *See, e.g., McCormick v. Adlatem Glob. Educ., Inc.*, 2022 IL App (1st) 201197-U, ¶ 26 (“the percentage method ... is favored in class actions”); ⁴ *In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig.*, 80 F. Supp. 3d 838, 844 (N.D. Ill. 2015) (the percentage method has “emerged as the favored method for calculating fees in common-fund cases in this district”); *Will v. General Dynamics Corp.*, No. 06-698, 2010 U.S. Dist. LEXIS 123349, *7 (S.D. Ill. Nov. 22, 2010) (in ERISA class action, using percentage method and noting, “The Seventh Circuit Court of Appeals uses a percentage basis rather than a lodestar or other basis when determining a reasonable fee”). Consistent with this, the percentage method is the predominant method used in class actions concerning retiree benefits.

As previously noted, Plaintiffs entered into written retainer agreements with Counsel providing that attorneys’ fees would be measured by a percentage of any recovery. Under that agreement, Counsel is entitled to 40 percent of any recovery, which Counsel have agreed to reduce to 33⅓ percent. Curley Dec., ¶ 91. Counsel’s choice to measure fees by a percentage is typical in class actions and supports the Court employing that method to analyze the fee request here. *See, e.g., McCormick*, 2022 IL App (1st) 201197-U, ¶ 26 (choosing percentage-of-recovery method to analyze fee award to class counsel, noting “in addition to being efficient and fair, the percentage approach is likely what the class members and counsel would have negotiated when counsel agreed to take on the case”; also, citing cases recognizing that most engagement agreements in class actions specify compensation calculated by the percentage-of-recovery method); *Brewer v. Molina Healthcare, Inc.*, Nos. 1:16-cv-09523, 1:16-cv-11346, 2018 U.S. Dist. LEXIS 105816, *10 (N.D. Ill. June 12, 2018) (awarding requested 33⅓ percent fee, where, as here, the engagement agreement provided for a 40 percent fee; “Thus, the court knows what private plaintiffs would have negotiated

⁴ Pursuant to Illinois Supreme Court Rule 23(e)(1), unpublished opinions issued after January 1, 2021 such as *McCormick* “may be cited for persuasive purposes.”

with their lawyers ... because the Named Plaintiff contracted for Plaintiff's Counsel to be compensated with an amount that was larger than what Plaintiff's Counsel now seek").

Due to its clear advantages, Illinois courts favor the percentage-of-recovery method over the alternative lodestar method. As noted in *McCormick*, "numerous criticisms have been lodged against the lodestar method since it originated in the federal Third Circuit and went into wider practice in the early 1970s." 2022 IL App (1st) 201197-U, ¶ 26. *See also id.*, citing *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 923 (1st Dist. 1995) ("the lodestar approach has been subjected to increased scrutiny as its deficiencies began to offset or exceed its benefits"). *McCormick* relied on a report by a "task force appointed by the Third Circuit to compare the respective merits of the percentage-of-recovery and lodestar methods," which found the lodestar method:

increases the workload of an already overtaxed judicial system, ... creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, ... has led to abuses such as lawyers billing excessive hours, ... creates a disincentive for the early settlement of cases, ... does not provide the trial court with enough flexibility to reward or deter lawyers so that desirable objectives will be fostered, ... [and] is ... confusing and unpredictable in its administration.

2022 IL App (1st) 201197-U, ¶ 26 (quoting *Ryan*, 274 Ill. App. 3d at 923, which cited *Court Awarded Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 246-49 (1985)).⁵

McCormick then noted how the Third Circuit task force concluded that while lodestar retains some utility in certain statutory-fee cases, "the percentage-of-recovery was the best way to calculate reasonable attorney fees in class action cases." *McCormick*, 2022 IL App (1st) 201197-U,

⁵ The Illinois Supreme Court in *Brundidge v. Glendale Fed. Bank F.S.B.*, 168 Ill. 2d 235 (1995), leveled similar criticisms of the lodestar method, recognizing that "[e]valuating the hours actually expended is a laborious, burdensome, and time-consuming task that may be biased by hindsight," and "[t]he risk multiplier is little short of a wild card in the already uncertain game of assessing fees under the lodestar calculation." *Id.* at 242-43.

¶ 26. *Accord Brundidge*, 168 Ill. 2d at 244 (“[a]warding attorney fees to plaintiffs’ counsel based on a percentage of the fund held by the court is, overall, a fair and expeditious method that reflects the economics of legal practice and equitably compensates counsel for the time, effort, and risks associated with representing the plaintiff class”);⁶ *Ryan*, 274 Ill. App. 3d at 923 (“a percentage fee was the best determinant of the reasonable value of the services rendered by counsel in common fund cases”); 5 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, William B. Rubenstein Ed. (“*Newberg*”) § 15:65 (5th ed.) (“Under the percentage method, counsel have an interest in generating as large a recovery for the class as possible, as their fee increases with the class’s take. By contrast, when class counsel’s fee is set by an hourly rate, the lawyers have an incentive to run up as many hours as possible in the litigation so as to ensure a hefty fee, even if the additional hours are not serving the clients’ interests in any way.”).

For these reasons, the Court should employ the percentage-of-recovery method to determine Counsel’s fee award.⁷

⁶ *Brundidge* noted there can be “deficiencies” with the percentage-of-recovery method when “the damages awarded are high but the costs and length of the litigation were comparatively slight,” where counsel has the “incentive ... to settle cases prematurely” due to the small amounts each class member will receive, and in cases that “can be disposed of quickly.” 168 Ill. 2d at 243. None of those circumstances are applicable to this hotly contested, fifteen-year litigation, where each Class Member will recover thousands of dollars constituting a high percentage of the amounts they lost over the years. *See* Curley Dec., ¶ 52.

⁷ Class Counsel recognizes the Court has “discretionary authority to choose” either the percentage-of-recovery or lodestar method. *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58. For the reasons stated above, however, the Court should choose the percentage-of-recovery method. And though courts retain discretion to use the lodestar as a cross-check, the “argument that a method that is disfavored in class actions should [be] used at least for a cross-check of [a] fee award is an argument for inefficiency.” *McCormick*, 2022 IL App (1st) 201197-U, ¶ 26. Thus, the Court need not perform a cross-check. *See Shaun Fauley*, 2016 IL App (2d) 150236, ¶ 59. Nevertheless, as of August 31, 2023, Counsel’s lodestar is \$14,265,486.04, resulting in a risk multiplier of 1.87 if the requested attorneys’ fees are awarded, Curley Dec., ¶¶ 105-06, well within the range courts regularly accept. *See, e.g., Shaun Fauley*, 2016 IL App (2d) 150236, ¶ 59 (multiplier of “approximately 2.97 [is] well within the range of multipliers used in other common fund cases”); *Spano v. Boeing Co.*, No. 06-cv-743-NJR-DGW, 2016 U.S. Dist. LEXIS 161078, *11 (S.D. Ill. Mar. 31, 2016) (ERISA class action; “In risky litigation such as this, lodestar multipliers can be reasonable in a range between 2 and 5”).

B. The Court Should Approve as Reasonable the Requested Fee of 33⅓ percent of the Settlement Fund.

Determining the reasonableness of a fee request under the percentage-of-recovery method involves assessing the extent of the recovery realized for the class, the probability of that recovery when viewed at the outset of the litigation, and the risks taken by Counsel (including the risk of non-payment) in bringing the lawsuit. *Ryan*, 274 Ill. App. 3d at 924; *accord Sutton v. Bernard*, 504 F. 3d 688, 692 (7th Cir. 2007) (courts should “do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time”). These factors support the percentage award sought here.

1. An Award of 33⅓ percent of the Settlement Fund Is Well Within the Range that Courts in Illinois and Elsewhere Have Found Reasonable in Similar Cases.

An attorneys’ fee of 33⅓ percent of the Settlement Fund is well within the range of fees that courts in Illinois and elsewhere regularly award to counsel in class actions. *See, e.g., Taubenfeld v. AON Corp.*, 415 F.3d 597, 600 (7th Cir. 2005) (noting with approval the district court’s reliance on “a table of thirteen cases in the Northern District of Illinois where counsel was awarded fees amounting to 30-39% of the settlement fund”); *Retsky Family Ltd. Partnership v. Price Waterhouse LLP*, No. 97 C 7694, 2001 U.S. Dist. LEXIS 20397, *10 (N.D. Ill. Dec. 10, 2001) (“A customary contingency fee would range from 33⅓% to 40% of the amount recovered.”); *McCormick*, 2022 IL App. (1st) 201197-U, ¶¶ 30-32 (fee award of 35 percent held to be “fair and reasonable compensation”); *Prelipceanu v. Jumio Corp.*, No. 2018-CH-15833 (Cir. Ct. Cook Cty. July 21, 2020) (Mullen, J.) (40 percent of settlement fund); *Zepeda v. Kimpton Hotel & Rest.*, No. 2018-CH-02140 (Cir. Ct. Cook Cty. Dec. 5, 2018) (Atkins, J.) (40 percent of settlement fund); *Rogers v. Illinois Central RR Co.*, No. 2019-CH-05129 (Cir. Ct. Cook Cty. Oct. 4, 2022) (Horan, J.) (38 percent of settlement fund); *see also, Newberg*, § 15:83 (5th ed.) (“50 percent of the fund

is the upper limit on a reasonable fee from any common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class”).

The proposed fee of 33 $\frac{1}{3}$ percent is also within the range of attorneys’ fees awarded in other retiree benefit class actions, including in Illinois. *See, e.g., In re Guidant Corp. ERISA Litig.*, No. 05-1009, 2010 U.S. Dist. LEXIS 153429 (S.D. Ind. Sept. 10, 2010) (38 percent of the settlement fund in ERISA class action); *Mansfield v. Air Line Pilots Ass’n, Int’l*, No. 06 C 6869, 2009 U.S. Dist. LEXIS 132346, *11-13 (N.D. Ill. Dec. 14, 2009) (awarding 35 percent of settlement fund as attorneys’ fee in pension benefits class action, a rate the court found “is consistent with awards in similarly complex cases in this and other jurisdictions and accurately reflects the market rate for Class Counsel’s services”); *Spano*, 2016 U.S. Dist. LEXIS 161078, *5 (33 $\frac{1}{3}$ percent in ERISA class action “is well within reasonable levels for a case such as this one”); *George v. Kraft Foods Global, Inc.*, No. 08-3799, 2012 U.S. Dist. LEXIS 166816 (N.D. Ill. June 26, 2012) (33 $\frac{1}{3}$ percent of recovery as attorneys’ fee in ERISA class action); *Abbott v. Lockheed Martin*, No. 06-701, 2015 U.S. Dist. LEXIS 93206, *7 (S.D. Ill. July 17, 2015) (33 $\frac{1}{3}$ percent in ERISA class action that lasted for more than eight years; “A one-third fee is consistent with the market rate in settlements concerning this particularly complex area of law”); *Will v. General Dynamics Corp.*, No. 06-698, 2010 U.S. Dist. LEXIS 123349, *9 (S.D. Ill. Nov. 22, 2010) (33 $\frac{1}{3}$ percent in ERISA class action; “The Court finds that the market for complex plaintiffs’ attorney work in this case and similar cases is a contingency fee. The Court further agrees that a one-third fee is consistent with the market rate.”); *Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 U.S. Dist. LEXIS 145111 (C.D. Ill. Sept. 10, 2010) (33 $\frac{1}{3}$ percent in ERISA class action); *Spann v. AOL Time Warner, Inc.*, 02 Civ. 8238 (DLC), 2005 U.S. Dist. LEXIS 10848, *24 (S.D.N.Y. June 7, 2005) (33 $\frac{1}{3}$ percent in ERISA class action; “Given the high risk that the defendants would prevail with a

complete defense on the issue of the interpretation of the Plan language, as well as the reasonable amount of time expended by plaintiffs' counsel, a fee award of one-third of the settlement ... is appropriate"). The requested attorneys' fee award of 33⅓ percent clearly falls within the range of awards in comparable cases, and is entirely appropriate here.

This case in particular warrants the requested attorneys' fees to fairly and reasonably compensate Counsel for (1) agreeing to represent Plaintiffs and the Class despite substantial risks, (2) the extraordinary expenditure of time and resources, including hundreds of thousands of dollars in out-of-pocket costs, and (3) ultimately obtaining for the Class an outstanding settlement.

2. The Substantial Risks of the Litigation, and the Very Real Possibility the Class Could Recover Nothing And Counsel Would Go Uncompensated, Also Support the Requested Fee.

In evaluating the reasonableness of a requested fee, courts consider the risks of non-recovery to the Class, and thus the risk to counsel of going uncompensated. *See, e.g., McCormick*, 2022 IL App (1st) 201197-U, ¶ 32 (trial judge's award of 35 percent was justified in light of his finding that "the attorneys were skilled litigators who undertook significant risk in overcoming [defendant's] thin liability and achieving an extraordinary settlement for the class"); *Shaun Fauley*, 2016 IL App (2d) 150236, ¶ 59 (citing "substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and the defenses asserted by [the defendant]"); *Ryan*, 274 Ill. App. 3d at 924 (noting the trial court's fee award was reasonable given the significant recovery for the class and the contingency risk). *Accord, In re Synthroid Mktg., Litig.*, 264 F.3d 712, 721 (7th Cir. 2001) ("The market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear."). Here, Counsel represented Plaintiffs and the Class on a wholly contingent basis, and agreed to advance litigation costs, necessarily having to redirect

resources from other work, Curley Dec., ¶ 103, knowing full well that the claims faced significant obstacles such that Counsel might never be paid at all.

First, when they undertook the representation, Counsel were aware of the plain language of Section 20.12, which Defendants have consistently argued does not provide lifetime, premium-free retiree health coverage. That interpretation would be wholly dispositive of the Class's claims (the termination argument), or severely reduce damages (the cap argument). While Class Counsel believes Plaintiffs have strong arguments against both of these positions, and prevailed on those arguments before Judge Walker before he recused himself, the arguments were again before the Court on the summary judgment cross-motions at the time the case settled, and the Court indicated it would review all issues *de novo*. Curley Dec., ¶ 56.

Second, at the time this case was filed, it was an open question whether retiree health benefits (as opposed to traditional pension benefits) were even subject to the Pension Protection Clause. That issue wasn't finally decided until 2014. *See Kanerva v. Weems*, 2014 IL 115811, ¶¶ 35, 40; *Matthews*, ¶ 54 (*Kanerva* held, "as a matter of first impression," that health benefits were covered). Curley Dec., ¶ 57.

Third, Counsel were also aware at the outset of the case that even if they established liability, proving damages for the Non-Participants, who did not pay the premiums or obtain the coverage offered, would be complex and raise issues of causation that could lead to a finding of no damages. These damages issues ultimately required expert testimony, and while again Class Counsel was confident Plaintiffs have the stronger argument, there was significant risk that the Court would hold otherwise. No court has ruled on these issues. Curley Dec., ¶ 58.

Fourth, Counsel knew that Defendants would vigorously oppose class certification, which they did, arguing that the Class Members had too many individualized interests to constitute a

single, unified class (such as Participants and Non-Participants, and retirees with dependents and those receiving only individual benefits). Though Class Counsel prevailed on Class Certification, there was no guarantee at the outset they would do so, which posed a significant risk to any recovery. *Id.*, ¶ 59.

Fifth, in addition to the myriad specific factual and legal issues that Counsel knew this highly complex case would spawn, they also knew from the outset that they would have to contend with highly skilled adversaries who, given the stakes of the Class's claims, would defend the case vigorously with extensive resources at their disposal. Counsel accepting this engagement had to be prepared to embark on a highly contested litigation over many years, which proved to be the case. *Id.*, ¶ 60.

Finally, Counsel was aware at the outset that even if they ultimately overcame the above obstacles, obtained a judgment in Plaintiffs' favor on liability, and then achieved a favorable result as to damages, any such judgment was highly likely to be appealed with the risk that an appellate court would reverse the liability finding, or reduce or eliminate the damages. *Id.*, ¶ 61. All of these risks to Counsel ever receiving compensation for their work were apparent when they took on the engagement and support the reasonableness of the fees requested. *Taubenfeld*, 415 F.3d at 600 (affirming 33⅓ percent fee, noting "significant degree of risk of nonpayment with the case").

3. Counsel's Expenditure of Time and Resources on the Class's Behalf, Plus the Substantial Monetary and Non-Monetary Benefits Achieved for the Class, Further Support the Requested Fee.

Despite the above-described risks, Counsel took on this case and achieved an outstanding Settlement, providing an average net recovery to 6,354 Class Members of over \$8,000 each, an amount that exceeds the monetary compensation in class action settlements that courts regularly approve. The Settlement amount of \$80,000,000 represents 63 percent of the approximately

\$127,000,000 in compensatory damages Plaintiffs seek, and 90 percent of the sum of all Class Member claims calculated pursuant to the Plan of Distribution.⁸ Curley Dec., ¶ 51.

The result here firmly places the Settlement in the upper tier of class action settlements. *See, e.g., In re Linerboard Antitrust Lit.*, MDL No. 1261, 2004 U.S. Dist. LEXIS 10532, at *15-16 (E.D. Pa. June 2, 2004) (settlement recovered 55 percent of the expert’s calculated damages during the limitations period, and 42 percent for the full period, and citing several cases with much lower percent recoveries); *Karpik v. Huntington Bancshares, Inc.*, No. 2:17-cv-1153, 2021 U.S. Dist. LEXIS 38641, *26 (S.D. Ohio Feb. 18, 2021) (approving settlement in ERISA class action representing approximately 30 percent of actual damages “associated with defendants’ alleged fiduciary breaches”); *Sims v. BB&T Corp.*, No. 1:15-cv-732, 2019 U.S. Dist. LEXIS 75837, *11-12 (M.D.N.C. May 6, 2019) (approving ERISA class action settlement representing 19 percent of estimated actual damages); *In re Polyurethane Foam Antitrust Litigation*, No. 1:10 MD 2196, 2015 U.S. Dist. LEXIS 23482, *17 (N.D. Ohio Feb. 26, 2015) (“A settlement figure that equates to roughly 18 percent of the best-case-scenario classwide [for recovery of actual damages, before trebling] is an impressive result in view of these possible trial outcomes”); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 583 (N.D. Ill. 2011) (approving settlement representing “approximately 10% of the [amount] that is the class’s maximum potential recovery,” based on an expert’s calculation of actual damages caused, and noting “[n]umerous courts have approved settlements with recoveries around (or below) this percentage”); *Spann*, 2005 U.S. Dist. LEXIS 10848, *9 (approving ERISA class action settlement of approximately 18 percent of what would be “the total

⁸ If either of Plaintiffs’ alternative additional claims for constructive trust (up to \$94,000,000) or pre-judgment interest (\$43,000,000), were ultimately successful, the \$80,000,000 Settlement amount would still represent between 36 percent and 47 percent of those amounts plus compensatory damages, recoveries well within the range courts regularly approve.

recovery for the class”); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001) (noting that since 1995, class action settlements typically “recovered between 5.5% and 6.2% of the class members’ estimated losses”). “The fact that numerous courts have approved settlements where the percent of damages was substantially lower than in this case provides objective evidence that the settlements are highly favorable.” *Linerboard*, 2004 U.S. Dist. LEXIS 10532, *15.

The significant non-monetary, anti-discrimination relief that the Settlement provides Class Members must also be considered in evaluating the results achieved for the Class. *See, e.g., Spano*, 2016 U.S. Dist. LEXIS 161078, *5 (“A court must also consider the overall benefit to the Class, including non-monetary benefits, when evaluating a fee request”; also noting, “[t]his is important so as to encourage attorneys to obtain meaningful affirmative relief”); *see also, Hall v. Cole*, 412 U.S. 1, 5 n. 7 (1973) (attorneys’ fee award “must logically extend, not only to litigation that confers a monetary benefit on others, but also litigation which corrects or prevents an abuse which would be prejudicial to the rights and interests of those others.”).

To achieve this outstanding Settlement, Counsel over the course of fifteen years made significant efforts and litigated aggressively on a fully contingent basis, without any guarantee of payment, against skilled defense counsel. Counsel pursued this litigation after conducting a comprehensive investigation of the underlying facts, including the decades-long history of CTA retirement benefits through the many collective bargaining agreements and iterations of the RPA; and engaging in the pleading, motion, appellate, discovery, and trial practice detailed earlier. Counsel thus expended over twenty thousand of hours of time, as well as hundreds of thousands of dollars of out-of-pocket costs, all without any guarantee of compensation. During that time, Counsel had to redirect resources from other work. *Curley Dec.*, ¶¶ 105, 112; *see Spano*, 2016 U.S.

Dist. LEXIS 161078, *7 (citing “Class Counsel’s willingness to pursue this action over more than nine and a half years of litigation” as a factor supporting 33⅓ percent fee in ERISA class action).

Class Counsel has also spent (and will continue to spend) significant time seeking approval of and administering the Settlement. Class Counsel solicited bids from and interviewed several potential claims administrators and escrow agents, drafted the Notice and negotiated the escrow agreement, consulted with actuaries to determine an appropriate Plan of Distribution and calculate the individual distribution amounts, and have had continuing communications with those entities and Class Members about administration of the Settlement. Finally, Class Counsel drafted and filed the motions for preliminary and final approval of the Settlement. Curley Dec., ¶ 102.

Given the significant monetary and non-monetary benefits obtained for the Class, and the enormous amount of time and expense Counsel incurred over the fifteen years since this case was initially filed, Counsel’s request for an award of 33⅓ percent of the Settlement Fund is fair and reasonable, particularly given the myriad defenses that could have been fully dispositive or substantially reduced the Class’s damages, and all of the other previously-discussed factors that presented “substantial risk [to counsel] in prosecuting this case under a contingency fee agreement.” *Shaun Fauley*, 2016 IL App (2d) 150236, ¶ 59.

II. The Requested Costs Should Be Awarded.

In addition to attorneys’ fees, Counsel also seek to be reimbursed for the costs advanced in prosecuting this litigation. Courts recognize that attorneys who create a common fund for the benefit of a class “are entitled to reimbursement for those expenses incurred in the creation ... of the common fund.” *See, e.g., Dalton v. Jones, Bird & Howell*, No. 91-3730, 1993 U.S. App. LEXIS 11377, at *9 (7th Cir. May 12, 1993); *see also, id.* at *4 (“Attorneys in a class action in which a common fund is created are entitled to compensation for their services and reimbursement of their

out-of-pocket expenses.”). Counsel advanced a total of \$485,682.42 in costs in connection with the investigation, filing, and prosecution of the litigation. Curley Dec., ¶ 112.

The costs for which Counsel seek reimbursement were reasonable, necessary, and directly related to the prosecution of the case. *Id.* They include deposition costs, expert fees, computerized research, travel-related costs, copying costs, and postage and delivery expenses. *Id.* All are the type that would typically be charged to paying clients. *See Abbott*, 2015 U.S. Dist. LEXIS 93206, *13 (“It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reporters; travel expense; copy, phone and facsimile expenses and mediation.”); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010) (awarding reimbursement of expenses, noting “[t]he expenses incurred by Plaintiffs’ counsel are largely attributable to ordinary and necessary costs such as court reporters, expert fees, computer-assisted document organization, travel, and copying”); *Spano*, 2016 U.S. Dist. LEXIS 161078, *11 (same; “Class Counsel’s incentive was to control costs as much as possible over the course of this protracted litigation, and there is no evidence they failed to do so”).

The Notice estimated that costs would be approximately \$480,000. *See* Notice (Ex. B to Agreement), p. 3. Reimbursement of costs in the amount of \$485,682.42 is fair and reasonable and should be approved.

III. The Requested Class Representative Service Awards Should Be Awarded.

Service Awards of \$55,000 for Jerry Williams, \$10,000 for Larry Whitehead, and \$10,000 for Stewart Cooke are also sought.⁹ Service Awards are appropriate in class actions because a class

⁹ Former Plaintiff and Class Representative Stewart Cooke has passed away. On June 30, 2022, his only child, Stewart F. Cooke, III, substituted into the case as Special Representative of the Estate of Stewart Cooke “solely to continue prosecuting claims for the benefit of the estate of Stewart Cooke,” and not as a

representative's efforts benefit absent class members, while also serving to encourage the future filing of beneficial litigation. *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992) (service awards “are not atypical in class action cases” and they “serve to encourage the filing of class action suits”). And where, as here, “litigation has been protracted, an incentive award is especially appropriate.” *Waldbuesser v. Northrop Grumman Corp.*, No. cv 06-6213, 2017 U.S. Dist. LEXIS 223293, *22 (C.D. Cal. Oct 24, 2017).

As set forth below, the Service Award requests are reasonable, both (1) in light of the size of the settlement and substantial benefits the Class received from the efforts of the Class Representatives; and (2) the extraordinary commitment and effort by Mr. Williams in particular, who has devoted his time and energy for the full fifteen years of this dispute. Quite simply, this Settlement would not have been possible without the time, effort, and unwavering commitment of the Class Representatives, who stepped forward on behalf of other Class Members, accepting the responsibility of cooperating in the litigation and subjecting themselves to discovery so they could advance the interests of all Class Members. *See Schulte*, 805 F. Supp. 2d at 600-01 (fact that class representatives opened themselves up to “scrutiny and attention” was in and of itself “certainly worth some remuneration”).

For Mr. Williams, this has been a fifteen-year commitment, as he was one of the original Plaintiffs when the claims were first filed in federal court. His dedicated work over that fifteen-year period has included: (1) retaining and working directly with Counsel on substantive issues and strategy, including hundreds of meetings, phone calls, and emails; (2) holding regular meetings throughout the fifteen-year period with Class Members to keep them informed of the status of the

Class Representative. Agreed Order, June 30, 2022. The portion of the Service Award allocated to Stewart Cooke will be paid to Stewart F. Cooke, III. Curley Dec., ¶ 117, n.3.

case; (3) responding to multiple discovery requests from Defendants, including interrogatories, supplemental interrogatories, and document requests; (4) providing affidavits; (5) preparing for and sitting for his deposition; and (6) attending the damages hearing in April 2022. *See generally*, Williams Dec. (Exhibit 4 hereto); Curley Dec., ¶ 118. Larry Whitehead and Stewart Cooke became Plaintiffs in 2017 after remand from the Supreme Court, and also responded to multiple discovery requests, provided affidavits, and gave deposition testimony. Curley Dec., ¶ 119.¹⁰

Under the circumstances, awards of \$55,000 to Mr. Williams, and \$10,000 each to Mr. Whitehead and Mr. Cooke are reasonable. *See e.g., Marchbanks Truck Serv. v. Comdata Network, Inc.*, No. 07-cv-1078, 2014 U.S. Dist. LEXIS 184691, *13-14 (E.D. Pa. July 14, 2014) (awarding \$150,000 to one class representative and \$75,000 to two other class representatives); *In re Titanium Dioxide Antitrust Litig.*, No. 10-cv-00318 RDB, 2013 U.S. Dist. LEXIS 176099, *8-9 (D. Md. Dec. 13, 2013) (awarding \$125,000 to one class representative and \$25,000 to each of two class representatives); *Brotherton v. Cleveland*, 141 F. Supp. 2d 908, 913-14 (S.D. Ohio 2001) (awarding \$50,000 to class representative).

Moreover, the combined total of \$75,000 for Service Awards is well within the range of reasonableness, representing just 0.09 percent of the Settlement Amount and thus consistent with awards in other class action litigation. *See Spano*, 2016 U.S. Dist. LEXIS 161078, *13 (“Class Representative awards of less than one percent of the fund are consistent with awards in comparable cases, even those which have not required such a long [nine-plus year] commitment”); *See also*, Eisenberg & Miller, *Symposium: Emerging Issues in Class Action Law: Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303, 1308 (Aug. 2006) (0.16 percent is the average); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-cv-4462, 2015

¹⁰ Messrs. Williams, Whitehead, and Cooke III agree to the division of the requested \$75,000 in Service Awards. Curley Dec., ¶ 121.

U.S. Dist. LEXIS 35421, at *19-20 (N.D. Ill. Mar. 23, 2015) (citing Eisenberg & Miller study as support for awarding service award). The Notice identified the total proposed Service Awards being sought. The requested Service Awards are fair and reasonable, and should be approved.

CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the Fee Application be granted and the Court (1) award attorneys' fees to Counsel in the amount of 33 $\frac{1}{3}$ percent of the Settlement Fund, or \$26,666,667, plus interest accrued since creation of the Escrow; (2) award Counsel their reasonable litigation costs advanced in the total amount of \$485,682.42; and (3) approve Service Awards of a combined total of \$75,000 to Jerry Williams, Larry Whitehead, and Stewart Cooke. A draft order will be provided with Class Counsel's reply brief, due October 9, 2023.

Respectfully submitted,

Robinson Curley P.C., Class Counsel

Dated: September 11, 2023

By: /s/ C. Philip Curley

Firm I.D. 15479
 C. Philip Curley
 Alan F. Curley
 Alan R. Dolinko
 Robert L. Margolis
 ROBINSON CURLEY P.C.
 200 North LaSalle Street, Suite 1550
 Chicago, Illinois 60601
 (312) 663-3100 – Telephone
 (312) 663-0303 – Fax
 pcurley@robinsoncurley.com
 acurley@robinsoncurley.com
 adolinko@robinsoncurley.com
 rmargolis@robinsoncurley.com

CERTIFICATE OF SERVICE

The Undersigned certifies that on September 11, 2023, I caused copies of the attached **MEMORANDUM IN SUPPORT OF CLASS COUNSEL'S APPLICATION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND CLASS REPRESENTATIVE SERVICE AWARDS** to be served by e-mail on the following:

Victoria R. Collado
Burke, Warren, MacKay & Serritella P.C.
330 North Wabash Avenue, Suite 2100
Chicago, Illinois 60611
Telephone: (312) 840-7001
vcollado@burkelaw.com

*Attorneys for Defendants Retirement Plan for Chicago
Transit Authority Employees and Board of Trustees
of the Retirement Plan for Chicago Transit Authority Employees*

Katheleen A. Ehrhart
Smith Gambrell & Russell LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606
Telephone: (312) 360-6790
Fax: (312) 360-6520
kehrhart@sgrlaw.com

*Attorneys for Defendants Retiree Health Care Trust
and Board of Trustees of the Retiree Health Care Trust*

/s/ C. Philip Curley

Exhibit 1

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

**Jerry Williams and Larry Whitehead,)
Individually and on Behalf of All Others)
Similarly Situated; and Stewart F. Cooke, III,)
as Special Representative of the Estate of)
Stewart Cooke,)**

Plaintiffs,)

v.)

**Retirement Plan for Chicago)
Transit Authority Employees;)
Board of Trustees of the)
Retirement Plan for Chicago)
Transit Authority Employees;)
Retiree Health Care Trust; and)
Board of Trustees of the)
Retiree Health Care Trust,)**

Defendants.)

**Case No. 11-CH-15446
Calendar 9**

Hon. Cecilia A. Horan

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made by and between the following Settling Parties:¹

- A. Jerry Williams (“Williams”), individually and on behalf of each of the Class Members.
- B. Larry Whitehead (“Whitehead”), individually and on behalf of each of the Class Members.
 - i. Williams and Whitehead are each a “Class Representative” and are collectively referred to as the “Class Representatives.”
- C. Stewart F. Cooke, III (“Cooke III”), as Special Representative of the Estate of Stewart Cooke (“Cooke”).²

¹ Capitalized terms not otherwise defined herein are used as defined in Section II(1) below.

² Cooke III is not a Class Representative and is not entering into this Agreement on behalf of any other Class Members.

- i. Cooke, who is deceased, was formerly a plaintiff and class representative. Williams, Whitehead, Cooke, and Cooke III are collectively referred to as “Plaintiffs,” depending on the context.
- D. The Retirement Plan for Chicago Transit Authority Employees (“Plan”).
- E. The Board of Trustees of the Retirement Plan for Chicago Transit Authority Employees (“Plan Board”).
 - i. The Plan and the Plan Board are collectively referred to as the “Plan Defendants”.
- F. The Retiree Health Care Trust (“Trust”).
- G. The Board of Trustees of the Retiree Health Care Trust (“Trust Board”).
 - i. The Trust and the Trust Board are collectively referred to as the “Trust Defendants.”
 - ii. The Plan Defendants and the Trust Defendants are collectively referred to as “Defendants.”

I. THE LITIGATION

WHEREAS, certain retirees of the Chicago Transit Authority (“CTA”) received pension and health benefits pursuant to an agreement referred to as the Retirement Plan for Chicago Transit Authority Employees (“Retirement Plan Agreement”).

WHEREAS, beginning no later than in 1983 and until June 30, 2009, eligible CTA retirees were provided health care coverage without being charged any premium. On July 1, 2009, pursuant to its statutory authority the Trust began charging retirees premiums for a portion of their retiree health care coverage, and the Plan began deducting those premiums from certain retirees’ pension checks.

WHEREAS, on December 30, 2008, in anticipation of the Trust beginning to charge retiree premiums, certain active employees and retirees of the CTA, including Williams, filed a Class Action Complaint against Defendants and others in the United States District Court for the

Northern District of Illinois, styled *Matthews, et al. v. Chicago Transit Authority, et al.*, No. 08-cv-7418, alleging, *inter alia*, that charging retirees premiums for individual retiree health care benefits violated certain provisions of the United States Constitution, Article XIII, Section 5 of the Illinois Constitution (“Pension Protection Clause”), and the Retirement Plan Agreement. On June 24, 2010, the federal court dismissed the federal claims and declined to exercise supplemental jurisdiction over the remaining state-law claims.

WHEREAS, on April 20, 2011, certain active employees and retirees of the CTA, including Williams, filed their initial Class Action Complaint in the Circuit Court of Cook County (“Court”), No. 11 CH 15446 (the “Litigation”). The initial complaint alleged, *inter alia*, that charging premiums for individual retiree health care benefits violated the Retirement Plan Agreement and the Pension Protection Clause.

WHEREAS, on September 21, 2012, the Court dismissed the claims of the active employees for lack of standing, and dismissed the claims of the retirees for failure to state a claim. Plaintiffs appealed, No. 1-12-3348, and on April 25, 2014, the Illinois Appellate Court issued an opinion affirming in part and reversing in part the judgment of the Court (2014 IL App (1st) 123348). The Illinois Supreme Court granted the parties’ cross-petitions for leave to appeal, Nos. 117638, 117713, 117728, and on May 5, 2016, issued an opinion affirming dismissal of the active employees’ claims, and affirming in part and reversing in part the opinion of the appellate court with respect to the retiree claims (2016 IL 117638).

WHEREAS, on remand, on June 7, 2017, a First Amended Class Action Complaint was filed in which Williams continued as Class Representative for the remaining retiree class and Whitehead was added as an additional Class Representative. Cooke was also added as a class representative and served in that capacity until his death on April 23, 2022. Defendants moved to

dismiss the First Amended Class Action Complaint and on November 20, 2017, the Court granted in part and denied in part the motions without prejudice.

WHEREAS, on December 22, 2017, Plaintiffs filed a Second Amended Class Action Complaint. The Trust Defendants moved to dismiss the Second Amended Class Action Complaint, and on July 12, 2018, the Court granted the motion without prejudice.

WHEREAS, on August 3, 2018, Plaintiffs filed a Third Amended Class Action Complaint (“Complaint”). The Complaint alleged that Defendants violated the Retirement Plan Agreement and the Pension Protection Clause (a) by the Trust charging retirees premium for a portion of their individual retiree health care benefits and the Plan deducting premiums from certain Class Members’ pension payments, and (b) by the Trust not providing the same health care coverage to retirees as is provided to active CTA employees. The Complaint sought damages and injunctive relief. The Trust Defendants moved to dismiss the Complaint, and on April 17, 2019, the Court denied the motion with respect to the retiree-premium claims, and granted the motion with respect to the same-coverage claims.

WHEREAS, the Plan filed an Amended Counterclaim for Common Law Indemnification of an Agent against the Trust on May 1, 2019 and the Court denied the Trust's motion to dismiss the Plan's Counterclaim for Indemnification in an order dated November 19, 2019;

WHEREAS, the Trust filed its Answer and Defenses to the Plan's Counterclaim for Indemnification on December 21, 2021, and the Plan filed its motion for summary judgment on its Counterclaim for Indemnification on February 3, 2022;

WHEREAS, the Trust and Plan reached a settlement agreement on March 15, 2022 whereby the Plan agreed to voluntarily dismiss its Counterclaim for Indemnification against the Trust in exchange for the Trust’s agreement to indemnify the Plan for any damages found against

the Plan in the Litigation, pursuant to the terms of agreement entered between the Plan and the Trust;

WHEREAS, the Plan's Counterclaim for Indemnification was voluntarily dismissed with prejudice in a Court Order entered on April 22, 2022;

WHEREAS, on July 7, 2020, over Defendants' objections, the Court granted Plaintiffs' Second Amended Motion for Class Certification. The Court certified the following Class:

All CTA retirees who were hired on or before September 5, 2001, retired from the CTA before January 1, 2007, and were eligible for retiree health benefits on July 1, 2009.

The Court also appointed Williams, Whitehead and Cooke as Class Representatives, and appointed Robinson Curley P.C. as Class Counsel.

WHEREAS, on or before October 15, 2020, the Court-approved Class Notice was mailed to all Class Members. Per the Court's order, the Notice informed the Class Members that the deadline to opt out of the Class was December 15, 2020. A total of six putative Class Members opted out of the Class.

WHEREAS, the parties engaged in extensive discovery and evidentiary proceedings in the Litigation.

WHEREAS, because the Third Amended Complaint raises complex and disputed legal and factual issues that would be costly to resolve at trial, the Parties have engaged in arm's-length settlement negotiations to resolve the claims of the Class.

WHEREAS, those settlement discussions have occurred over an eight month period of time, have necessitated special executive session board meetings by the Trust Board, in addition to executive sessions in the monthly meetings of the Trust Board and the Plan Board, and multiple conversations between Class Counsel and Defendants' Counsel.

WHEREAS, Plaintiffs believe that the claims asserted in the Litigation have merit and that the evidence supports their claims. However, Plaintiffs and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against Defendants through trial and appeals. Plaintiffs and Class Counsel also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the Litigation. Plaintiffs and Class Counsel also are mindful of the inherent problems of proof and possible defenses to the claims asserted in the Litigation.

WHEREAS, Defendants have denied and continue to deny any wrongdoing, that they are obligated to provide retirees with premium-free individual retiree health care benefits pursuant to the Retirement Plan Agreement or the Pension Protection Clause, or that they have committed any act or omission in violation of the Retirement Plan Agreement or the Pension Protection Clause. Defendants have denied and continue to deny that the Class was properly certified, or that the Class Representatives or any Class Members have suffered damages or were otherwise harmed by the conduct alleged in the Complaint. Nonetheless, Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement. Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the Litigation. Defendants have, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Agreement.

WHEREAS, the Parties agree that it is in their best interests to compromise the claims raised by the Litigation and to end the Litigation due to their desire to avoid the expense delay and risks of continued litigation, including further motion practice and trial, and they desire to

compromise the claims of the Class against Defendants, subject to the Court’s approval, upon the terms and conditions set forth herein;

WHEREAS, The Class Representatives and Class Counsel believe the Settlement set forth in this Agreement confers substantial benefits upon the Class. Based on their evaluation, the Class Representatives and Class Counsel have determined that the Settlement set forth in this Agreement is in the best interests of the Class;

WHEREAS, the Parties expressly acknowledge that the settlement embodied in the Settlement Agreement is a good faith settlement of the claims of the Class against Defendants and the Released Defendants defined herein. The Parties further expressly acknowledge that the terms of the Settlement Agreement were negotiated at arm’s length between the Parties

II. SETTLEMENT TERMS

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs, the Class, and Defendants that, subject to approval of the Court, the Litigation, the Released Claims and the Released Defendants’ Claims shall be finally, fully and forever compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to all Settling Parties upon and subject to the terms and conditions of this Agreement, as follows:

1. Definitions

As used in this Agreement the following capitalized terms not elsewhere defined have the meanings specified below:

1.1 “Claims Administrator” means the firm of Kroll Settlement Administration, LLC.

1.2 “Class” means all CTA retirees who were hired on or before September 5, 2001, retired from the CTA before January 1, 2007, and were eligible for retiree health benefits on

July 1, 2009. Excluded from the Class are Persons who previously opted out of the Class.

1.3 “Class Counsel” means the law firm of Robinson Curley P.C.

1.4 “Class Member” means a Person who falls within the definition of the Class as set forth in ¶ 1.2 above.

1.5 “Effective Date,” or the date upon which this Settlement becomes “effective,” means the first date by which all of the events and conditions specified in ¶ 8.1 of this Agreement have been met and have occurred or have been waived.

1.6 “Escrow Agent” means The Huntington National Bank.

1.7 “Escrow Agreement” means the agreement entered into between Class Counsel and the Escrow Agent for the provision of escrow services.

1.8 “Estate Representative” means the court-appointed representative of a deceased Class Member or, in the absence of a court-appointed representative, the surviving spouse of a deceased Class Member, or, in the absence of a surviving spouse, the surviving children of a deceased Class Member, or, in the absence of a surviving spouse or children, the surviving parents of the deceased Class Member, or in the absence of a surviving spouse, children or parent, any other properly verified next of kin of the deceased Class Member.

1.9 “Final” means when the last of the following with respect to the Judgment approving this Agreement shall occur: (i) the expiration of 30 days after the entry of the Judgment without any motion being filed to modify or vacate the Judgment (“Section 2-1203 Motion”); (ii) the expiration of the time for the filing or noticing of any appeal from the Judgment without any appeal having been taken; and (iii) if a Section 2-1203 Motion is filed or if an appeal is taken, immediately after the final determination of that motion or appeal such that no further judicial review or appeal is permitted, whether by reason of affirmance by a court of

last resort, lapse of time, voluntary dismissal of the appeal, or otherwise in such a manner as to permit the consummation of the Settlement substantially in accordance with the terms and conditions of this Agreement. For purposes of this paragraph, an “appeal” shall include any request for leave to appeal, petition for a writ of *certiorari* or other writ that may be filed in connection with approval or disapproval of this Settlement. The parties agree to request that the Court enter a finding pursuant to Illinois Supreme Court Rule 304(a) with respect to the Judgment, and to address the requests for approval of the Fee and Expense Application and the Plan of Distribution in orders separate from the Judgment, so that any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to the Fee and Expense Application or the Plan of Distribution (as submitted or subsequently modified), not delay, affect, or preclude the time set forth above for the Judgment to become Final, or otherwise preclude the Judgment from becoming Final.

1.10 “Judgment” means the Order and Final Judgment to be rendered by the Court substantially in the form attached hereto as Exhibit C.

1.11 “Net Settlement Fund” means the Settlement Fund less: (i) Notice and Administration Expenses; (ii) Taxes and Tax Expenses; (iii) any Fee and Expense Award and interest thereon; and (iv) other Court-approved deductions.

1.12 “Person” means an individual, corporation, limited liability corporation, professional corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint stock company, their estate, legal representative, trust, or unincorporated association, and all of their respective heirs, executors, administrators, predecessors, successors, representatives, or assigns.

1.13 “Plan of Distribution” means the plan or formula of allocation and distribution of

the Net Settlement Fund whereby the Net Settlement Fund shall be distributed to Class Members. Any Plan of Distribution is not part of this Agreement and neither Defendants nor their Related Parties shall have any responsibility or liability with respect thereto.

1.14 “Related Parties” means each Defendant’s respective former, present, and future employees, members, managers, partners, principals, officers, directors, trustees, alternate trustees, agents, attorneys, advisors, accountants, auditors, insurers and reinsurers; and the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, legal or personal representatives, and assigns of each of them.

1.15 “Released Claims” means any and all claims, causes of action, demands, rights, potential actions, liabilities, duties, damages, losses, diminutions in value, obligations, agreements, suits, fees, attorneys’ fees, expert or consulting fees, debts, expenses, and costs, of every nature and description whatsoever, known and unknown, whether arising under federal, state, common, statutory, constitutional, administrative, or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, that Plaintiffs or any Class Member asserted in the Litigation or could have asserted, whether known or unknown, contingent or absolute, liquidated or not liquidated, accrued or unaccrued, suspected or unsuspected, disclosed or undisclosed, foreseen or unforeseen, that arise out of or are based upon or related in any way to the claims asserted in the Litigation, including but not limited to (a) the charging of premiums for individual retiree health care benefits to the Class, (b) the deduction of premiums for individual retiree health care benefits from retiree pension payments; and (c) the failure to provide the same health care coverage to the Class as is provided to active CTA employees, except for claims relating to the enforcement of the Settlement.

1.16 “Released Defendants’ Claims” means any and all claims, causes of action,

demands, rights, potential actions, liabilities, duties, damages, losses, diminutions in value, obligations, agreements, suits, fees, attorneys' fees, expert or consulting fees, debts, expenses, and costs, of every nature and description whatsoever, known and unknown, whether arising under federal, state, common, statutory, constitutional, administrative, or foreign law, or any other law, rule or regulation, at law or in equity, that any Released Defendant asserted in the Litigation or could have asserted, whether known or unknown, contingent or absolute, liquidated or not liquidated, accrued or unaccrued, suspected or unsuspected, disclosed or undisclosed, foreseen or unforeseen, that arise out of or are based upon or related in any way to the claims asserted in the Litigation.

1.17 "Released Persons" means the Defendants and their Related Parties.

1.18 "Settlement" means the resolution of the Litigation in accordance with the terms and provisions of this Agreement.

1.19 "Settlement Amount" means Eighty Million Dollars (\$80,000,000) in cash to be paid by the Trust on behalf of all Defendants by check or wire transfer to the Escrow Agent pursuant to ¶ 2.1 of this Agreement. This is the total aggregate dollar amount that Defendants will be obligated to pay if the Settlement is approved by the Court.

1.20 "Settlement Fund" means the Settlement Amount plus all interest, accretions, earnings, and losses thereon.

1.21 "Settlement Hearing" means the hearing set by the Court to consider final approval of the Settlement.

1.22 "Settling Parties" means, collectively, Plaintiffs, Defendants, and the Class.

1.23 "Tax" or "Taxes" mean any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and

additional amounts imposed with respect thereto) imposed by any governmental authority, including, but not limited to, any local, state, and federal taxes.

2. The Settlement

a. The Settlement Amount

2.1 In consideration of the terms of this Agreement, the Trust shall cause the Settlement Amount to be paid to the Escrow Agent by check or wire transfer in accordance with instructions to be provided by the Escrow Agent, on or before the later of: (i) June 30, 2023, or (ii) ten (10) business days after providing the Trust all information necessary to effectuate a transfer of funds, including, but not limited to, the bank name and ABA routing number, account name and number, and a signed W-9 reflecting the taxpayer identification number for the Settlement Fund. The Escrow Agent shall deposit the Settlement Amount in a segregated escrow account (the “Escrow Account”) maintained by the Escrow Agent and invested as set forth in ¶ 2.5 below.

2.2 If the entire Settlement Amount is not timely paid to the Escrow Agent, Class Counsel in its discretion may take all necessary action to enforce this Agreement or terminate the Settlement.

2.3 Other than the Trust’s obligation to pay or cause to be paid the Settlement Amount into the Escrow Account set forth in ¶ 2.1 herein, Defendants shall have no obligation to make any other payment, into the Settlement Fund or otherwise, pursuant to this Agreement, and shall have no responsibility, obligation, or liability with respect to the Escrow Account or the monies maintained in the Escrow Account or the administration of the Settlement, including, without limitation, any responsibility or liability for any fees, Taxes, investment decisions, maintenance, supervision or distribution of any portion of the Settlement Amount.

2.4 The Settlement Amount is the maximum aggregate amount Defendants shall be obligated to pay under this Agreement, if it is approved by the Court. In the event a court determines or otherwise issues an order or opinion that there should be any money paid from the Settlement Fund or by Defendants other than as contemplated by this Agreement, Defendants have the right to terminate this Agreement, in their sole discretion.

b. The Escrow Agent

2.5 The Escrow Agent shall invest the Settlement Amount deposited pursuant to ¶ 2.1 hereof in United States Agency or Treasury Securities or other instruments backed by the Full Faith & Credit of the United States Government, or fully insured by the United States Government or an Agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund, and the Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent, except their reversionary interest in the Settlement Fund to the extent the Effective Date does not occur pursuant to ¶ 2.13 below.

2.6 The Escrow Agent shall not disburse the Settlement Fund except as provided in this Agreement, the Escrow Agreement, by an order of the Court, or with the prior written agreement of all the Settling Parties' counsel identified in ¶ 10.12 hereof.

2.7 Subject to further order(s) and/or directions as may be made by the Court or as provided in this Agreement, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Agreement and the Escrow Agreement. The Released Persons

shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent, except their reversionary interest in the Settlement Funds to the extent the Effective Date does not occur pursuant to ¶¶ 2.13 and 8.5 below.

2.8 All funds held by the Escrow Agent shall be deemed and considered to be in the legal custody of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

2.9 After the Court issues the Preliminary Approval Order, and notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Class Counsel may obtain payment from the Settlement Fund, without further approval and/or order of the Court, for the reasonable costs and expenses actually incurred in connection with providing notice of the Settlement to the Class, calculating claims of Class Members, locating Class Members and Estate Representatives, administering the Settlement, and paying escrow fees and costs (“Notice and Administration Expenses”). Class Counsel shall post a quarterly report of all such payments on the Settlement website. The Released Persons shall have no responsibility for or liability whatsoever with respect to the Notice and Administration Expenses, nor shall they have any responsibility or liability whatsoever for any claims with respect thereto.

c. Taxes

2.10 (a) The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. The Settling Parties and the Escrow Agent further agree that the Settlement Fund shall be established pursuant to the Court’s subject matter jurisdiction within the meaning of

Treas. Reg. §1.468B-1(c)(1). The Claims Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 2.10, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” (as defined in Treas. Reg. §1.468B-2(k)(3)) shall be the Claims Administrator. The Claims Administrator shall timely and properly file all informational and other federal, state, or local tax returns necessary or advisable with respect to the earnings on the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the elections described in ¶ 2.10 (a) hereof) shall be consistent with this ¶ 2.10 and in all events shall reflect that all Taxes (including any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶ 2.10 (c) hereof.

(c) All (i) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Persons with respect to any income earned by the Settlement Fund for any period, after the deposit of the Settlement Amount, during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (ii) expenses and costs incurred in connection with the operation and implementation of this ¶ 2.10 (including, without limitation, expenses of tax attorneys and/or

accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶ 2.10 (“Tax Expenses”), shall be paid out of the Settlement Fund; the Released Persons and their counsel shall have no liability or responsibility for the Taxes or the Tax Expenses. The Claims Administrator, through the Settlement Fund, shall indemnify and hold each of the Released Persons and their counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be authorized (notwithstanding anything herein to the contrary) to withhold from disbursement to the Claims Administrator any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(i)(2)). The Settling Parties agree to cooperate with the Claims Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 2.10.

2.11 This is not a claims-made settlement. As of the Effective Date, Defendants shall not have any right to return of the Settlement Fund or any portion thereof for any reason.

2.12 To the extent the Trust or its successors continue to offer retiree, dependent or surviving spouse coverage to CTA retirees, the Trust and its successors shall make benefit and premium determinations (including eligibility determinations, premium rates, and plan design features) without regard to whether the retiree participated as a Class Member or not, and the Trust and its successors determinations shall not in any way discriminate against, single out, or treat differently the Class Members or any of them, their dependents or surviving spouses, from

comparable non-Class retirees, their dependents or surviving spouses. Violations of this provision are not released by this Agreement. Subject to the above limitation, this Agreement shall have no impact on the Trust's current (a) eligibility requirements for retiree coverage of Class Members, (b) eligibility requirements for dependents and surviving spouses of Class Members, or (c) ability to charge retirees premium for individual retiree and/or dependent and surviving spouse health care coverage. For the avoidance of doubt, it is intended that, subject to the above limitation, the Trust shall be entitled to maintain or change current eligibility and premium requirements and plan design features for Class Members and their surviving spouses and dependents.

d. Termination of Settlement

2.13 In the event that this Agreement or the Settlement is not approved, or is terminated, canceled, or the Effective Date otherwise fails to occur for any reason, including, without limitation, in the event the Judgment is reversed or vacated or materially altered following any appeal taken therefrom, or is successfully collaterally attacked, the Settlement Fund less Notice and Administration Expenses and Taxes or Tax Expenses paid, incurred, or due and owing pursuant to ¶¶ 2.9 and 2.10 hereof in connection with the Settlement provided for herein, shall be refunded pursuant to written instructions from the Trust's counsel in accordance with ¶ 8.5 herein.

3. Preliminary Approval Order and Settlement Hearing

3.1 Within ten (10) calendar days after execution of this Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for (a) entry of an order (the "Preliminary Approval Order"), substantially in the form of Exhibit A hereto, requesting, *inter alia*, the preliminary approval of the Settlement set forth in this

Agreement as fair, reasonable, and adequate, including the material terms of this Agreement; (b) set a date for the final Settlement Hearing; (c) approve the proposed settlement notice (the “Notice”) substantially in the form of Exhibit B hereto and authorize its dissemination to the Class by mail; and (d) set deadlines consistent with this Agreement for mailing of the Notice, the filing of objections, the filing of motions, and the filing of papers in connection with the final Settlement Hearing. The Notice shall include a description of the general terms of the Settlement set forth in this Agreement, the proposed Plan of Distribution, the general terms of the Fee and Expense Application, and the date of the Settlement Hearing as defined below. Defendants agree to not oppose the entry of the Preliminary Approval Order, provided it is substantially in the form of Exhibit A hereto.

3.2 It shall be solely the responsibility of Class Counsel and the Claims Administrator to disseminate the Notice to the Class in accordance with this Agreement and as ordered by the Court. Class Members shall have no recourse against the Released Persons with respect to any claims they may have that arise from any failure of the notice process or otherwise.

3.3 Class Counsel shall request that, 120 days after the Notice is sent, the Court hold a hearing (the “Settlement Hearing”) and approve the Settlement of the Litigation as set forth herein. At the Settlement Hearing, Class Counsel also will request that the Court approve the proposed Plan of Distribution and the Fee and Expense Application. Class Counsel shall post the Fee and Expense Application on the Settlement website on or before the deadline set forth in the Preliminary Approval Order.

4. Releases

4.1 Upon the Effective Date, Plaintiffs and each Class Member shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,

relinquished, and discharged all Released Claims against the Released Persons, whether or not such Class Member shares in the Net Settlement Fund. Claims to enforce the terms of this Agreement are not released.

4.2 Upon the Effective Date, Plaintiffs, all Class Members, and anyone claiming through or on behalf of any of them, will be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum or other forum of any kind, asserting any Released Claims against any of the Released Persons. This Release shall be included as part of any judgment, so that all released claims and rights shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion.

4.3 Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Defendants' Claims against Plaintiffs, each and all of the Class Members, and Class Counsel. Claims to enforce the terms of this Agreement are not released.

4.4 Upon the Effective Date, the Plan Defendants and their Related Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Defendants' Claims against the Trust Defendants and their Related Parties.

4.5 Upon the Effective Date, the Trust Defendants and their Related Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Defendants' Claims against the Plan Defendants and their Related Parties.

4.6 All of the foregoing Releases shall be incorporated by reference as part of the Judgment, so that all released claims and rights shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion.

5. Administration and Calculation of Claims, Individual Settlement Amounts, and Supervision and Distribution of the Settlement Fund

5.1 The Claims Administrator, pursuant to the Plan of Distribution and subject to such supervision and direction of Class Counsel and the Court as may be necessary or as circumstances may require, shall administer and calculate the claims of Class Members and shall oversee distribution of the Net Settlement Fund to Class Members, and to Estate Representatives who have timely and properly completed and submitted a Change of Information form approved by the Claims Administrator as provided in the Notice. The Claims Administrator may rely on sworn statements of the Class Members and Estate Representatives in allocating and distributing the Settlement Fund.

5.2 The Settlement Fund shall be applied as follows:

- (a) to pay all Notice and Administration Expenses;
- (b) to pay all Taxes and Tax Expenses;
- (c) within ten (10) business days after the Effective Date, to pay Service Awards to Class Representatives and attorneys' fees and expenses, if and to the extent allowed by the Court (the "Fee and Expense Award"); and
- (d) within thirty (30) calendar days after the Effective Date, to distribute the Net Settlement Fund to Class Members and Estate Representatives as provided by this Agreement, the Plan of Distribution, and the orders of the Court.

5.3 Each Class Member shall be deemed to have submitted to the jurisdiction of the Court with respect to the Class Member's claim or status as a Class Member, including all

releases contained herein, the Judgment, and the bar against bringing any action against the Released Persons concerning the Released Claims.

5.4 The Net Settlement Fund shall be distributed to the Class Members and Estate Representatives substantially in accordance with the Plan of Distribution set forth in the Notice and approved by the Court. If there is any balance remaining in the Net Settlement Fund after a reasonable period of time after the date of the initial distribution of the Net Settlement Fund, Class Counsel shall, if feasible and economical, reallocate (which reallocation may occur on multiple occasions) such balance among Class Members and Estate Representatives in an equitable and economical fashion. Any *de minimis* balance that still remains in the Net Settlement Fund after such reallocation(s) and payments, which is not feasible or economical to reallocate, shall be donated to any appropriate non-sectarian, non-profit charitable organization(s) serving the public interest as approved by the Court. This is not a claims-made settlement. There will be no reversion of remaining funds to Defendants.

5.5 Defendants and their Related Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the distribution of the Net Settlement Fund, the Plan of Distribution, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith. No Person shall have any claim of any kind against the Released Persons or their counsel with respect to the matters set forth in ¶¶ 5.1-5.5 hereof; and Plaintiffs and the Class release the Released Persons and their Related Parties from any and all liability and claims arising from or with respect to the administration, investment, or distribution of the Settlement Fund.

5.6 No Person shall have any claim against any Plaintiff, Class Counsel or the Claims Administrator, or any other Person designated by Class Counsel, based on determinations or

distributions made substantially in accordance with this Agreement and the Settlement contained herein, the Plan of Distribution, or further order(s) of the Court.

5.7 It is understood and agreed by the Settling Parties that the Court's failure to approve any proposed Plan of Distribution of the Net Settlement Fund shall not prevent this Agreement from becoming effective, nor shall it be grounds for termination. In the event that the Court declines to approve the Plan of Distribution of the Net Settlement Fund, the remaining provisions of this Settlement Agreement shall remain in full force and effect. The Plan of Distribution is not part of this Agreement, and the parties shall request that the Court enter a finding pursuant to Illinois Supreme Court Rule 304(a) with respect to the Judgment, and to address the request for approval of the Plan of Distribution separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Agreement, and shall further request that any order or proceeding relating to the Plan of Distribution not affect the finality of the Court's Judgment approving this Agreement and the Settlement set forth herein.

6. Class Member Statements in Support and Objections

6.1 Each Class Member shall be bound by all determinations and judgments in the Litigation, including, but not limited to, the releases provided for herein, whether favorable or unfavorable to the Class. If the Settlement is approved by the Court at the Settlement Hearing, any and all Class Members will be bound by any Orders entered by the Court and the Release set forth herein.

6.2 Any Class Member may file a statement in support of or objection to the Settlement, the Plan of Distribution, and/or the Fee and Expense Application. Any such statement or objection shall be filed with the Court at least thirty (30) calendar days prior to the

Settlement Hearing (or other date as prescribed by the Court), and also delivered by hand, email or First-Class Mail by that same date to Class Counsel and Defendants' counsel at the addresses listed in ¶ 10.12 below.

6.3 Any such statement or objection must: (a) clearly indicate the Class Member's name, mailing address, telephone number and email address; and (b) identify what aspect(s) of the Settlement for which the Class Member is seeking to be heard and the reason(s) for the statement or objection, including legal support, if any, for such statement or objection. The statement or objection must also be signed by the Class Member to be considered. Class members may file a statement or objection either on their own or through an attorney hired at their own expense.

6.4 Attendance at the Settlement Hearing is not necessary. However, any Persons wishing to be heard at the Settlement Hearing, either individually or through counsel of their own choice, in support of or opposition to approval of the Settlement, the Plan of Distribution, and/or the Fee and Expense Application, are required to indicate in their timely written statement or objection pursuant to ¶¶ 6.2 and 6.3 hereof, their intention to appear at the Settlement Hearing and to include in such written statement or objection the identity of any witnesses they may call to testify and copies of any exhibits they intend to introduce into evidence at the Settlement Hearing.

6.5 Class Members do not need to appear at the Settlement Hearing to indicate their support for the Settlement or make an objection. Class Counsel and Defendants' counsel shall promptly furnish each other with copies of any and all statements in support or objections that come into their possession, and shall file same with the Court if the supporter or objector has not done so.

6.6 Any Class Member who does not object to the Settlement, Plan of Distribution, and/or the Fee and Expense Application in the manner prescribed herein and in the Notice, shall be deemed to have waived such objection and their right to object to the Settlement, the Judgment, the Plan of Distribution, and the Fee and Expense Application, and shall forever be barred and foreclosed from making any objection to the fairness, adequacy or reasonableness of the proposed Settlement, the Final Judgment, the Plan of Distribution, and the Fee and Expense Application, and from otherwise being heard concerning the Settlement, the Judgment, the Plan of Distribution, and the Fee and Expense Application in this or any other proceeding.

7. Class Counsel's Attorneys' Fees and Expenses

7.1 On or before the deadline set forth in the Preliminary Approval Order, Class Counsel may submit an application or applications (the "Fee and Expense Application") for payment from the Settlement Fund of: (a) an award of attorneys' fees; plus (b) costs and expenses in connection with prosecuting the Litigation; plus (c) compensation for the Class Representatives' time and expenses in connection with their work on behalf of the Class ("Service Awards"); plus (d) any interest on such attorneys' fees, costs, expenses and Service Awards at the same rate and for the same periods as earned by the Settlement Fund. Class Counsel reserves the right to make additional applications for fees and expenses incurred.

7.2 Any Fee and Expense Award approved by the Court shall be paid from the Settlement Fund, as ordered, within three (3) business days after the Effective Date. Class Counsel may thereafter allocate the attorneys' fees among Class Counsel and other counsel who represented Plaintiffs in a manner in which Class Counsel in good faith believes comports with existing fee agreements and the contributions of such counsel to the prosecution of the

Litigation. The Court shall retain jurisdiction to resolve any disputes concerning the allocation of such fees.

7.3 The procedure for the allowance or disallowance by the Court of a Fee and Expense Application by Class Counsel is not part of the Settlement set forth in this Agreement. The Court's denial of the Fee and Expense Application in whole or in part shall not prevent this Agreement from becoming effective, nor shall it be grounds for termination, and the parties shall request that the Court enter a finding pursuant to Illinois Supreme Court Rule 304(a) with respect to the Judgment, and to address the request for approval of the Fee and Expense Application separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Agreement, and shall further request that any order or proceeding relating to the Fee and Expense Application not affect the finality of the Court's Judgment approving this Agreement and the Settlement set forth herein.

7.4 Any fees and/or expenses awarded by the Court shall be paid solely from the Settlement Fund. With the sole exception of the Trust's obligation to pay or cause the Settlement Amount to be paid into the Escrow Account as provided for in ¶ 2.1, Defendants and their Related Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment of attorneys' fees and/or expenses to Class Counsel, any Service Awards or any other counsel or Person who receives payment from the Net Settlement Fund.

8. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

8.1 The Effective Date of the Settlement shall be conditioned on the occurrence of all of the following events:

- (a) the Court has entered the Preliminary Approval Order, as required by ¶ 3.1 hereof;

- (b) the Settlement Amount has been deposited into the Escrow Account;
- (c) the Court has entered the Judgment, or a judgment substantially in the form of Exhibit C attached hereto, following notice to the Class and the Settlement Hearing; and
- (d) the Judgment has become Final.

8.2 Upon the Effective Date, any and all remaining interest or right of the Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished. If the conditions specified in ¶ 8.1 hereof are not met, then the Settlement shall be canceled and terminated subject to ¶¶ 8.5, 8.6 or 8.7 hereof unless Plaintiffs and Defendants mutually agree in writing to proceed with the Settlement.

8.3 Plaintiffs or Defendants shall have the right to terminate the Settlement and this Agreement by providing written notice of their election to do so (“Termination Notice”) to all other Settling Parties hereto within fourteen (14) days of: (a) the Court’s declining to enter the Preliminary Approval Order in any material respect; (b) the Court’s refusal to approve this Agreement or any material part of it; (c) the Court’s declining to enter the Judgment in any material respect; (d) the Judgment being modified or reversed in any material respect by the Court or any appeals court; or (e) the Settlement or the Judgment failing to become Final or the Effective Date failing to occur for any reason.

8.4 If, before the Settlement becomes Final, the Trust files for protection under the Bankruptcy Code, or any similar law, or a receiver, conservator, or other fiduciary is appointed under bankruptcy, or any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money or any portion thereof to the Escrow Agent by the Trust to be a preference, voidable transfer, fraudulent transfer or similar transaction

and any portion thereof is required to be returned to Defendants out of the Escrow Account, then, at the election of Plaintiffs, the Settlement may be terminated and the Judgment, including the releases pursuant thereto, shall be null and void.

8.5 Unless otherwise ordered by the Court, in the event this Agreement is not approved or this Agreement or the Settlement is terminated, or canceled, or the Effective Date otherwise fails to occur for any reason, including, without limitation, in the event the Judgment is reversed or vacated or materially altered following any appeal taken therefrom, or is successfully collaterally attacked, within fourteen (14) business days after written notification of such event is sent by Defendants' counsel or Class Counsel to the Escrow Agent, the Settlement Fund, less Taxes, Tax Expenses and Notice and Administration Expenses which have either been disbursed pursuant to ¶¶ 2.9 and/or 2.10 hereof, or are chargeable to the Settlement Fund pursuant to ¶¶ 2.9 and/or 2.10 hereof, shall be refunded by the Escrow Agent to the Trust. Such refund shall be pursuant to written instructions from the Trust's counsel. The Claims Administrator shall apply for any tax refund owed on the Settlement Amount and the Escrow Agent shall pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to the same Persons in the same manner as the Settlement Fund described in this ¶ 8.5. Such payments shall be pursuant to written instructions from Defendants' counsel.

8.6 In the event that this Agreement is not approved or this Agreement or the Settlement is terminated, canceled, or the Effective Date otherwise fails to occur for any reason, the Settling Parties shall be restored to their respective positions in the Litigation as of March 24, 2023. In such event, the terms and provisions of this Agreement, including its Exhibits, with the exception of ¶¶ 1.1 - 1.23, 2.3 - 2.11, 7.3 - 7.4, 8.4 - 8.7 and 10.5 hereof, shall have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation, in any

other proceeding or otherwise for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Agreement (except to enforce its surviving terms) shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Distribution or any Fee and Expense Award shall operate to terminate or cancel this Agreement or constitute grounds for cancellation or termination of this Agreement.

8.7 If the Effective Date does not occur, or if this Agreement is terminated pursuant to its terms, neither Plaintiffs nor any of their counsel shall have any obligation to repay any amounts disbursed pursuant to ¶ 2.9 hereof. In addition, any amounts already incurred pursuant to ¶ 2.9 hereof at the time of such termination or cancellation but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of this Agreement prior to the balance being refunded in accordance with ¶¶ 2.13, 8.6 and 8.7 hereof.

9. No Admission of Wrongdoing

9.1 Defendants deny any wrongdoing and liability and maintain that their conduct at all times was legal and proper. Neither the Settlement, this Agreement (whether or not consummated), including the Exhibits hereto and the Plan of Distribution contained therein (or any other plan of distribution or allocation that may be approved by the Court), any of the terms of this Agreement, the negotiations leading to the execution of this Agreement and the Settlement, nor any proceedings taken pursuant to or in connection with this Agreement, and/or approval of the Settlement (including any arguments proffered in connection therewith) shall be offered or received against any Defendant as evidence of or deemed or construed to be evidence of or constitute any presumption, concession, or admission by any Defendant of the truth of any allegations by Plaintiffs or any Class Member or the validity of any claim that has been or could

have been asserted in the Litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation or in any other litigation, or of any liability, negligence, fault, damage, or wrongdoing of any kind of any of the Defendants or in any way referred to for any other reason as against any of the Defendants, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement.

10. Miscellaneous Provisions

10.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

10.2 No modification or amendment of this Agreement shall be valid unless made in writing and signed by or on behalf of all Settling Parties or their respective successors-in-interest.

10.3 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises all claims that were, are or could have been contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the Settlement Amount and the other terms of the Settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum regarding the Litigation, including that the Litigation was brought or defended in bad faith or without a reasonable basis.

10.4 Defendants and/or their respective Related Parties may file this Agreement and/or the Judgment from this action in any other action that may be brought against them in order to support any defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion, issue preclusion, bar or similar defense or counterclaim.

10.5 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Agreement.

10.6 All of the Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

10.7 This Agreement and the Exhibits attached hereto constitute the entire agreement among the Settling Parties hereto as to the subject matter hereof and supersede any prior or contemporaneous written or oral agreements or understandings between the Settling Parties. No representations, warranties, or inducements have been made to any party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

10.8 Except as otherwise provided herein, each party shall bear their own fees and costs.

10.9 Class Counsel, on behalf of the Class, are expressly authorized by Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to this Agreement to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Class which they deem appropriate.

10.10 Each counsel or other Person executing this Agreement or any of its Exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

10.11 This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court. Signatures sent by facsimile or pdf via email shall be deemed originals.

10.12 Other than as provided in ¶ 6.2, all notices, requests, demands, claims, and other communications hereunder shall be in writing and shall be deemed duly given when delivered by electronic mail addressed to the intended recipient as set forth below:

If to Plaintiffs or to Class Counsel:

C. Philip Curley
Robinson Curley PC
200 North LaSalle Street, Suite 1550
Chicago, Illinois 60601
Telephone (312) 663-3100
pcurley@robinsoncurley.com

If to Plan Defendants or to Plan Defendants' Counsel:

Victoria R. Collado
Burke, Warren, MacKay & Serritella P.C.
330 North Wabash Avenue, Suite 2100
Chicago, Illinois 60611
Telephone: (312) 840-7001
vcollado@burkelaw.com

If to Trust Defendants or to Trust Defendants' Counsel:

Katheleen A. Ehrhart
Smith Gambrell & Russell LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606
Telephone: (312) 360-6460
kehrhart@sgrlaw.com

10.13 This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

10.14 The waiver by one party of any breach of this Agreement by any other party shall not be deemed a waiver by any other party or a waiver of any other prior or subsequent breach of this Agreement.

10.15 Pending approval of the Court of this Agreement and its Exhibits, all proceedings in this Litigation shall be stayed and all Class Members shall be barred and enjoined from prosecuting any of the Released Claims against any of the Released Persons.

10.16 This Agreement and the Exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Illinois, and the rights and obligations of the Settling Parties shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of Illinois without giving effect to its choice-of-law principles.

10.17 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

10.18 This Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties and all Settling Parties have contributed substantially and materially to the preparation of this Agreement.

IN WITNESS WHEREOF, the Settling Parties and their counsel have caused this Agreement to be executed on the dates indicated below.

Jerry W. Williams
Jerry Williams, Individually and on behalf of the Class

Date: 5-10-2023

Larry Whitehead
Larry Whitehead, Individually and on behalf of the Class

Date: 05-10-2023

Stewart Cooke III, as Special Representative of the
Estate of Stewart Cooke

Date: _____

C. Philip Curley, ROBINSON CURLEY P.C.
C. Philip Curley, Class Counsel, on behalf of the Class

Date: May 17, 2023

Retirement Plan for Chicago Transit Authority Employees

By: _____
Keith Hill, Chairman of the Board of Trustees of
the Retirement Plan for Chicago Transit Authority
Employees

Date: _____

Board of Trustees of the Retirement Plan for Chicago Transit Authority Employees

By: _____
Keith Hill, Chairman of the Board of Trustees of
the Retirement Plan for Chicago Transit Authority
Employees

Date: _____

Retiree Health Care Trust

By: _____
Keith Hill, Chairman of the Board of Trustees of
the Retiree Health Care Trust

Date: _____

Jerry Williams, Individually and on behalf of the Class

Date: _____

Larry Whitehead, Individually and on behalf of the Class

Date: _____

Stewart H. Cooke III

Stewart Cooke III, as Special Representative of the
Estate of Stewart Cooke

Date: 05 / 08 / 2023

C. Philip Curley, Class Counsel, on behalf of the Class

Date: _____

Retirement Plan for Chicago Transit Authority Employees

By: _____
Keith Hill, Chairman of the Board of Trustees of
the Retirement Plan for Chicago Transit Authority
Employees

Date: _____

Board of Trustees of the Retirement Plan for Chicago Transit Authority Employees

By: _____
Keith Hill, Chairman of the Board of Trustees of
the Retirement Plan for Chicago Transit Authority
Employees

Date: _____

Retiree Health Care Trust

By: _____
Keith Hill, Chairman of the Board of Trustees of
the Retiree Health Care Trust

Date: _____

Jerry Williams, Individually and on behalf of the Class

Date: _____

Larry Whitehead, Individually and on behalf of the Class

Date: _____

Stewart Cooke III, as Special Representative of the
Estate of Stewart Cooke

Date: _____

C. Philip Curley, Class Counsel, on behalf of the Class

Date: _____

Retirement Plan for Chicago Transit Authority Employees

By: Keith Hill
Keith Hill, Chairman of the Board of Trustees of
the Retirement Plan for Chicago Transit Authority
Employees

Date: 17 May 2023

Board of Trustees of the Retirement Plan for Chicago Transit Authority Employees

By: Keith Hill
Keith Hill, Chairman of the Board of Trustees of
the Retirement Plan for Chicago Transit Authority
Employees

Date: 17 May 2023

Retiree Health Care Trust

By: Keith Hill
Keith Hill, Chairman of the Board of Trustees of
the Retiree Health Care Trust

Date: 17 May 2023

Board of Trustees of the Retiree Health Care Trust

By: Keith Hill
Keith Hill, Chairman of the Board of Trustees of
the Retiree Health Care Trust

Date: 17 May 2023

FILED DATE: 9/19/2023 10:20 AM 2011CH15446

Exhibit A

Proposed Preliminary Approval Order

Exhibit A to Settlement Agreement

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

Jerry Williams and Larry Whitehead,)
Individually and on Behalf of All Others)
Similarly Situated; and Stewart F. Cooke, III,)
as Special Representative of the Estate of)
Stewart Cooke,)

Plaintiffs,)

v.)

Retirement Plan for Chicago)
Transit Authority Employees;)
Board of Trustees of the)
Retirement Plan for Chicago)
Transit Authority Employees;)
Retiree Health Care Trust; and)
Board of Trustees of the)
Retiree Health Care Trust,)

Defendants.)

Case No. 11-CH-15446

Calendar 9

Hon. Cecilia A. Horan

[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT

WHEREAS, on July 7, 2020, this Court granted Plaintiffs’ Second Amended Motion for Class Certification and certified the following Class in this Litigation¹:

All Chicago Transit Authority (“CTA”) retirees who were hired on or before September 5, 2001, retired from the CTA before January 1, 2007, and were eligible for retiree health benefits on July 1, 2009 (“Class Definition”).

WHEREAS, the Court appointed Jerry Williams and Larry Whitehead as Class Representatives,² and appointed Robinson Curley P.C. as Class Counsel.

¹ Capitalized terms not otherwise defined herein are used as defined in the Settlement Agreement.

² Stewart Cooke was also appointed a Class Representative but passed away during the pendency of this case. Stewart Cooke III, as Special Representative of the Estate of Stewart Cooke, was substituted as a Plaintiff after Mr. Cooke’s death to preserve Stewart Cooke’s individual Claims. Stewart Cooke III does not serve as a Class Representative.

FILED DATE: 9/19/2023 10:20 AM 2011CH15446

WHEREAS, on or before October 15, 2020, proper notice of the certification and an opportunity to opt out of the Class by a Court-ordered deadline of December 15, 2020, was provided to all individuals meeting the Class Definition. A total of six putative Class Members opted out of the Class. All other individuals meeting the Class Definition are members of the Class and bound by the orders of the Court in this Litigation.

WHEREAS, on _____, 2023, a Class Action Settlement Agreement (“Agreement”) was reached by all parties to settle this Litigation;

WHEREAS, Plaintiffs have made an unopposed application pursuant to 735 ILCS 5/2-806 for an order preliminarily approving the Settlement in accordance with the Agreement and allowing Notice of the Settlement to be disseminated to Class Members as more fully described herein;

WHEREAS, all Settling Parties have consented to the entry of this Order;

WHEREAS, the Court has read and considered: (a) Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement (“Motion”), and the papers filed and arguments made in connection therewith; and (b) the Agreement and its Exhibits attached as Exhibit 1 to the Motion;

NOW THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Court hereby preliminarily approves the Agreement and the Settlement set forth therein as being fair, reasonable and adequate to Class Members, subject to further consideration at the Settlement Hearing.

2. The Settlement Hearing is hereby scheduled to be held before the Court on _____, 2023 at ____ a.m. [120 days after Notice Date], for the following purposes:

- a) To determine whether the proposed Settlement is fair, reasonable, and adequate to Class Members and should be approved by the Court;
- b) To determine whether the Judgment referenced in the Agreement should be entered and to determine whether the release by the Class of the Released Claims, as set forth in the Agreement, should be provided to the Released Persons;
- c) To determine whether the release by the Released Persons of the Released Defendants' Claims, as set forth in the Agreement, should be provided;
- d) To determine whether the proposed Plan of Distribution of the proceeds of the Settlement is fair and reasonable and should be approved by the Court;
- e) To consider Class Counsel's application for an award of attorneys' fees and expenses, including Service Awards for Class Representatives ("Fee and Expense Application"); and
- f) To rule upon such other matters as the Court may deem appropriate.

3. The Court may change the date and time of the Settlement Hearing without notice. Any change to the Settlement Hearing will be posted on the Settlement website (www.robinsoncurley.com under the tab "CTA Retiree Class Action").

4. The Court reserves the right to approve the Settlement, including, if appropriate, with such modifications as may be agreed by the Settling Parties, without further notice to the Class. The Court further reserves the right to enter its Judgment approving the Settlement and dismissing the Litigation with prejudice prior to and separately from approval of a final Plan of Distribution and final consideration of Class Counsel's Fee and Expense Application.

5. The Court approves the form, substance, procedures and requirements of the Notice of Proposed Settlement of Class Action (the "Notice") attached as Exhibit B to the

Agreement, and finds that it (a) meets the requirements of the Illinois Code of Civil Procedure and all other applicable laws and rules; (b) is the best notice practicable under the circumstances; (c) constitutes due and sufficient notice that is reasonably calculated, under the circumstances, to apprise Class Members of (i) the effect of the proposed Settlement (including the releases to be provided thereunder), (ii) the general terms of Class Counsel's Fee and Expense Application, (iii) their right to object to the proposed Settlement, and (iv) their right to appear at the Settlement Hearing; and (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement. The date and time of the Settlement Hearing shall be included in the Notice.

6. The Court approves the appointment of Kroll Settlement Administration, LLC as the Claims Administrator to supervise and administer the Notice and distribution procedure in connection with the proposed Settlement. The Claims Administrator may rely on sworn statements of the Class Members and Estate Representatives in allocating and distributing the Settlement Fund.

7. Within thirty (30) calendar days of the entry of this Order (the "Notice Date"), the Claims Administrator shall cause the Notice, substantially in the form attached to the Agreement as Exhibit B, to be mailed by First-Class Mail, postage prepaid, to all putative Class Members, or their known surviving spouses, who can be identified with reasonable effort. Class Counsel shall, at least forty-two (42) calendar days prior to the Settlement Hearing, file with the Court proof, by affidavit or declaration, of the Claims Administrator's mailing of the Notice.

8. The Court approves the appointment of The Huntington National Bank as Escrow Agent. The Escrow Agent shall timely and properly file all informational and other federal, state, or local tax returns necessary or advisable with respect to the earnings on the Settlement Fund

(including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)), to cause any Taxes due and owing to be paid from the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof as contemplated by the Agreement without further order of the Court.

9. Class Counsel shall submit their papers in support of final approval of the Settlement, the Agreement and its Exhibits, the Plan of Distribution, and Class Counsel's Fee and Expense Application, by no later than forty-two (42) calendar days prior to the Settlement Hearing. All replies in support of such motions shall be filed and served no later than fourteen (14) calendar days prior to the Settlement Hearing.

10. Class Members shall be bound by all determinations and judgments in the Litigation, whether favorable or unfavorable, except such Class Members who previously opted out in a timely and proper manner.

11. Any Class Member may file an objection to the Settlement, the Plan of Distribution, and/or the Fee and Expense Application. Any such objection and any supporting papers shall be filed with the Court at least thirty (30) calendar days prior to the Settlement Hearing, and also delivered by hand, overnight courier, or First-Class Mail to Class Counsel and Defendants' Counsel by that same date. Any such objection must: (a) clearly indicate the objector's name, mailing address, telephone number and email address; (b) state that the objector is objecting to the proposed Settlement, Plan of Distribution, and/or Fee and Expense Application in *Williams v. Retirement Plan*, No 11 CH 15446 (Circuit Court of Cook County, Illinois); and (c) specify the reason(s) for the objection, including any legal or factual support for such objection. In order to be considered, an objection also must be signed by the Class Member making the objection. Any Class Member wishing to be heard orally, either individually or

through counsel of their own choice, in opposition to approval of the Settlement, the Plan of Distribution, and/or the Fee and Expense Application, must so indicate in their written objection. Class Members do not need to appear at the Settlement Hearing or take any other action to participate in the Settlement. Class Counsel and Defendants' counsel shall promptly furnish each other with copies of any and all objections that come into their possession, and shall file same with the Court if the objector has not done so.

12. All proceedings in the Litigation are stayed until further order of this Court, except as may be necessary to implement the Settlement or comply with the terms of the Agreement. Pending final determination of whether the Settlement should be approved, Plaintiffs, all Class Members, and anyone claiming through or on behalf of any of them, are barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting any Released Claims against any of the Released Persons.

13. The passage of title and ownership of the Settlement Fund to the Escrow Agent in accordance with the terms and obligations of the Agreement is approved.

14. The contents of the Settlement Fund held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Agreement or further order of the Court.

15. All reasonable costs incurred in locating Class Members and identifying Estate Representatives and notifying them of the Settlement, as well as in administering the Settlement, shall be paid as set forth in the Agreement.

16. If the Settlement is terminated pursuant to the Agreement or any specified condition to the Settlement set forth in the Agreement is not satisfied and Plaintiffs or Defendants elect to terminate the Settlement as provided in the Agreement, then, in any such event, the terms of the Agreement shall apply, and this Order shall be null and void and of no further force or effect, without prejudice to any party, and may not be introduced as evidence or referred to in any actions or proceedings by any person or entity, and each party shall be restored to their respective position in this Litigation as it existed as of March 24, 2023.

17. Neither this Order, the Agreement (whether or not approved or consummated), nor their negotiation, nor any proceedings taken pursuant to them: (i) shall be offered against any of the Released Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Persons with respect to the truth of any fact alleged by Plaintiffs, or the validity of any claim that was or could have been asserted, or the deficiency of any defense that has been or could have been asserted in the Litigation or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind by any of the Released Persons (provided, however, that if the Settlement is approved by the Court, the Parties and the Released Persons and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement); (ii) shall be construed against any of the Released Persons as an admission, concession, or presumption that the consideration to be given represents the amount which could be or would have been recovered after trial; or (iii) shall be construed against the Plaintiffs or the Class to argue that any of their claims are without merit.

DATED:

Honorable Cecilia A. Horan

Exhibit B

Notice and Plan of Distribution

Exhibit B to Settlement Agreement

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
No. 11 CH 15466
Williams, et al. v. Retirement Plan for CTA Employees, et al.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

To: All Chicago Transit Authority (“CTA”) retirees who were hired on or before September 5, 2001, retired from the CTA before January 1, 2007, and were eligible for retiree health benefits on July 1, 2009 (“Class”).

A court authorized this Notice. This is not a solicitation from a lawyer.

THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS AND PROVIDE YOU POTENTIAL BENEFITS. PLEASE READ IT CAREFULLY.

WHAT IS THE PURPOSE OF THIS NOTICE?

This Notice is being sent in connection with a class action lawsuit involving CTA retiree health benefits (the “Lawsuit”). You are receiving this Notice because records indicate you are a member of the above-defined Class (“Class Member”). The purpose of this Notice is to advise you of a proposed settlement (the “Settlement”) between the Class and Defendants, the Retirement Plan for Chicago Transit Authority Employees (“Plan”) and its Board of Trustees (together, “Plan Defendants”) and the Retiree Health Care Trust (“Trust”) and its Board of Trustees (together, “Trust Defendants”).

Your estimated Individual Settlement Amount is: \$ _____.

If the Class Member to whom this Notice is addressed is deceased, please review carefully the information on page 7 of this Notice regarding the Proof of Kinship form required to obtain a deceased Class Member’s Individual Settlement Amount.

This Notice provides important information that (a) explains this Lawsuit and the proposed Settlement, (b) instructs you on how to object to the Settlement if you wish to do so, and (c) notifies you of a hearing the Court has scheduled (“Final Settlement Hearing”) on _____ to consider whether to give final approval to the Settlement, including how the settlement funds will be distributed to Class Members. At the Final Settlement Hearing, the Court will also consider the request for fees and expenses (“Fee and Expense Application”) being made by the attorneys for the Class (“Class Counsel”), and the request for payment to the Class Representatives of additional funds to compensate them for their time and effort spent in prosecuting the Lawsuit (“Service Awards”). The full Class Action Settlement Agreement (“Settlement Agreement”) is available on the Settlement website, www.robinsoncurley.com, under the tab “CTA Retiree Class Action.” Class Counsel’s Fee and Expense Application (including the request for Class Representative Service Awards) will be available on the Settlement website upon its filing with the Court no later than _____, 2023 **[42 days before Final Settlement Hearing]**.

WHAT IS THIS LAWSUIT ABOUT?

This is a class action Lawsuit in which one or more persons known as “Class Representatives” sue on behalf of themselves and others who have similar claims. Here, the Class Representatives

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Exhibit B to Settlement Agreement

are CTA retirees Jerry Williams and Larry Whitehead.¹ The Class Representatives sued Defendants, alleging they violated the Pension Protection Clause of the Illinois Constitution and breached the CTA Retirement Plan Agreement by charging the Class Members monthly premiums for health care coverage.

On July 1, 2009, the Trust began charging the Class Members monthly health care premiums and the Plan began deducting those premiums from the monthly pension checks of certain Class Members. Plaintiffs contend in the Lawsuit that Class Members are entitled to lifetime, premium-free retiree health coverage. Defendants have vigorously defended against these claims for 15 years, deny the claims in this Lawsuit, and deny that they are doing anything wrong by charging the Class Members monthly premiums or otherwise.

The Class Representatives and Defendants have reached a Settlement of all claims asserted in the Lawsuit. The Settlement has been preliminarily approved by the Court and will be the subject of a Final Settlement Hearing. The Settlement is not an admission of liability or wrongdoing by Defendants. Because you are a Class Member, you will receive benefits from the Settlement if the Court gives its final approval at the Final Settlement Hearing, and after any appeals have been resolved.

WHO IS IN THE CLASS?

The Class consists of approximately 6,358 CTA retirees. You are receiving this Notice because records maintained by Defendants establish that you meet the Class definition above and are therefore a Class Member, or you are the surviving spouse of a deceased Class Member. When notice of the Court's certification of the Class was mailed to you in October 2020, you did not elect to exclude yourself from the Class, but chose to remain a part of the Class.

If the Class Member to whom this Notice is addressed is deceased, a court-appointed estate representative, surviving spouse or relative of the deceased Class Member ("Estate Representative") may be entitled to receive the Class Member's Individual Settlement Amount by following the instructions set forth below on page ____.

WHY IS THERE A SETTLEMENT?

The Court has not decided this Lawsuit in favor of the Class or Defendants. While you may be aware that there have been various rulings by the Court throughout this litigation in favor of either the Class or Defendants, the Court never issued a final ruling resolving the claims or defenses of the parties in the Lawsuit. Instead of continuing the litigation and obtaining a final decision, both sides have agreed to a Settlement. By settling, they avoid the costs and delay of a trial and likely appeals, and settlement benefits go to the Class Members now. The Class Representatives and Class Counsel feel strongly that this Settlement is in the best interests of the Class Members, taking into account the benefits of the Settlement, the uncertain outcome and the risks of continuing to litigate this highly complex case, and the extensive delay in obtaining relief for the Class if the Lawsuit continues, even if Plaintiffs prevail.

¹ Stewart Cooke passed away during the pendency of this case and is no longer a Class Representative. His son and Estate Representative Stewart Cooke III was substituted as a Plaintiff after Mr. Cooke's death.

Exhibit B to Settlement Agreement

DOES A LAWYER REPRESENT ME IN THE LAWSUIT?

Yes. All Class Members are represented by Class Counsel Robinson Curley P.C., whose contact information is included at the end of this Notice. If you want to be represented by your own lawyer, you may hire one at your own expense but it is not necessary.

WHAT ARE THE PRINCIPAL TERMS OF THE SETTLEMENT?

The principal terms of the proposed Settlement are as follows:

- A. Settlement Fund: If the Settlement Agreement gains final approval from the Court, the Trust will pay \$80,000,000 to fully and finally settle the entire case. This is the total amount that will be paid on behalf of all Defendants to settle the case.

Before the Settlement funds are divided among the Class Members and their Estate Representatives, amounts approved by the Court will be deducted for the following:

- (a) the cost to send this Notice and distribute the settlement funds (“Notice and Administration Expenses”);
- (b) any taxes owed by the Settlement Fund;
- (c) up to 33 $\frac{1}{3}$ percent of the Settlement Fund for the attorneys’ fees of Class Counsel for their work on the case for 15 years;
- (d) reimbursement of approximately \$480,000 of costs and expenses advanced by Class Counsel in the case; and
- (e) a combined total of up to \$75,000 for Service Awards to the three Class Representatives (or their heirs) to compensate them for their substantial time and effort in prosecuting the case and making this Settlement possible.

The amount of Settlement funds remaining after the above deductions is referred to as the “Net Settlement Fund.”

- B. Settlement Payments: Each Class Member will be eligible to receive a payment from the Net Settlement Fund in accordance with the Plan of Distribution set forth below in this Notice.
- C. Release: Each Class Member will release certain claims against Defendants and their Related Parties (as defined in the Settlement Agreement). This is referred to as the “Release.” If the Settlement is approved, all Class Members will be deemed to have released any and all claims that were brought or could have been brought in the Lawsuit. This includes claims arising from the charging of premiums by the Trust for retiree health coverage both in the past and the future, subject to the anti-discrimination provision described below in Section D. If final approval is given, you may not assert any of these claims in any other lawsuit or proceeding. This includes any other lawsuit or proceeding already in progress. The final judgment order entered by the Court in this case will bind all Class Members.

Exhibit B to Settlement Agreement

The Release is effective and binding as to every Class Member who did not request exclusion from the Class in accordance with the Class Notice sent in October 2020, regardless of whether the Class Member receives and cashes a settlement payment check.

- D. Future Allowed Actions By the Plan and the Trust To Charge or Deduct Premiums: Under the terms of the Settlement Agreement, for those Class Members who elect to obtain or continue coverage from the Trust in the future, the Trust may continue to charge a monthly premium and the Plan may continue to deduct those premiums from the pension checks of retirees who pay for health care coverage through a pension deduction. The Settlement Agreement has no impact on the Trust's current (a) eligibility requirements for retiree coverage of Class Members, (b) eligibility requirements for dependents and surviving spouses of Class Members, or (c) ability to charge retirees a premium for individual retiree and/or dependent and surviving spouse health care coverage. This means the Trust may maintain or even increase the current premium levels charged to Class Members, their surviving spouses and dependents. The Settlement requires, however, that the Trust not discriminate against Class Members by imposing more stringent eligibility rules, or by charging Class Members higher premiums, deductibles, co-pays, or out-of-pocket limits for retiree, surviving spouse or dependent coverage, than it charges non-Class retirees who are similarly situated to Class Members.
- E. Dismissal of the Lawsuit: All claims in the Lawsuit will be dismissed with prejudice.

Sections A-E above provide only a general summary of the proposed Settlement. You may consult the Settlement Agreement for more information about the exact terms of the Settlement. The Settlement Agreement is available at the Settlement website, www.robinsoncurley.com under the tab "CTA Retiree Class Action," or from the Claims Administrator, whose contact information is included at the end of this notice.

HOW ARE INDIVIDUAL SETTLEMENT AMOUNTS CALCULATED?

Determination of Individual Settlement Amounts (Plan of Distribution):

Your estimated Individual Settlement Amount is set forth on the first page of this Notice. It is only an estimate because your final Individual Settlement Amount may be higher or lower depending on the full amount of the Notice and Administration Expenses incurred, the Court's rulings with respect to the Fee and Expense Application and Service Awards, and whether certain Class Members or their Estate Representatives cannot be found or fail to cash or deposit their settlement checks. Each Class Member's final Individual Settlement Amount will be determined as follows:

1. Determining Each Class Member's "Claim": The starting point for quantifying each Class Member's Individual Settlement Amount is determining the amount of each Class Member's individual "Claim."
2. Time Period for Claim Determinations: Claim amounts will be determined for the period beginning July 1, 2009, and ending on March 31, 2023 ("Claim Period").

Exhibit B to Settlement Agreement

3. Participant and Non-Participant Claims:

- a. To understand how the amount of each Class Member's Claim will be determined, there are a couple of important items to understand.
- During the Claim Period, the premiums paid by retirees covered only approximately one-third of the actual cost of health coverage provided to retirees. In other words, even after imposing the premiums, the Trust subsidized (paid) approximately two-thirds of the cost of coverage for retirees.
 - The Class consists of some Class Members who paid premiums and obtained coverage from the Trust for the entire Claim Period, others who elected not to obtain coverage from the Trust and never paid premiums during the Claim Period, and others who paid premiums and obtained coverage during some but not all of the Claim Period.
 - For each month during the Claim Period that a Class Member paid a premium to the Trust and participated in the Trust's health plan, the Class Member is referred to as a "Participant."
 - For each month during the Claim Period that a Class Member did not pay the premium and therefore did not obtain coverage from the Trust, the Class Member is referred to as a "Non-Participant."
 - Class Members who paid premiums and obtained coverage for some but not all of the Claim Period are Participants during the months they paid premiums, and Non-Participants during the months they did not.

b. Calculation of Each Class Members' Participant Claim:

Participants paid the premiums and thereby obtained the full value of the Trust's health coverage (including the subsidized portion). Therefore, for each month during the Claim Period that a Class Member paid a premium to the Trust and participated in the Trust's health plan, the Class Member or Estate Representative will have a claim equivalent to the amount of premium paid to obtain such coverage. The total of such monthly amounts is the Class Member's "Participant Claim." Records maintained by Defendants have already been used to quantify these amounts and you need not provide any evidence to support them.

c. Calculation of Each Class Member's Non-Participant Claim:

Non-Participants declined to pay the premiums and therefore obtained none of the value of the coverage to which Plaintiffs contend they were entitled. However, Non-Participants could have paid the premiums and thereby obtained the full value of the coverage from the Trust (including the subsidized portion). Therefore, for each month during the Claim Period that a Class Member did not pay a premium to the Trust or obtain coverage under the Trust's health plan, the Class Member or Estate Representative will have a claim equivalent to the amount of premium that could have been paid by the Class Member to obtain coverage. The total of such monthly amounts is the Class Member's "Non-Participant Claim." This measure of Non-Participant Claims is supported by Class Counsel's analysis of the legal and evidentiary strengths and

Exhibit B to Settlement Agreement

weaknesses of the Non-Participant Claims, including the fact that Defendants have asserted additional legal and factual defenses to the Non-Participant Claims, and that any measure of Non-Participant Claims must rely upon actuarial assumptions and calculations, while the Participant Claims do not. Class Counsel has consulted with Milliman, a leading, worldwide actuarial firm, to determine the appropriate measure of Non-Participant Claims for this Settlement. Records maintained by Defendants have already been used to quantify the Non-Participant Claims and you need not provide any evidence to support such claims.

d. Calculation of Total Claim

The sum of each Class Member's Participant Claim and Non-Participant Claim will equal each Class Member's total Claim against the Net Settlement Fund.

4. Determining Each Class Member's Individual Settlement Amount:

The Net Settlement Fund will be divided among the Class Members based on the ratio of each Class Member's Claim to the sum of all Class Members' Claims. The amount calculated under this formula is the Class Member's Individual Settlement Amount.

By way of example, if a Class Member paid \$20,000 of premiums and obtained health coverage from the Trust for several years during the Class Period, the Class Member would have a Participant Claim of \$20,000. If in the other years during the Class Period the same Class Member did not take coverage from the Trust but could have paid \$5,000 of premiums to obtain such coverage, the Class Member would have a Non-Participant Claim of \$5,000, making the Class Member's total Claim \$25,000. If the sum of all Class Members' Claims is \$90,000,000, and the Net Settlement Fund is \$53,000,000 after all court-approved deductions, then the Class Member would be entitled to an Individual Settlement Amount of 0.02778 percent ($25,000 \div 90,000,000$, stated as a percentage) of the Net Settlement Fund, or \$14,723 ($0.0002778 \times 53,000,000$).

At the Final Settlement Hearing, the Court may approve this method of distributing the Net Settlement Fund or modify it without additional notice to the Class.

WHEN WILL I RECEIVE MY INDIVIDUAL SETTLEMENT AMOUNT?

The Court must determine that the Settlement is fair and reasonable and give final approval to the Settlement before it can go into effect. If the Settlement is approved, a final Judgment will be entered and the Claims Administrator will mail checks to the Class Members or their Estate Representatives for the Individual Settlement Amounts within 30 days after the Judgment becomes final and any appeals are resolved. If there is any appeal filed, distribution of the Individual Settlement Amounts will be delayed while the appeal is being resolved, which can take significant time, sometimes a year or longer.

WHAT HAPPENS IF THE SETTLEMENT IS NOT APPROVED?

If the Court does not approve the Settlement or the Settlement is terminated on any grounds provided in the Settlement Agreement, then the parties will be returned to their previous positions in the Lawsuit and the case will proceed as if no Settlement had occurred. If this occurs, no Individual Settlement Amounts will be distributed to Class Members.

Exhibit B to Settlement Agreement

WHAT ARE MY OPTIONS AND WHAT DO I NEED TO DO TO RECEIVE MY INDIVIDUAL SETTLEMENT AMOUNT?

Class Members have the following options in responding to this Notice:

DO NOTHING	You will receive a check for your final Individual Settlement Amount and be bound by the Settlement Agreement. You will give up the claims that are released by the Settlement Agreement.
FILE A STATEMENT IN SUPPORT OR OBJECTION	You may submit a timely written statement in support of or objection to the Settlement. If the Settlement is approved despite any objection you submit, you will remain a member of the Class and still give up your rights to bring any claims that are released by the Settlement Agreement. Class Members need not submit a statement in support of the Settlement to obtain their Individual Settlement Amount.

WHAT IF THE ADDRESS ON THIS NOTICE IS NO LONGER VALID?

If the address to which this Notice has been sent is no longer valid, the Change of Address form included with this notice must be completed, notarized and mailed to the Claims Administrator. Checks will be mailed to the same address to which this Notice was sent unless a completed Change of Address Form is sent to the Claims Administrator postmarked or received by _____, 2023 **[30 days before Settlement Hearing]**. Checks may be cashed or deposited only by the payee and not any third party. Checks not cashed or deposited within 90 days will be void and replacement checks will not be provided. If a check is lost or destroyed and a request is received by the Claims Administrator within those 90 days, a replacement check may be issued.

WHAT IF THE CLASS MEMBER IS DECEASED?

Defendants' records establish that approximately ____ Class Members are deceased as of March 31, 2023. To obtain any deceased Class Member's Individual Settlement Amount, the Estate Representative of a deceased Class Member must complete and send the Proof of Kinship Form provided with this Notice to the Claims Administrator, postmarked or received on or before _____, 2023 **[45 days before Settlement Hearing]**. An Estate Representative can be the court-appointed representative of a deceased Class Member or, if there is no court-appointed representative, the surviving spouse, children, parents, or any other properly verified next of kin of the deceased Class Member, in that order of priority.

The Proof of Kinship Form must be sworn in person before a Notary Public. If a proper Proof of Kinship Form is not submitted to the Claims Administrator, or if the Notice addressed to a deceased Class Member is returned as undeliverable to the Claims Administrator, no payment will be made from the Settlement Fund on behalf of the deceased Class Member unless, after reasonable investigation, the Claims Administrator is able to identify and locate the deceased Class Member's court-appointed representative or next of kin.

ARE THERE TAX IMPLICATIONS FOR CLASS MEMBERS?

You may receive an IRS form 1099 for your Individual Settlement Amount for each tax year in which any part of your Individual Settlement Amount is paid to you. You should consult with

Exhibit B to Settlement Agreement

your tax professional regarding whether these payments must be reported on your federal and state income tax returns and any taxes you may owe as a result of receiving your Individual Settlement Amount.

HOW CAN CLASS MEMBERS OBJECT TO THE SETTLEMENT?

You can object to the Settlement if you do not like any part of the Settlement Agreement, the Plan of Distribution, or the Fee and Expense Application, and the Court will consider your objection. Any such objection must (a) clearly indicate your name, mailing address, telephone number, and e-mail address; (b) identify what aspect(s) of the Settlement you are objecting to and the reasons for the objection, including legal support, if any; and (c) be signed by you. Any such objection must be filed with the Circuit Court of Cook County, Illinois on or before _____, 2023 [**30 days before Settlement Hearing**] and delivered by hand, overnight delivery service, or U.S. First Class Mail to Class Counsel and Defendants' counsel at the addresses listed below by that same date. You are not required to appear at the Settlement Hearing if you object to the settlement. Nevertheless, if you wish to address the Court personally during the Settlement Hearing concerning your objection, you must so indicate in your objection letter. If the Court rejects your objection, you will still be bound by the terms of the Settlement.

WHEN IS THE FINAL SETTLEMENT HEARING?

The Court will hold a hearing to decide whether to give final approval to the Settlement on _____, 2023, at _____ a.m., in the courtroom of Judge Cecilia A. Horan, Calendar 9, Circuit Court of Cook County, Illinois, Chancery Division, Room 2008, 50 West Washington Street, Chicago, Illinois. The hearing date may be changed without notice to the Class, and you should check the Settlement website at www.robinsoncurley.com under the tab "CTA Retiree Class Action" or the public court file for this Lawsuit for any updates. At the hearing, the Court will consider whether the Settlement, the Plan of Distribution, and the Fee and Expense Application are fair, reasonable, and adequate. If there are objections, the Court will consider them. You may attend but you are not required to do so. You can also speak in favor of or against the Settlement at the Settlement Hearing, but only if you have indicated your intention to do so in your written statement in support or objection. You may view the proceedings by Zoom using any one of the log-in methods below, but you may not speak or address the Court unless you have indicated your intention to do so in a timely submitted, written statement in support or objection.

Zoom Log-In Information for Settlement Hearing:

1. Direct link to hearing:
<https://circuitcourtofcookcounty.zoom.us/j/95658991093?pwd=VINvOUZxcTA2K2x4YUhEdnpMTFB1OT09>
2. Log-in through Zoom website or app:
Meeting ID: 956 5899 1093; Password: 129359
3. Telephone (audio only; also requires Meeting ID and Password identified above):
312-626-6799

Exhibit B to Settlement Agreement

IMPORTANT SETTLEMENT DATES AND DEADLINES

Objection Deadline: (filing and receipt date)
Deadline to Submit Proof of Kinship Form: (postmark/receipt date)
Deadline to Submit Change of Address Form: (postmark/receipt date)
Final Approval Hearing:

CONTACT INFORMATION FOR THE CLAIMS ADMINISTRATOR, CLASS COUNSEL, AND DEFENDANTS' COUNSEL

Claims Administrator:

Kroll Settlement Administration, LLC
[contact information to come]

Class Counsel:

C. Philip Curley
Robinson Curley PC
200 North LaSalle Street, Suite 1550
Chicago, Illinois 60601
Telephone (312) 546-5221
CTARetireeClassAction@robinsoncurley.com

Trust Defendants' Counsel:

Katheleen A. Ehrhart
Smith Gambrel & Russell LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606

Plan Defendants' Counsel:

Victoria R. Collado
Burke, Warren, MacKay & Serritella P.C.
330 North Wabash Avenue, Suite 2100
Chicago, Illinois 60611

This Notice provides only a summary of the Settlement Agreement. If you would like to see a full copy of the Settlement Agreement, it is available on the Settlement website, www.robinsoncurley.com under the tab "CTA Retiree Class Action," in the public court file for this Lawsuit, or from the Claims Administrator. If you have any questions about the Settlement or this Notice, please visit the Settlement website or contact Class Counsel or the Claims Administrator.

Exhibit B to Settlement Agreement

**PLEASE DO NOT TELEPHONE OR CONTACT THE COURT, THE COURT CLERK'S
OFFICE, DEFENDANTS, OR DEFENDANTS' COUNSEL TO ASK QUESTIONS
ABOUT THE SETTLEMENT**

FILED DATE: 9/19/2023 10:20 AM 2011CH15446

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
No. 11 CH 15466
Williams, et al. v. Retirement Plan for CTA Employees, et al.

CHANGE OF ADDRESS FORM

If the address to which the Notice of Proposed Class Action Settlement (“Notice”) was sent has changed or is inaccurate, please complete this form, have it notarized, and return it to the Claims Administrator at the address on the bottom of this form by _____, 2023.

ID number (found on the first page of the Notice): _____

Name of Class Member: _____

Address to which this Notice was sent:

New or corrected mailing address to which future notices and settlement checks should be sent:

Name of person completing this form: _____

Your relationship to Class Member: _____

Your telephone number: _____

Your email address: _____

Under penalty of perjury, I certify that the address to which the Notice was sent has changed or is inaccurate, and the true and accurate address of the Class Member is stated above.

Your signature

Subscribed and sworn to before me this _____ day of _____, 2023

Notary Public

[Notary Seal]

Return this Form by U.S. First Class Mail to the Claims Administrator at the following address:

Williams v. Retirement Plan Settlement Administrator
Kroll Settlement Administration, LLC
[address]

This form must be postmarked or received by the Claims Administrator on or before _____, 2023 [30 days before *Final Settlement Hearing*]

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

No. 11 CH 15466

Williams, et al. v. Retirement Plan for CTA Employees, et al.

PROOF OF KINSHIP FORM

If the Class Member to whom the Notice of Proposed Class Action Settlement (“Notice”) was sent is deceased, please complete this form, have it notarized, and return it to the Claims Administrator at the address on the bottom of this form by _____, 2023.

ID number (found on the first page of the Notice): _____

Name of deceased Class Member: _____

Name of person completing this form: _____

Your relationship to deceased: _____

Your mailing address:

Your telephone number: _____

Your email address: _____

Identification of Court-Appointed Representative, Surviving Spouse, or Other Living Relatives of Deceased Class Member. Complete only one of the following three sections.

1. Court-Appointed Estate Representative: The following individual was appointed by a court to represent the estate of the deceased Class Member and should receive checks for the deceased Class Member’s Individual Settlement Amount, and will distribute such amount in accordance with the deceased Class Member’s will or, if there was no will, in accordance with state law. Checks will be made out to the estate of the deceased Class Member:

Name: _____

Relationship to deceased Class Member: _____

Mailing Address:

Telephone number: _____

Email address: _____

Complete the Surviving Spouse section below only if there is no court-appointed estate representative.

2. Surviving Spouse: The following individual is the surviving spouse of the deceased Class Member to whom checks for the deceased Class Member’s Individual Settlement Amount should be sent:

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Name: _____

Mailing Address: _____

Telephone number: _____

Email Address: _____

Complete the Other Relatives section below only if there is no court-appointed estate representative or surviving spouse.

3. Other Relatives: If there is no court-appointed estate representative or surviving spouse, identify other relatives of the deceased Class Member in the table below, following these instructions carefully:

- a. List all living children of the deceased Class Member;
- b. Only if there are no living children, list all living parents of the deceased Class Member;
- c. Only if there are no living children or parents, list all living brothers and sisters of the deceased Class Member;
- d. Only if there are no living children, parents, brothers or sisters, list all living nieces or nephews of the deceased Class Member.

The deceased Class Member's Individual Settlement Amount will be divided equally between and sent to the relatives you list below.

Name	Address	Phone	Relationship

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Under penalty of perjury, I certify that the Class Member to whom this Notice was sent is deceased, and above is a true and accurate identification of the deceased Class Member's court-appointed estate representative, or if there is no court-appointed estate representative, the Class Member's surviving spouse, or if there is no surviving spouse, the Class Member's other relatives as set forth above.

Your signature

Subscribed and sworn to before me this _____ day of _____, 2023

Notary Public

[Notary Seal]

Return this Form by U.S. First Class Mail to the Claims Administrator at the following address:

Williams v. Retirement Plan Settlement Administrator
Kroll Settlement Administration, LLC
[address]

This form must be postmarked or received by the Claims Administrator on or before _____, 2023 [45 days before Final Settlement Hearing]

Exhibit C

Proposed Final Approval Order

Exhibit C to Settlement Agreement

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

**Jerry Williams and Larry Whitehead,
Individually and on Behalf of All Others
Similarly Situated; and Stewart F. Cooke, III,
as Special Representative of the Estate of
Stewart Cooke,**

Plaintiffs,

v.

**Retirement Plan for Chicago
Transit Authority Employees;
Board of Trustees of the
Retirement Plan for Chicago
Transit Authority Employees;
Retiree Health Care Trust; and
Board of Trustees of the
Retiree Health Care Trust,**

Defendants.

**Case No. 11-CH-15446
Calendar 9**

Hon. Cecilia A. Horan

[PROPOSED] FINAL ORDER AND JUDGMENT

On _____, 2023, a hearing was held before this Court pursuant to the Order Preliminarily Approving Settlement dated _____, 2023 (the “Preliminary Approval Order”), to determine: (a) whether the terms and conditions of the Class Action Settlement Agreement (“Agreement”) in this case are fair, reasonable, and adequate for the settlement of all claims asserted by Plaintiffs on behalf of the Class¹ against Defendants now pending in this Court in the above-captioned Litigation, including the release of the Released Persons, and should be approved; (b) whether judgment should be entered dismissing the Litigation with

¹ Capitalized terms not otherwise defined herein are used as defined in the Agreement and Preliminary Approval Order.

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prejudice; (c) whether to approve the Plan of Distribution as a fair and reasonable method to allocate and distribute the Net Settlement Fund among the Class Members; and (d) whether, and in what amount, to award fees and expenses to Class Counsel, including Service Awards to Class Representatives. The Court having considered all matters submitted to it at the Settlement Hearing, including all properly and timely filed objections; and it appearing that Notice of the Settlement Hearing, substantially in the form approved by the Court, was mailed to all Class Members at the respective addresses set forth in the records compiled by the Claims Administrator;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of this Litigation and all matters relating to the Settlement, as well as personal jurisdiction over all of the Settling Parties and the Class Members.

2. This Judgment incorporates and makes a part hereof: (a) the Agreement; and (b) the Notice.

3. On July 7, 2020, the Court certified the following Class:

All Chicago Transit Authority (“CTA”) retirees who were hired on or before September 5, 2001, retired from the CTA before January 1, 2007, and were eligible for retiree health benefits on July 1, 2009.

On or before October 15, 2020, proper notice of such certification and an opportunity to opt out of the Class by a Court-ordered deadline of December 15, 2020, was provided to the Class Members. A total of six putative Class Members listed in Exhibit 1 hereto opted out of the Class.

4. Notice of the proposed Settlement was given to all Class Members who could be identified with reasonable effort. The Court finds that the form and method of notice to the Class of the terms and conditions of the proposed Settlement: (a) were implemented in accordance with

the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances to apprise Class Members of (i) the effect of the proposed Settlement (including the releases to be provided thereunder); (ii) Class Counsel's Fee and Expense Application; (iii) their right to object to any aspect of the Settlement, the Plan of Distribution, and/or the Fee and Expense Application; and (iv) their right to appear at the Settlement hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of the Illinois Code of Civil Procedure and all other applicable laws and rules.

5. Pursuant to 735 ILCS 5/2-806, the Court hereby fully and finally approves the Settlement set forth in the Agreement in all respects (including, without limitation, the amount of the Settlement, the releases provided for therein, and the dismissal with prejudice of the claims asserted in the Litigation), and finds that the Settlement is, in all respects, fair, reasonable, adequate, and in the best interests of the Class. Subject to the terms and provisions of the Agreement and the conditions therein being satisfied, the Parties are directed to consummate the Settlement.

6. All of the claims asserted in the Litigation are hereby dismissed in their entirety with prejudice. Plaintiffs, Defendants, and the Class Members shall bear their own costs and expenses, except as otherwise expressly provided in the Agreement.

7. The terms of the Agreement and of this Judgment shall be forever binding on Plaintiffs, Defendants, and the Class Members (regardless of whether or not any individual Class Member obtains a distribution from the Net Settlement Fund), as well as their respective

successors and assigns. The Persons listed on Exhibit 1 hereto are excluded from the Class pursuant to their request and are not bound by the terms of the Agreement or this Judgment.

8. Upon entry of this Judgment, the releases set forth in the Agreement shall be in full force and effect. Plaintiffs and all Class Members, including Class Members who did not obtain any distribution from the Net Settlement Fund, are hereby permanently barred and enjoined from the assertion, institution, maintenance, prosecution, or enforcement against Defendants or any Released Persons in any state or federal court or arbitral forum, or in the court of any foreign jurisdiction, of any and all Released Claims.

9. Upon entry of this Judgment, all claims by any individual or entity for contribution or indemnity arising out of the Litigation, however such claims are denominated, shall be barred against the Released Persons.

10. The Court finds that Defendants have satisfied all financial obligations under the Agreement.

11. Except as set forth in paragraph 12 below, neither this Judgment nor the Agreement, and any discussion, negotiation, proceeding, or agreement relating to the Settlement, or any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall be offered or received against or to the prejudice of the Parties or their respective counsel, for any purpose other than in an action to enforce the terms of this Judgment of the Agreement, as provided in the Agreement.

12. Notwithstanding the foregoing, the Released Persons and their respective counsel may refer to or file the Agreement and/or this Judgment in any action that may be brought against them in order to support a defense, claim, or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any

other theory of claim preclusion or issue preclusion or similar defense or counterclaim or otherwise to enforce the terms of the Settlement.

13. The proposed Plan of Distribution and Fee and Expense Application shall be considered separately from final approval of the Settlement and such consideration in this Court shall in no way disturb or affect the finality of this Judgment. Separate orders shall be entered regarding approval of a Plan of Distribution and the Fee and Expense Application. Any post-judgment challenge or appeal relating to approval of a Plan of Distribution or the Fee and Expense Application shall in no way disturb or affect the finality of this Judgment.

14. The Court shall retain jurisdiction to supervise and adjudicate issues relating to effectuation of the Settlement, including the full and final distribution of the Settlement Amount as set forth in the Agreement.

15. Pursuant to Illinois Supreme Court Rule 304(a), the Court expressly finds that there is no just reason to delay enforcement or appeal of this final order and judgment.

DATED:

Honorable Cecilia A. Horan

EXHIBIT 1

Class Member Opt-Out List

Name	Date Submitted
Marilyn Borg	12/5/2020
Ismail Jamil Saleh	10/22/2020
Donald Vernon St. John	10/21/2020
Ronald William Voas	10/27/2020
Lowona V. Wheeler	11/13/2020
A.C. Works	10/27/2020

FILED DATE: 9/19/2023 10:20 AM 2011CH15446

Exhibit 2

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

Jerry Williams and Larry Whitehead,)
Individually and on Behalf of All Others)
Similarly Situated; and Stewart F. Cooke, III,)
as Special Representative of the Estate of)
Stewart Cooke,)

Plaintiffs,)

v.)

Retirement Plan for Chicago)
Transit Authority Employees;)
Board of Trustees of the)
Retirement Plan for Chicago)
Transit Authority Employees;)
Retiree Health Care Trust; and)
Board of Trustees of the)
Retiree Health Care Trust,)

Defendants.)

Case No. 11-CH-15446
Calendar 9

Hon. Cecilia A. Horan

DECLARATION OF C. PHILIP CURLEY

Firm I.D. 15479
C. Philip Curley
Alan F. Curley
Alan R. Dolinko
Robert L. Margolis
ROBINSON CURLEY P.C.
200 North LaSalle Street, Suite 1550
Chicago, Illinois 60601
(312) 663-3100 – Telephone
(312) 663-0303 – Fax
pcurley@robinsoncurley.com
acurley@robinsoncurley.com
adolinko@robinsoncurley.com
rmargolis@robinsoncurley.com

Counsel for Plaintiffs

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C. Philip Curley hereby declares as follows:

1. I am a Shareholder and the Treasurer of Robinson Curley P.C. (“RC”). RC is Class Counsel in this class action lawsuit (the “Litigation”). I am an attorney and have been licensed to practice law in the State of Illinois since 1979; a member of the bar of the United States Supreme Court, the Seventh Circuit Court of Appeals, and the United States District Court for the Northern District of Illinois; and have been admitted to practice *pro hac vice* in many state and federal jurisdictions across the United States.

2. I have personal knowledge of the matters set forth herein based on my active participation in and supervision of the Litigation on behalf of the Plaintiffs and the Class. If called upon as a witness, I could and would testify competently thereto.

I. PRELIMINARY STATEMENT

3. I respectfully submit this Declaration in support of: (i) Plaintiffs’ Motion for Final Approval of Class Action Settlement (“Final Approval Motion”); and (ii) Class Counsel’s Application for Award of Attorney’s Fees and Expenses and Class Representative Service Awards (“Fee Application”).

4. This Declaration describes (i) the claims and issues in dispute in this Litigation; (ii) the risks Counsel faced in bringing the litigation at its inception; (iii) the history of the Litigation, including the efforts Counsel undertook to prosecute the Litigation; (iv) events leading to the Settlement with Defendants, including the negotiation and drafting of the Settlement Agreement; (v) the risks that Class Counsel and the Class Representatives considered in determining that the Settlement provides an outstanding recovery for the Class and merits final approval; (vi) the process by which Notice of the Settlement was provided to Class Members; (vii) the proposed Plan

of Distribution for the Settlement and the bases for approving it; and (viii) the bases for the requested attorneys' fees and expenses and Service Awards.¹

II. THE LITIGATION

A. Claims and Issues in Dispute

5. Plaintiffs contend that under the language of the operative Retirement Plan Agreement for Chicago Transit Authority Employees ("RPA") each Class Member is entitled to lifetime, premium-free retiree health coverage. Beginning July 1, 2009, however, (i) the Trust Defendants began charging the Class monthly premiums for retiree health coverage, and (ii) the Plan Defendants deducted those premiums from certain Class Members' pension payments and sent them to the Trust. Plaintiffs contend that by doing so Defendants breached the RPA and violated Article XIII, Section 5 of the Illinois Constitution ("Pension Protection Clause").

6. Defendants claim that Class Members are not entitled to lifetime, premium-free retiree health coverage, and contend that they at all times acted in accordance with the RPA and the Pension Protection Clause.

7. For those Class Members who participated in the Trust's health plan, Plaintiffs sought as damages the amount of premiums they have paid since July 1, 2009. For those Class Members who did not participate in the Trust's health plan, Plaintiffs sought as damages the value of the coverage that should have been provided to them. Plaintiffs also sought pre-judgment interest, injunctive relief preventing the Trust Defendants from charging Class Members for retiree health coverage going forward, and imposition of a constructive trust.

8. Throughout the Litigation, Defendants have denied, and continue to deny, any and all allegations of fault, liability, wrongdoing, and damages.

¹ Capitalized terms not otherwise defined herein have the meanings set forth in the Class Action Settlement Agreement dated May 17, 2023.

9. The primary issue presented in the Litigation is the interpretation and application of Section 20.12 of the RPA, which sets forth the retiree health benefits to which the Class is entitled. It provides in pertinent part:

- 20.12 (a) Effective December 1, 1989, a sum will be paid in an amount sufficient to provide insurance coverage for all retirees under the Group Hospital Surgical Major Medical Plan or the Health Maintenance Organization premium, *but said sum shall not exceed the premium cost to the Plan effective for such coverage for a retiree on December 31, 2003*. This benefit terminates when the retiree attains age 65.
- (b) Upon the attainment of age 65 by a retiree who participates in the Complement to Medicare Plan, the Plan shall pay a sum sufficient to provide coverage under the Complement to Medicare Plan; *provided, however, that such sum shall not exceed the cost to the Plan effective for such coverage on December 31, 2003*. (Amended 9-26-90) (Further Amended 12-23-93) (Further Amended 12-23-97) (Further Amended 11-12-03).

2004-2006 RPA, § 20.12 (a), (b) (emphasis added).

10. Defendants contend the language italicized above either terminated the Class's right to retiree health coverage altogether on December 31, 2003 ("termination argument"), or at a minimum caps the Class's damages at the cost of the coverage on December 31, 2003 ("cap argument"). Plaintiffs argue (i) the Illinois Supreme Court has already decided the termination argument in Plaintiffs' favor, and (ii) Section 20.12 is ambiguous, and extrinsic evidence confirms Section 20.12 provides lifetime, premium-free retiree health coverage without any cap.

B. Pleadings and Discovery

i. Federal and State Court Complaints, Appeals, and Remand

11. On December 30, 2008, in anticipation of the Trust Defendants beginning to charge retiree premiums, certain active employees and retirees of the CTA, including Mr. Williams, filed a Class Action Complaint against Defendants and others in the United States District Court for the

Northern District of Illinois, styled *Matthews, et al. v. Chicago Transit Authority, et al.*, No. 08-cv-7418, alleging, *inter alia*, that charging retiree premiums violated the United States Constitution, the RPA, and the Pension Protection Clause of the Illinois Constitution. On June 24, 2010, the court dismissed the federal claims and declined to exercise supplemental jurisdiction over the State law claims.

12. On April 20, 2011, certain active employees and retirees of the CTA, again including Mr. Williams, filed this case in the Circuit Court of Cook County, reasserting their State law claims. The initial complaint alleged, *inter alia*, that charging retiree premiums violated the RPA and the Pension Protection Clause. On September 21, 2012, Judge Valderrama dismissed the claims of the active employees for lack of standing, and dismissed the claims of the retirees for failure to state a claim.

13. Plaintiffs appealed, and on April 25, 2014, the Illinois Appellate Court affirmed in part and reversed in part this Court's judgment. *Matthews v. Chicago Transit Authority*, 2014 IL App (1st) 123348.

14. The Illinois Supreme Court granted the parties' cross-petitions for leave to appeal, and on May 5, 2016, affirmed dismissal of the active employees' claims, and affirmed in part and reversed in part the Appellate Court opinion with respect to the retiree claims. *Matthews v. Chicago Transit Authority*, 2016 IL 117368 ("*Matthews*"). With respect to the class of retirees still at issue in this case, the Supreme Court held that Williams (and the Class) have a vested right to retiree health benefits and stated a claim against Defendants for breach of the RPA and violation of the Pension Protection Clause. *See Matthews*, ¶¶ 84, 104.

15. The Supreme Court remanded the case to the Circuit Court. *Id.*, ¶ 104. After the remand, Class Counsel filed amended complaints, culminating in Plaintiffs' Third Amended Class Action Complaint ("Complaint"), the operative complaint here.

16. Defendants filed multiple motions to dismiss that would have been fully dispositive of all claims if granted. Class Counsel opposed the motions, and ultimately the Complaint was upheld. Defendants filed Answers denying the material allegations of the Complaint and asserted multiple affirmative defenses.

17. The Parties actively and aggressively litigated the nature and extent of the vested benefits to which the Class has a right for nearly seven years between the remand and when a settlement in principle was reached in March 2023.

ii. Discovery

18. The parties conducted extensive fact discovery over several years after the remand, and worked diligently to develop a full evidentiary record.

19. First, they exchanged multiple sets of written discovery. Class Counsel issued several sets of Document Requests and Interrogatories to Defendants, and responded to several sets of Document Requests and Interrogatories propounded by Defendants.

20. Between them, the parties also issued dozens of third-party subpoenas to entities and individuals with relevant information.

21. Class Counsel received and reviewed hundreds of thousands of pages of documents produced by Defendants and third parties. The Class Representatives and Class Counsel also produced hundreds of documents to Defendants.

22. In addition to extensive written discovery, the parties conducted 32 depositions of fact witnesses. Class Counsel appeared at all depositions and defended the depositions of the Class Representatives.

23. After the close of fact discovery, Plaintiffs and Defendants each tendered expert reports (updated several times) and supporting documents on damages. The expert reports included highly complex actuarial analyses of damages issues.

24. Class Counsel worked closely with Plaintiffs' expert (an actuary from Milliman) and defended her deposition. Class Counsel also reviewed and analyzed the expert reports and supporting documents from Defendants' damages expert (working with Plaintiffs' expert in the process) and conducted his deposition.

iii. Class Certification

25. After prolonged opposition, Class Counsel obtained certification of the Class. On July 7, 2020, Judge Valderrama granted Plaintiffs' Second Amended Motion for Class Certification ("Class Certification Order"), certifying the following Class:

All CTA retirees who were hired on or before September 5, 2001, retired from the CTA before January 1, 2007, and were eligible for retiree health benefits on July 1, 2009.

Class Certification Order, p. 25.

26. Judge Valderrama also found that Class Counsel "has the qualification and skill to represent the class." *Id.*, p. 24.

27. In October 2020, notice of the Class certification and an opportunity to opt out by a Court-imposed deadline of December 15, 2020, was provided to Class Members, and six putative Class Members opted out.

28. Thereafter, Judge Valderrama was appointed to the federal bench and Judge Allen Walker succeeded him on Calendar 3 and presided over the case.

iv. Cross-Motions for Summary Judgment and Summary Determination

29. In the fall of 2020, the parties filed multiple cross-motions for summary judgment and summary determination on all issues related to liability, completing briefing on those motions in March 2021. Class Counsel filed four motions for summary determination, and opposed four motions for summary judgment and summary determination filed by Defendants.

30. Defendants' motions concerned, among other things, (i) interpretation of Section 20.12 (asserting, *inter alia*, both the termination argument and the cap argument), (ii) whether Plaintiffs had standing to pursue the claims, (iii) certain "consent" affirmative defenses, and (iv) whether the Trust Defendants were successors to the Retirement Plan Defendants. At least two of those motions would have been fully dispositive of one or all of Plaintiffs' claims. Plaintiffs cross-moved for summary determination on each of those same subjects. The briefing on all of these motions and cross-motions comprised hundreds of pages, and the supporting evidence comprised hundreds of exhibits.

31. Judge Walker heard oral argument on the motions in June 2021. On November 3 and December 3, 2021, Judge Walker issued four separate opinions granting all of Plaintiffs' motions and denying all of Defendants' motions. These opinions constituted a finding of liability in favor of Plaintiffs and against Defendants on all counts of Plaintiffs' Complaint and also disposed of all of Defendants' affirmative defenses ("Liability Opinions").

v. Plaintiffs' Damages and the Damages Hearing

32. Judge Walker scheduled a damages hearing for April 26-28, 2022. Class Counsel spent months preparing for that hearing, including drafting several motions *in limine*, which were

effectively summary determination motions on key damages issues and defenses. Class Counsel drafted proposed findings of fact and conclusions of law comprising 227 paragraphs addressing damages issues and defenses, and filed responses to Defendants' lengthy proposed findings of fact and conclusions of law.

33. Before the hearing, Judge Walker denied without prejudice the following: (i) Plaintiffs' Motion for a Permanent Injunction; (ii) several motions *in limine* of each party; (iii) the Trust Defendants' motion to bar testimony of Plaintiffs' expert on certain issues; and (iv) Defendants' motion to strike Plaintiffs' request for a constructive trust.

34. At the damages hearing, Plaintiffs sought damages both for Class Members who elected to pay the newly-imposed premiums ("Participants") and those who did not ("Non-Participants"). For Participants, Plaintiffs sought as damages the amount of premiums paid to Defendants for retiree health coverage. As of March 31, 2023 (the end of the "Claims Period" as defined in the Settlement), that amount is \$60.8 million. For Non-Participants, Plaintiffs sought the full value of the premium-free retiree coverage denied them, as determined by Plaintiffs' expert in accordance with actuarial principles and assumptions. As of December 31, 2021, the last date for which such a calculation was made, that amount was \$64.7 million and is several million dollars higher today. Thus, Plaintiffs seek total compensatory damages of approximately \$127 million.

35. Defendants have argued that Section 20.12 terminated premium-free retiree coverage entirely for Class Members on December 31, 2003, which if they were to succeed would result in zero damages for both Participant and Non-Participant Class Members.

36. As to Participants, Defendants argued that damages should be offset by a reduction in the cost of dependent coverage for Class Members. Defendants have further argued that Section 20.12 caps Participant damages at the cost of coverage on December 31, 2003, or even earlier for

those who retired under earlier collective bargaining agreements. As a result, Defendants' position is that Participant damages, if not \$0, would at most be in the range of \$15 million to \$39 million.

37. For Non-Participants, in addition to the termination argument, Defendants argued Plaintiffs could not prove that imposing premiums caused Non-Participants to decline coverage (there was no individualized evidence on this issue), which would also result in Non-Participants being entitled to zero damages. Defendants argued in the alternative that the premiums covered only about one-third of the actual cost of coverage, with the Trust subsidizing the remainder, and Non-Participants would get a windfall if they were paid the full value of the coverage as damages, when they could have paid just one-third of that amount to actually obtain the coverage. Finally, Defendants have argued that their "cap" argument also applies to Non-Participants. Defendants' position is that Non-Participant damages, if not \$0, would at most be in a range of \$4 million to \$10 million.

38. Thus, Defendants claimed that Plaintiffs' total damages for both Participants and Non-Participants, if not \$0, would be only \$19 million to \$49 million.

39. Plaintiffs also sought five percent statutory pre-judgment simple interest pursuant to 815 ILCS 205/2 ("Interest Act"). At the time of the damages hearing, such interest would have totaled approximately \$43 million for all Participant and Non-Participant damages sought by Plaintiffs. Defendants, however, argued that such interest was precluded by *Kouzoukas v. Ret. Bd. of Policemen's Annuity*, 234 Ill. 2d 446, 477 (2009), which holds that certain "public pension agreements" are not "instruments of writing" under the Interest Act.

40. Plaintiffs also sought the imposition of a constructive trust over the Trust's \$94 million of investment returns earned on the premiums collected from Participants and on the costs avoided by not offering premium-free coverage to Non-Participants, less any interest that

might be awarded to Plaintiffs. Defendants raised a number of procedural, factual, and legal defenses to the imposition of such a constructive trust.

41. Finally, Plaintiffs requested an injunction requiring the Trust Defendants to provide premium-free retiree coverage to Class Members in the future.

42. The damages hearing began as scheduled on April 26, 2023, and during the first two days of hearings, Class Counsel proffered the testimony of Plaintiffs' expert and cross-examined Defendants' key fact witness.

vi. Judge Walker's Recusal

43. At the conclusion of the testimony on the second day of the damages hearing, on April 27, 2023, Judge Walker recused himself under Illinois Supreme Court Rule 63(c).

44. Defendants thereafter moved to vacate all of Judge Walker's substantive rulings. Class Counsel opposed the motion. On July 25, 2022, this Court granted Defendants' motion and ordered that "all substantive orders entered by Judge Walker in this matter are vacated." As a result, the Liability Opinions were vacated.

45. At a status hearing on July 26, 2022, the Court ordered the parties to resubmit the briefs and exhibits on all of the cross-motions for summary judgment and summary determination, after which the Court would hear oral argument and rule on the motions *de novo*. On December 1, 2022, the Court heard the cross-motions on Defendants' "standing" affirmative defense and ruled in Plaintiffs' favor, holding that Plaintiffs have standing to pursue their claims. On December 21, 2022, the Court entered and continued the case to March 24, 2023, for argument on the Section 20.12 cross-motions and for status on the remaining cross-motions (successorship and "consent" affirmative defenses). Those cross-motions, including arguments that could be fully dispositive of Plaintiffs' claims, were pending before the Court when the settlement in principle was reached.

vii. Settlement Negotiations

46. At the status hearing on July 26, 2022, the Court ordered the parties to “meet and confer on potential settlement of this matter” by August 23, 2022. Plaintiffs presented Defendants with a demand on August 8, 2022, which led to negotiations over the ensuing months.

47. After considerable and vigorous arms-length negotiations, the parties in March 2023 reached an agreement in principle on the terms of a Class-wide settlement. The agreement in principle was followed by further negotiations over the following weeks leading to the Settlement Agreement and the exhibits thereto. The Settlement was reached through the above-described extensive arm’s-length negotiations, and without collusion.

48. Based on the several years of extensive discovery resulting in a fully developed factual record, the eight summary judgment/summary determination motions and cross-motions, the motion practice and analytical work in preparation for the damages hearing, and the two days of testimony in the damages hearing, I can say unequivocally that at the time the Settlement was reached, the Class Representatives and Class Counsel were fully informed of the factual and evidentiary record in the case, the strengths and weaknesses of the parties’ legal and factual arguments, and the risks of continuing to litigate in the absence of a settlement.

49. When the parties agreed in principle to settle in March 2023, they were largely in the same procedural posture as when briefing on the cross-motions had been completed two years earlier in March 2021. Most liability issues, including the interpretation of Section 20.12, are unresolved. Several more years of litigation are on the horizon, including a damages hearing if Plaintiffs were to prevail on liability, followed by inevitable appeals.

III. THE SETTLEMENT BENEFITS AND THE RISKS OF NON-RECOVERY

A. The Settlement's Benefits

50. The proposed Settlement provides Class Members with an immediate cash benefit of \$80,000,000 (already paid into escrow by the Trust Defendants and earning interest) to create the Settlement Fund. Notice and Administration expenses, taxes and tax expenses, attorneys' fees and costs, and Service Awards will be deducted from the Settlement Fund. The remaining funds ("Net Settlement Fund") will be paid to Class Members on a *pro rata* basis in accordance with the proposed Plan of Distribution set forth in the Notice. No portion of the Settlement Fund will be returned to Defendants.

51. The Settlement Amount of \$80,000,000 represents 63 percent of the approximately \$127,000,000 in compensatory damages Plaintiffs seek, and 90 percent of the sum of all Class Member Claims calculated by Plaintiffs' actuarial expert pursuant to the Plan of Distribution. In my opinion, this is an outstanding result for Class Members given the risks of the Litigation.

52. The average net recovery to Class Members is estimated to be in excess of \$8,000.

53. The Settlement also provides significant anti-discrimination protections going forward, guaranteeing Defendants will not in any way discriminate against, single out, or treat Class Members, their dependents, and surviving spouses differently from comparable non-Class retirees, or their dependents or surviving spouses. Thus, Class Members, their dependents, and surviving spouses will be provided coverage on the same terms (including eligibility requirements, premium rates, and plan design features) offered to comparable non-Class retirees, their dependents, and surviving spouses. Settlement Agreement, ¶ 2.12.

54. The immediacy and certainty of this recovery are particularly important in this case because more than 99.5 percent of living Class Members are over age 65, approximately 40 percent

are over age 80, and the average age of living Class Members is almost 79. As of March 31, 2023, approximately 2,346 Class Members have passed away since the litigation was filed, or about 36 percent, and an average of 18 Class Members pass away every month.

B. The Risks of Non-Recovery

55. While Plaintiffs and Counsel have always been confident in the strength of their claims, Counsel undertook this Litigation in the face of several significant risks to both (i) Plaintiffs' ability to prevail on liability, and (ii) even if liability were established, to prove damages for a large portion of the Class (in particular, the Non-Participants).

56. First, when they undertook the representation, Counsel were aware of the plain language of Section 20.12, which Defendants have consistently argued does not provide lifetime, premium-free retiree health coverage. That interpretation would be wholly dispositive of the Class's claims (the termination argument), or severely reduce damages (the cap argument). While Class Counsel believes it has strong arguments against both of these positions, and prevailed on those arguments before Judge Walker prior to recusal, the arguments were again before the Court on the summary judgment and summary determination cross-motions at the time the case settled, and the Court made clear its intention to review all issues *de novo*.

57. Second, at the time this case was filed, it was an open question whether retiree health benefits (as opposed to retiree pension benefits) were even subject to the Pension Protection Clause. That issue wasn't finally decided until 2014, six years after the Litigation was begun. *See Kanerva v. Weems*, 2014 IL 115811, ¶¶ 35, 40; *Matthews*, ¶ 54 (*Kanerva* held, "as a matter of first impression," that health benefits were covered).

58. Third, Counsel were also aware at the outset of the case that even if they established liability, proving damages for the Non-Participants who did not pay the required premiums or

obtain the coverage offered, would be complex and raise causation issues that could result in a finding of no damages at all. These damages issues ultimately required expert testimony, and while Class Counsel again was confident Plaintiffs had the stronger argument, there has always been significant risk that the Court would hold otherwise. No court has ever ruled on these issues.

59. Fourth, Counsel knew that Defendants would vigorously oppose class certification, which they did, arguing that Class Members had too many individualized interests to constitute a single, unified class (such as Participants and Non-Participants, and retirees with dependents and those receiving only individual retiree benefits). Though Class Counsel prevailed on Class Certification, there was no guarantee at the outset they would do so, which posed a significant risk to ultimate recovery.

60. Fifth, in addition to the myriad specific factual and legal issues that Counsel knew this highly complex case would spawn, they also knew from the outset that they would have to contend with highly skilled adversaries who, given the stakes, would defend the case vigorously, with extensive resources at their disposal. Counsel had to be prepared to embark on a highly contested litigation over many years, which proved to be the case.

61. Finally, Counsel knew at the outset that even if they ultimately overcame the above obstacles, obtained a judgment on liability, and then achieved a favorable result as to damages, any such judgment was highly likely to be appealed with the risk that an appellate court would reverse the liability finding, or reduce or eliminate damages altogether.

62. Plaintiffs and Counsel overcame those risks to achieve the Settlement. Importantly, even after fifteen years of litigation, a number of significant hurdles remained to be cleared in the absence of Settlement, before relief could be secured.

63. The still-pending cross-motions concerning Section 20.12 raised both the termination and cap arguments. If Defendants were to prevail on their termination argument in the cross-motions, it would be fully dispositive of the case in their favor and the Class would recover nothing. If the Plaintiffs were to prevail on the termination argument, but Defendants nonetheless prevailed on the cap argument, the Class's damages, according to the Defendants' damages expert, would be far less than the \$80,000,000 Settlement amount. While Plaintiffs are confident they have strong arguments with expert support to counter Defendants' positions, Defendants also have expert support for their positions, and damages have yet to be addressed by any judge.

64. In addition, Defendants consistently made clear they would appeal any adverse rulings, which would ensure several more years of litigation before Plaintiffs could secure a recovery, if any.

C. The Settlement is Fair and Reasonable When Considered in Light of the Risks.

65. The Settlement is fair and reasonable in that it provides the outstanding recovery described above, an immediate and certain benefit to the Class of elderly retirees rather than the mere possibility of a recovery after additional years of litigation and appeals, while avoiding all of the above-mentioned risks, including that Defendants would prevail on liability and thus defeat Plaintiffs' claims outright.

66. The Settlement is also reasonable when considered in relation to the range of potential recoveries had Plaintiffs and Class Counsel prevailed on liability. As explained above, the parties' experts presented damages figures that substantially differed, the Defendants' cap argument could have reduced damages of both Participants and Non-Participants substantially, and the Non-Participants faced causation arguments unique to them that could lead to them recovering no damages at all even if liability were proven.

67. Because the Settlement does not include Defendants' agreement to provide premium-free retiree health coverage to Class Members going forward, Class Representatives and Class Counsel considered the present value of such relief when negotiating the Settlement.

68. In this regard, it is also worth noting that over 99.5 percent of the living Class Members are above the age of 65, and thus qualify for Medicare. As a result, they no longer need to look to the Trust for the full scope of their health coverage, and have the option of obtaining premium-free Medicare Advantage plans from other providers, thus limiting the value of injunctive relief.

69. Moreover, given Defendants' steadfast refusal to provide premium-free health coverage going forward as part of any settlement, such relief could only be obtained by litigating the case to conclusion (with all the above-described risks), during which time hundreds more Class Members can be expected to pass away. Even those Class Members who outlive the litigation would still have to wait those several additional years before receiving the benefit of injunctive relief.

70. Thus, the Class Representatives and Class Counsel determined that a settlement providing guaranteed and substantial monetary relief to Class Members now was more valuable than the uncertain possibility of premium-free health coverage going forward for the ever-diminishing number of living Class Members.

71. For all of these reasons, based on a thorough understanding of the evidentiary record, the legal and factual arguments on liability and damages, and the litigation risks in the absence of settlement, the Class Representatives and Class Counsel strongly support final approval of the Settlement.

IV. PLAN OF DISTRIBUTION

72. Records maintained by Defendants were used to quantify each Class Member's Claim for the period July 1, 2009, through March 31, 2023 ("Claim Period"). For each month during the Claim Period that a Class Member paid a premium to the Trust Defendants and participated in the Trust Defendants' health plan, the Class Member is referred to as a "Participant." A Participant's Claim is calculated based on the amount of premium paid to obtain such coverage.

73. For each month during the Claim Period that a Class Member did not pay the premium and therefore did not obtain coverage from the Trust Defendants, the Class Member is referred to as a "Non-Participant." A Non-Participant's Claim is based on the amount of premium that could have been paid by the Class Member to obtain coverage from the Trust Defendants.

74. The calculation of the Non-Participant Claims is supported by Class Counsel's analysis of the legal and evidentiary strengths and weaknesses of the Non-Participant Claims, including the fact that Defendants have asserted unique legal and factual defenses to the Non-Participant Claims not applicable to Participant Claims, and that any measure of Non-Participant Claims must rely upon actuarial assumptions and calculations, while the Participant Claims do not. Class Counsel consulted with Milliman, a leading, worldwide actuarial firm, to determine the appropriate measure of Non-Participant Claims.

75. Some Class Members paid premiums and obtained coverage during some but not all of the Claim Period. Class Members who paid premiums and obtained coverage for some but not all of the Claim Period are Participants during the months they paid premiums, and Non-Participants during the months they did not. By way of example, if a Class Member paid \$20,000 of premiums and obtained health coverage from the Trust Defendants for several years during the

Class Period, the Class Member would have a Participant Claim of \$20,000. If in the other years during the Class Period the same Class Member did not take coverage but could have paid \$5,000 of premiums to obtain such coverage, the Class Member would have a Non-Participant Claim of \$5,000, for a total Class Member Claim of \$25,000.

76. The Net Settlement Fund will be divided among the Class Members based on the ratio of each Class Member's Claim to the sum of all Class Members' Claims. The sum of all Class Member Claims calculated as set forth above is \$89,127,654. Thus, assuming a Net Settlement Fund of \$53,000,000 (after Notice and Administration expenses, taxes and tax expenses, attorneys' fees and costs, and Service Awards), a Class Member with a Claim of \$25,000, will receive an initial distribution of \$14,866.32 ($\$25,000 \div \$89,127,634 \times \$53,000,000$).

77. Any balance remaining in the Net Settlement Fund after the initial distribution (for example, due to unclaimed funds) will, if feasible and economical, be redistributed among Class Members. Settlement Agreement, ¶ 5.4. Any *de minimis* amount remaining in the Net Settlement Fund after all distributions that is not feasible or economical to redistribute, will be donated to an appropriate non-sectarian, non-profit charitable organization(s) serving the public interest as approved by the Court. There will be no reversion of remaining funds to Defendants.

78. The proposed Plan of Distribution is a fair and adequate method for distributing the Settlement Amount to Class Members. The Class Representatives and Class Counsel strongly support its approval by the Court.

V. COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REQUIRING THE ISSUANCE OF NOTICE TO THE CLASS

79. The Class Representatives and Class Counsel have to date fully complied with all requirements of the Preliminary Approval Order.

80. Class Counsel solicited bids and ultimately retained Kroll Settlement Administration LLC, as Claims Administrator. Notice to the Class Members was provided by the Claims Administrator consistent with the Court's Preliminary Approval Order. The Notice informed Class Members of the terms of the Settlement, and the attorneys' fees and costs and Service Awards now being sought, and provided instructions on how to file an objection to those amounts. The Notice informed Class Members how to submit change of address forms, advised surviving spouses and other relatives how to obtain amounts owed to deceased Class Members, and provided information about the Final Approval Hearing.

81. The Notice also informs Class Members that if the Settlement is approved, they will be bound by the Releases contained in the Agreement.

82. More details about the Notice to the Class are set forth in the Declaration of Scott M. Fenwick ("Kroll Declaration"), submitted contemporaneously in support of the Final Approval Motion and Class Counsel's Fee Application.

83. The substance and means of providing the Notice were approved by the Court in its Preliminary Approval Order, and fairly apprises Class Members of their rights with respect to the Settlement, and therefore is the best notice practicable under the circumstances. As such, it complies with the Court's Preliminary Approval Order, Illinois law, and due process.

84. Class Counsel and the Claims Administrator have also maintained separate Settlement websites with settlement information and links to Settlement-related documents, and have spoken and corresponded with hundreds of individual Class Members about the Settlement.

85. The deadline in the Preliminary Approval Order for Class Members to file objections to the Settlement, including to the requested attorneys' fees and costs and Service Awards, is September 25, 2023.

86. To date, just one written objection to the Settlement has been received on behalf of a single Class Member, which will be addressed in Plaintiff's Reply Memorandum, due October 9, 2023, along with any other written objections that may be received after this filing.

87. To date, no objections have been received to the requested attorneys' fees and costs or Service Awards.

88. Class Counsel also will appear at the final approval hearing to defend the Settlement and present the Fee Application.

89. In the event the Court grants final approval of the Settlement, Class Counsel will continue to work with the Claims Administrator to handle matters related to Settlement administration and the distribution of the Net Settlement Fund to the Class Members. It is expected it may take four to six months after final approval to complete the Settlement administration and final distribution. Having stood with the Class for many years, Class Counsel will continue to serve the Class until all tasks are completed.

VI. FEE APPLICATION

90. RC, the law firms of Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich LLP ("Dowd") and Klausner, Kaufman, Jensen & Levinson ("Klausner"), and attorney Mark W. Solock (collectively, "Counsel"), have at different times represented individual plaintiffs and the Class. In addition to seeking final approval of the Settlement, Class Counsel is applying to the Court to award attorneys' fees to Counsel of 33 $\frac{1}{3}$ percent of the Settlement Fund. Counsel also seek reimbursement from the Settlement Fund for costs in the amount of \$485,682.42, and Class Counsel has applied on behalf of the Class Representatives for payment from the Settlement Fund for Service Awards for Jerry Williams (\$55,000), Larry Whitehead (\$10,000), and Stewart Cooke (\$10,000).

A. Attorneys' Fees

91. Plaintiffs and Counsel entered into written retainer agreements in which Counsel agreed to represent Plaintiffs on a purely contingent basis, to be paid only in the event of a recovery. Those agreements provide for an attorneys' fee of 33 $\frac{1}{3}$ percent of any recovery, and 40 percent in the event of an appeal. The Litigation, of course, has already included successful appeals to the Illinois Appellate Court and the Illinois Supreme Court.

92. RC is a boutique state and federal commercial litigation firm with over thirty-five years of experience in complex litigation and class actions such as this. Notwithstanding its small size, it has obtained hundreds of millions of dollars in settlements and judgments for its clients. Professional biographies of the four principal RC attorneys who have worked on the Litigation are attached as Exhibit A hereto. Additional information about RC can be found on our website, www.robinsoncurley.com.

93. RC attorneys have decades of experience litigating complex commercial cases, including class actions, in Illinois and nationally, and have tried complex cases to verdict. This has included litigation involving state pension and retirement systems, health insurance issues, and the duties and obligations of boards of trustees and directors. Summaries of some of the relevant class action and other complex cases RC has worked on are attached as Exhibit B hereto. These summaries were prepared at my direction from records of the firm and are true and correct to the best of my knowledge, information, and belief.

94. RC served as lead counsel when it joined the Litigation in federal court; served as lead counsel in this Court from 2011 to 2012, and again from 2017 to the present; and as sole Class Counsel since 2020. By agreement of Counsel, I have served as lead counsel throughout RC's participation in the Litigation.

95. Dowd represents public and private pension and health funds and international and local unions. The firm served as lead counsel in a successful class action involving municipal employees denied pension credits, whistleblowers in a successful 12-year *qui tam* suit to recover government losses, and public employees on leave whose Pension Protection Clause rights and benefits had been diminished and were recovered. Additional information about Dowd can be found on its website, www.laboradvocates.com. Dowd participated in the federal court action; in this Court from 2011 until 2012; as lead counsel in the Illinois Appellate Court and Illinois Supreme Court proceedings; and again in this Court in 2017 before it withdrew as the result of a conflict that developed after the *Matthews* remand.

96. Klausner specializes in representing public employee retirement systems and has provided legal services to more than 200 state and local government retirement systems in more than 30 states and territories. It has substantial litigation experience in both the prosecution and defense of federal and state class actions, including the successful defense of the Kentucky Retirement Systems in the United States Supreme Court. Additional information about Klausner can be found on its website, www.klausnerkaufman.com. Klausner participated in the Illinois Appellate Court and Illinois Supreme Court proceedings.²

97. The fees sought in this petition will compensate the three firms and Mr. Solock -- each of whom brought particular strengths and experience to the case -- for their service to the Class and contributions toward creation of the common fund. No duplication of effort between the firms occurred at any time. Counsel have agreed to a method, approved by Plaintiffs, for allocating any fee award.

² Attorney Mark W. Solock represented individual plaintiffs for a brief time very early in the case.

i. Counsel's Efforts in the Face of Substantial Risks of Non-Payment

98. The requested attorneys' fee award of 33 $\frac{1}{3}$ percent of the Settlement would fairly and adequately compensate Counsel for (i) agreeing to represent the Class on a wholly contingent basis despite substantial risks, (ii) the substantial expenditure of time and resources, including tens of thousands of attorney and paralegal hours, and hundreds of thousands of dollars advanced in out-of-pocket costs, and (iii) ultimately obtaining for the Class an outstanding settlement notwithstanding those risks.

99. Counsel undertook to represent the Plaintiffs on a wholly contingent basis and advanced substantial litigation costs, knowing full well that the claims faced significant obstacles such that they might not get paid at all. From the outset, they understood the Litigation would be complex, expensive, and lengthy, with no guarantee of ever being compensated for the substantial investment of time and money the case would require. The abundant risks (including the risk of losing on fully dispositive motions) are discussed in detail above, and were apparent to Counsel when they took on the engagement.

100. In undertaking that responsibility, Counsel took on the obligation to ensure that sufficient resources were dedicated to the prosecution of the Litigation, including the considerable litigation costs a case like this requires. The impact of working on a solely contingent basis was felt particularly strongly in this instance, where Counsel worked without compensation for fifteen years, and advanced \$485,682.42 in costs for the benefit of the Class, in addition to the overhead cost of attorneys, staff, and other resources needed for the Litigation.

101. As explained in detail above, Counsel vigorously advocated on behalf of the Class over the fifteen-year course of the Litigation—from the investigation of the claims, through the filing of complaints in two different courts, through appeals to the Illinois Appellate Court and

Illinois Supreme Court, and then after remand through several years of discovery (fact and expert), motion practice, and a contested damages hearing, followed by months of negotiations that ultimately produced the Settlement.

102. RC as Class Counsel has continued to work on behalf of the Class after the Settlement was reached. This has included drafting the Settlement Agreement and negotiating its wording with Defendants' counsel; working with Milliman to develop and implement the Plan of Distribution; hiring the Escrow Agent and Claims Administrator; working with the Claims Administrator to provide the Notice to Class Members; building a page on the RC website dedicated to the Litigation and the Settlement; working with the Claims Administrator to create a separate Settlement website; drafting, filing, and presenting the Preliminary Approval Motion; drafting, filing, and presenting the Final Approval Motion and Fee Application; and responding to inquiries from Class Members and others about the Litigation and the Settlement.

103. Counsel have expended over twenty-one thousand hours in attorney and paralegal time, and advanced hundreds of thousands of dollars in out-of-pocket costs. Class Counsel's records reflect that over 500 documents have been filed with this Court alone. This commitment required Counsel to defer working on cases involving paying clients and redirect resources to this case.

104. As noted above, Class Counsel will continue to work on the Class's behalf until the Settlement Fund has been distributed in full.

105. While Class Counsel believes the Court should employ the strongly favored percentage-of-recovery approach in awarding attorneys' fees and that the Court need not perform a lodestar cross-check, the following table itemizes the time expended and lodestars, calculated

pursuant to the retainer agreements with Plaintiffs, for all work performed by Counsel through and including August 31, 2023:

	<u>Hours</u>	<u>Lodestar</u>
Robinson Curley P.C.	17,179.70	\$12,082,599.35
Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich LLC	4,084.55	2,147,771.26
Klausner, Kaufman, Jensen & Levinson	60.00	31,523.00
Mark W. Solock	9.50	3,592.43
	-----	-----
Total	21,333.75	\$14,265,486.04

106. Given the 33 $\frac{1}{3}$ percent attorneys' fee requested, and based on the \$80 million Settlement Amount, the risk multiplier is 1.87 ($\$26,666,667.00 \div \$14,265,486.04$), well within the range courts regularly approve in cases utilizing the lodestar method. Because Class Counsel will continue to work through the final distribution to Class Members, the final multiplier will be lower.

107. The above-described substantial efforts of time and resources, in the face of the significant risks that Counsel would not ever receive compensation for their work or be minimally compensated, support the reasonableness of the fees requested.

108. The request for attorneys' fees of 33 $\frac{1}{3}$ percent of the Settlement Fund was included in the Notice sent to all Class Members. As of September 11, 2023, no Class Member has objected to the requested attorneys' fees.

ii. The Substantial Benefits Conferred by the Settlement

109. The substantial benefits the Settlement provides, and the certain and immediate payment of \$80,000,000 plus significant anti-discrimination protections going forward, have been described above.

110. That the Class Members recognize these benefits is reflected in their reaction to the Settlement. Because Class Members who approve of the Settlement are not required to take any action to demonstrate their support, it may fairly be presumed that all Class Members who received the Notice and have not objected are in favor the Settlement, the Plan of Distribution, and the Fee Application. As of the date of this filing, just one written objection to the Settlement (not the Fee Application) has been received on behalf of a single Class Member.

111. For the reasons stated above, the Settlement provides exceptional relief to the Class of 6,354 retirees, especially in light of the costs, risks, and delay of further litigation. These benefits and the Class Members' implicit acknowledgement of them further support the requested attorneys' fees.

B. Costs

112. Counsel seek reimbursement of a total of \$485,682.42 for costs, \$468,563.46 of which was advanced by RC, and \$17,118.96 of which was advanced by Dowd. These costs were reasonable, necessary, and directly related to prosecution of the Litigation. Reimbursement of these costs is appropriate and fair as they are typical of the costs courts in class actions regularly award. The costs incurred by RC and Dowd together are categorized as follows:

CATEGORY	AMOUNT
Experts/Consultants	\$346,579.71
Document Hosting/Management	10,713.65
Depositions/Transcripts	40,212.85
Travel	6,018.65
Computerized Legal Research	64,874.15
Photocopying/Telephones/Delivery	13,714.10
Service of Process	1,979.19
Filing Fees	1,590.12
Total	\$485,682.42

113. The costs RC advanced in the Litigation are reflected in the books and records of RC, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records, and other source materials, and are an accurate record of the expenses incurred and paid by RC. I understand based on representations made to me that this is true for Dowd's expenses as well.

114. RC and Dowd advanced these costs at their own substantial risk, and with no guarantee of receiving any reimbursement, let alone any remuneration whatsoever. These expenses were necessary to effectively prosecute the Litigation, were reasonable, and in line with typical expenses incurred in complex litigation and class action cases.

115. For example, Plaintiffs' damages expert Susan Taranto is a Principal and Consulting Actuary at Milliman, and Managing Partner of the New York Region Employee Benefits Practice with extensive experience in pension and retiree health benefit plans. Her services were necessary to assist Class Counsel in evaluating and calculating damages, responding to Defendants' damages arguments, and in formulating the Plan of Distribution. Likewise, for example, obtaining transcripts from depositions and court hearings was necessary and constitutes a typical expense that courts regularly reimburse.

116. The Notice sent to all Class Members estimated costs of \$480,000, just slightly below the final amount being sought. As of September 11, 2023, no Class Member has objected to the requested expense reimbursement.

C. Service Awards

117. Class Counsel also requests Service Awards for Jerry Williams (\$55,000), Larry Whitehead (\$10,000), and Stewart Cooke (\$10,000).³ Each Class Representative worked with

³ Former Plaintiff and Class Representative Stewart Cooke recently passed away. On June 30, 2022, his only child, Stewart Cooke, III substituted into the case as Special Representative of the

Class Counsel to represent the interests of the Class and actively contributed to the creation of the common fund.

118. For Mr. Williams, this has been a fifteen-year commitment, as he was one of the original Plaintiffs when the claims were first filed in federal court. Mr. Williams's work over that fifteen-year period has included: (1) retaining and working directly with Counsel on substantive issues and strategy, including hundreds of meetings, phone calls, and emails; (2) using social media and holding meetings to keep retirees informed of the status of the case, and responding to hundreds of inquiries from Class Members about the Litigation and the Settlement; (3) responding to multiple discovery requests from Defendants, including interrogatories, supplemental interrogatories, and document requests; (4) providing affidavits; (5) preparing for and sitting for his deposition; and (6) attending the damages hearing in April 2022. I have personal knowledge of Mr. Williams's efforts, having worked closely with him throughout the Litigation, and can attest that his work was instrumental in prosecuting the Litigation and obtaining the Settlement for the benefit of the Class, exceeding the time and effort of class representatives in other class actions of which I am aware. *See also generally* Williams Dec.

119. I also have personal knowledge that Mr. Whitehead and Mr. Cooke, who joined the litigation as Plaintiffs in 2017, also met multiple times with Class Counsel to discuss substantive issues and strategy, helped to keep Class Members informed, responded to multiple discovery requests, provided affidavits, and gave deposition testimony.

120. In my opinion, each of the Class Representatives, through their respective commitments of time and effort over the period of many years, and their willingness to undertake

Estate of Stewart Cooke "solely to continue prosecuting claims for the benefit of the estate of Stewart Cooke," and not as a Class Representative. Agreed Order, June 30, 2022. The portion of the Service Award allocated to Stewart Cooke will be paid to Stewart F. Cooke, III.

Exhibit A

I. C. Philip Curley

- A. Bar Admissions
 - 1. Illinois (1979)
 - 2. U.S. Supreme Court
 - 3. U.S. Court of Appeals, 7th Circuit
 - 4. N.D. Ill.
- B. Education
 - 1. Northwestern University (B.A. 1976)
 - 2. National Law Center, George Washington University (J.D. 1979)
 - a. Graduated with Honors
 - b. Order of the Coif
- C. Employment
 - 1. Robinson Curley P.C., Founding Shareholder (1987)
 - 2. Burke & Smith Chartered, Associate (1981-87)
 - 3. Rooks, Pitts, Fullager & Poust, Associate (1979-81)
- D. Awards and Recognition
 - 1. Illinois Super Lawyer (Civil Litigation)
 - 2. Leading Lawyers of Illinois (Commercial Litigation, Insurance)

II. Alan F. Curley

- A. Bar Admissions
 - 1. Illinois (1985)
 - 2. U.S. Supreme Court
 - 3. U.S. Courts of Appeals, 4th, 5th, 6th, 7th Circuits
 - 4. N.D. Ill.
- B. Education
 - 1. Tulane University (B.A. 1981)
 - 2. John Marshall Law School (J.D. 1985)
 - a. Graduated with Highest Distinction
 - b. John Marshall Law Review, Lead Articles Editor
- C. Employment
 - 1. Robinson Curley P.C., Associate (1988); Shareholder (1992)
 - 2. Sidley & Austin, Associate (1986-88)
 - 3. Hon. W. Eugene Davis, U.S. Court of Appeals, 5th Circuit, Law Clerk (1985-86)
 - 4. Sidley & Austin, Summer Associate (1984, 1985)
- D. Awards and Recognition

1. Leading Lawyers of Illinois (Commercial Litigation)

III. Alan R. Dolinko

- A. Bar Admissions
 1. Illinois (1986)
 2. U.S. Courts of Appeals, 3rd, 7th Circuits
 3. N.D. Ill. (Trial Bar)
 4. C.D. Ill.
- B. Education
 1. University of Illinois at Champaign – Urbana (B.S. 1983)
 - a. Graduated with Highest Honors
 - b. James Brady Award for Political Journalism
 2. DePaul University College of Law (J.D. 1986)
 - a. Graduated with Honors
 - b. DePaul Law Review
- C. Employment
 1. Robinson Curley P.C., Partner (2003); Shareholder (2006)
 2. Chuhak & Tecson, P.C., Associate (1990-94); Partner (1994-03)
 3. Sidley & Austin, Summer Associate (1985); Associate (1986-90)
 4. New Trier Township High School District 203 Board of Education, elected Board Member (2009-2017); President (2012-15)
 - a. Lead negotiator for School Board with teacher’s union on three collective bargaining agreements, including health benefits.
 5. Wilmette Public Schools District 39 Board of Education, Elected Board Member (2001-09); President (2001-09)
- D. Awards and Recognition
 1. Illinois Super Lawyer (Business Litigation)

IV. Robert L. Margolis

- A. Bar Admissions
 1. Illinois (1995)
 2. New York (1989)
 3. U.S. Supreme Court
 4. U.S. Courts of Appeals, 6th, 7th Circuits
 5. N.D. Ill.
 6. S.D.N.Y.
 7. E.D.N.Y.

B. Education

1. Duke University (B.A. 1985)
2. University of Chicago Law School (J.D. 1988)
 - a. Mandel Legal Aid Clinic

C. Employment

1. Robinson Curley P.C., Associate (1995); Partner (2006); Shareholder (2021)
2. Gold Farrell & Marks (NY), Associate (1990-93)
3. Proskauer, Rose, Goetz & Mendelson (NY), Associate (1988-90)

D. Board Memberships

1. Lawyers for the Creative Arts
 - a. Treasurer
 - b. Executive Committee

Exhibit B

Robinson Curley P.C. – Representative Cases

A. Class Action Cases

1. United States District Court (N.D. Ill.) (2016-2021) (CPC, AFC)¹

Represented plaintiff state retirement system in securities fraud class action case. Matter settled with a recovery of \$27 million for the class.

2. United States District Court (N.D. Ill.) (2007-2010) (CPC)

Represented retirement system and pension plan as liaison counsel in securities fraud class action case. \$13 million settlement obtained after plaintiffs defeated motions to dismiss.

3. United States District Court (N.D. Ill.) (2003-2009) (CPC)

Represented state Division of Investment in securities fraud class action case. \$190 million settlement reached on eve of trial. Philip Curley was one of three lead trial counsel.

4. Circuit Court of Cook County (2002-2004) (CPC)

Represented class of over 2,000 minority members of Chicago Board of Trade in breach of fiduciary duty case against full members. Settled after protracted litigation and successful summary judgment appeal, yielding value of \$800 million to class, an average of \$363,000 per class member.

5. United States District Court (E.D.N.Y.) (2000-2005) (ARD)

Represented insecticide manufacturer in large class action mass tort case.

6. United States District Court (N.D. Ill.) (1999-2002) (CPC, RLM)

Served as lead counsel in securities fraud class action case. Resulted in settlement of approximately \$25 million for plaintiff class.

¹ Parentheticals refer to court, years Robinson Curley P.C. (“RC”) attorneys were involved in the case, and initials of RC attorneys who worked on the case. “CPC” refers to C. Philip Curley; “AFC” refers to Alan F. Curley; “ARD” refers to Alan R. Dolinko; and “RLM” refers to Robert L. Margolis.

7. United States District Court (N.D. Ill.) (1997-2001) (RLM)

Represented investment arm of state pension funds in securities fraud class action case. The case settled for over \$60 million in 2001.

B. Other Complex Litigation and Matters

1. United States District Court (2021-present) (AFC, ARD)

Representing court-appointed Independent Fiduciary of more than 3,000 ERISA-governed employer-sponsored health benefit plans with tens of millions of dollars in medical claims, all now being liquidated.

2. United States District Court (N.D. Ill.) (2017-present) (CPC, AFC, RLM)

Representing Independent Fiduciary of health care benefit plans shut down by the United States Department of Labor. Assisting Independent Fiduciary with DOL and ancillary professional liability litigation and estate administration. Multiple settlements achieved thus far totaling approximately \$7 million.

3. Insurance Company, in Liquidation (2016-2018) (CPC, AFC, RLM)

Represented liquidator of insolvent insurance company in claims against former directors and officers. Pre-filing settlement of \$4,750,000 reached in February 2018 after two-day mediation involving ten law firms.

4. Insolvent Financial Institutions Investigations and Litigation (2009-2018) (CPC, AFC, ARD, RLM)

Represented receiver of multiple insolvent financial institutions in several states in professional liability investigations and litigation. Over \$12 million of cash recoveries obtained.

5. United States District Court (N.D. Ill.) (2008-present) (AFC, RLM)

Represented bankruptcy trustee and minority shareholders of European corporation victimized by complex racketeering scheme. Claims were filed against the company's majority shareholders and their attorneys. Judgment of \$413 million entered against majority shareholders as litigation sanction, affirmed by the Seventh Circuit. Collection efforts in Europe are ongoing. Attorney case settled favorably for clients.

6. Illinois State Court (2013-2014) (CPC)

Represented Trustee of bankruptcy liquidating trust in Illinois state court against company's former officers and directors. Claims settled favorably for the Trustee.

7. Insurance Company, in Liquidation (2011- 2014) (AFC, RLM)
Represented liquidator of insolvent nursing home liability insurer in separate litigations against defalcating reinsurance intermediary and former officers and directors. Both cases settled favorably for the estate.
8. United States District Court (E.D. Mich.) (2010-2013) (CPC, RLM)
Represented mortgage lender victimized by complex mortgage fraud scheme in RICO and state-law action against numerous perpetrators. Case settled favorably for the client.
9. Insurance Companies, in Liquidation (2000-2012) (CPC, AFC, RLM)
Represented liquidator of three insolvent insurance companies in national and international litigation to recover funds looted by notorious felon. Over \$168 million of cash recoveries achieved for the insurance companies and affiliated companies' estates.
10. Circuit Court of Cook County (2005- 2010) (ARD)
Represented cost containment consultant seeking a fee arising out of advice given in connection with large self-funded insurance plan. Bench trial judgment awarded in the amount of \$1,387,999; upheld on appeal.
11. Insurance Company, in Liquidation (2005-2009) (CPC, AFC, RLM)
Represented liquidator of three insolvent insurance companies in cases against officers, directors, attorneys, and auditors. Over \$12 million in cash and non-cash settlements obtained.
12. Insurance Company, in Liquidation (1992-2006) (CPC, AFC, RLM)
Represented liquidator of insolvent insurance company in case against officers, directors, attorneys, and auditor. Obtained \$6 million of settlements from attorneys and auditors. Obtained verdict of \$13.6 million against directors and officers after lengthy jury trial.
13. Insurance Company, in Liquidation (2001-2003) (CPC, ARD)
Represented liquidator of insolvent insurance company in accounting malpractice case. Obtained jury verdict after three-week trial in excess of accounting firm's malpractice coverage.
14. Employees Association Trust, in Receivership (1996-2002) (AFC)
Represented Independent Fiduciary of insolvent union health and welfare benefit plan in professional liability claims against the Trust's former trustees, agents, attorneys, accountants, and reinsurers, all of which were successfully settled.

Exhibit 3

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

**Jerry Williams and Larry Whitehead,)
Individually and on Behalf of All Others)
Similarly Situated; and Stewart F. Cooke, III,)
as Special Representative of the Estate of)
Stewart Cooke,)**

Plaintiffs,)

v.)

**Retirement Plan for Chicago)
Transit Authority Employees;)
Board of Trustees of the)
Retirement Plan for Chicago)
Transit Authority Employees;)
Retiree Health Care Trust; and)
Board of Trustees of the)
Retiree Health Care Trust,)**

Defendants.)

Case No. 11-CH-15446

Calendar 9

Hon. Cecilia A. Horan

**DECLARATION OF SCOTT M. FENWICK
OF KROLL SETTLEMENT ADMINISTRATION LLC
IN CONNECTION WITH FINAL APPROVAL OF SETTLEMENT**

I, Scott M. Fenwick, declare as follows:

INTRODUCTION

1. I am a Senior Director of Kroll Settlement Administration LLC (“Kroll”),¹ the Claims Administrator appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement (as defined below).

are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with final approval of the Settlement.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

BACKGROUND

3. Kroll was appointed as Claims Administrator to provide notice and administration services in connection with that certain Class Action Settlement Agreement (the “Settlement Agreement”) entered into in connection with the above-captioned case. Procedures employed by Kroll in connection with the Settlement have and will include: (a) receiving and analyzing a data file provided by Milliman identifying Class Members (the “Class List”); (b) creating a Settlement website; (c) establishing a Settlement toll-free telephone number; (d) establishing a post office box for the receipt of Settlement-related mail; (e) preparing and sending the Notice of Proposed Class Action Settlement (the “Notice”) via first-class mail; (f) receiving and processing mail with forwarding addresses for Class Members from the United States Postal Service (“USPS”); (g) receiving and processing undeliverable mail without a forwarding address from the USPS; (h) receiving and processing “Change of Address Forms” and “Proof of Kinship Forms”; (i) receiving and processing inquiries; (j) distributing the Settlement Fund as provided in the Settlement Agreement; and (k) such other tasks as Class Counsel or the Court may request Kroll to perform.

NOTICE PROGRAM

4. On April 26, 2023, Kroll designated a dedicated post office box with the assigned mailing address *Williams, et al. v. Retirement Plan for CTA Employees, et al.*, c/o Kroll Settlement Administration LLC, PO Box 225391, New York, NY 10150-5391, to receive correspondence from Class Members, including Change of Address Forms and Proof of Kinship Forms.

5. On April 26, 2023, Kroll established a toll-free Settlement telephone number, (833) 747-6924, for Class Members to call and obtain additional information regarding the Settlement by being connected to a live operator. As of September 1, 2023, 986 callers have been connected to live operators.

6. In June 2023, Kroll developed a dedicated Settlement website entitled www.ctaretireesettlement.com. The Settlement website “went live” on June 23, 2023, and contains details about the Settlement, important dates, frequently asked questions, contact information for the Claims Administrator, and copies of the Settlement Agreement, the Preliminary Approval Order, the Notice of Proposed Class Action Settlement, the Change of Address Form, and the Proof of Kinship Form.

7. On June 6, 2023, Kroll received a data file from Milliman containing the Class List, which included the 6,354 Class Member names, last known physical (mailing) addresses as maintained by Defendants, Retiree Health Care Trust (“RHCT”) member IDs, Social Security numbers, dates of birth, dates of death, participant allocations, non-participant allocations, total allocations, percent allocated, and “Estimated Individual Settlement Amounts.” Kroll undertook several steps to ensure the data file was correctly loaded into the Kroll database. Kroll created data mapping instructions identifying the data fields from the file to the corresponding fields in the Kroll database. The data mapping instructions contained identical column headers as the data file

from Milliman to ensure the data was uploaded accurately. Once the data was uploaded, Kroll followed quality assurance protocols to verify that the information in the Kroll database corresponded with the data file provided by Milliman. Additionally, in an effort to ensure that Notice would be deliverable to Class Members, Kroll ran the Class List through the USPS's National Change of Address ("NCOA") database and updated the Class List with address changes received from the NCOA.

8. On June 23, 2023, Kroll caused the Notice to be mailed via first-class mail to the 6,354 Class Members at their last known physical address. Included with the Notice were the Change of Address Form and Proof of Kinship Form. A true and correct copy of the Notice, Change of Address Form, and Proof of Kinship Form as mailed are attached hereto as **Exhibit A**.

NOTICE PROGRAM REACH

9. As of September 8, 2023, twenty-six (26) Notices were returned by the USPS with a forwarding address. Those twenty-six (26) Notices were automatically re-mailed to the updated addresses provided by the USPS.

10. As of September 8, 2023, 661 Notices were returned by the USPS as undeliverable as addressed, without a forwarding address being provided. Kroll ran 531 undeliverable records through an advanced address search.² The advanced address search produced 270 updated addresses. Kroll re-mailed Notices to the 270 updated addresses obtained from the advanced address search. Kroll conducted an additional advanced address search for the remaining 261 records that had not produced updated addresses. The additional advanced address search produced another 116 updated addresses. Kroll re-mailed Notices to the additional 116 updated addresses

² The remaining 130 undeliverable Notices received to date were received after the advanced address search was run and therefore those records were not included in that search. An advanced address search for these additional 130 undeliverable Notices is, however, in process.

obtained from the additional advanced address search. Of the 386 re-mailed Notices, 115 have been returned as undeliverable a second time.

11. In an effort to ensure that Notices were deliverable to the next of kin of deceased Class Members, Kroll conducted an advanced relative search to identify living relatives of the known deceased Class Members. In furtherance of that effort, Defendants also recently provided one (1) data file for the known surviving spouses of deceased Class Members, containing RHCT member IDs, deceased Class Member Social Security Numbers, names, dates of birth, and dates of death; and the surviving spouse names, last known physical (mailing) addresses, dates of birth, and dates of death (the “Surviving Spouse List”). Kroll is still in the process of reviewing the advanced relative search results obtained, as well as the Surviving Spouse List provided. Following finalized review of the data, Kroll will cause Notice to be mailed to the identified relatives and surviving spouses of the deceased Class Members via first-class mail.

12. Based on the foregoing, Kroll has reason to believe that Notice likely reached 5,969 of the last known addresses of the 6,354 Class Members to whom Notice was mailed, after taking into account the advanced address searches and re-mailings conducted to date, which equates to a reach rate of the direct mail Notice of approximately 94%. This reach rate is consistent with other court-approved, best-practicable notice programs and with Federal Judicial Center Guidelines³ which state that a notice plan that reaches over 70% of targeted class members is considered a high percentage and the “norm” of a notice campaign.⁴

³ Fed. Jud. Ctr., *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), available at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>. The guide suggests that the minimum threshold for adequate notice is 70%.

⁴ Barbara Rothstein and Thomas Willging, *Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges*, at 27 (3d Ed. 2010).

RECORDS INFORMATION UPDATES

13. As of September 8, 2023, Kroll has received 138 Change of Address Forms and 551 Proof of Kinship Forms. Kroll is still in the process of reviewing and validating those forms.

14. On August 31, 2023, Kroll sent deficiency letters via first-class mail to eighty-five (85) Class Members who had submitted deficient Change of Address Forms and/or Proof of Kinship Forms, allowing those Class Members to cure the deficient forms by September 25, 2023. A true and correct copy of the mailed deficiency letters are attached hereto as **Exhibit B and Exhibit C** respectively.

OBJECTIONS

15. The Notice does not instruct Class Members to submit objections to the Claims Administrator, and none have been received by Kroll.

COST OF NOTICE PROGRAM

16. As of July 31, 2023, Kroll has billed \$40,955.93 for services and costs incurred as Claims Administrator.

CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

September 11, 2023

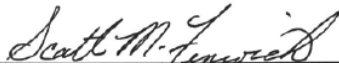

SCOTT M. FENWICK

Exhibit A

Member ID: <<Member ID>>

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
No. 11 CH 15446
Judge Cecilia A. Horan, Calendar 9
Williams, et al. v. Retirement Plan for CTA Employees, et al.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

To: All Chicago Transit Authority (“CTA”) retirees who were hired on or before September 5, 2001, retired from the CTA before January 1, 2007, and were eligible for retiree health benefits on July 1, 2009 (“Class”).

A court authorized this Notice. This is not a solicitation from a lawyer.

THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS AND PROVIDE YOU POTENTIAL BENEFITS. PLEASE READ IT CAREFULLY.

WHAT IS THE PURPOSE OF THIS NOTICE?

This Notice is being sent in connection with a class action lawsuit involving CTA retiree health benefits (the “Lawsuit”). You are receiving this Notice because records indicate you are a member of the above-defined Class (“Class Member”). The purpose of this Notice is to advise you of a proposed settlement (the “Settlement”) between the Class and Defendants, the Retirement Plan for Chicago Transit Authority Employees (“Plan”) and its Board of Trustees (together, “Plan Defendants”) and the Retiree Health Care Trust (“Trust”) and its Board of Trustees (together, “Trust Defendants”).

Your estimated Individual Settlement Amount is: \$<<Estimated Individual Settlement Amount>>.

If the Class Member to whom this Notice is addressed is deceased, please review carefully the information included in this Notice regarding the Proof of Kinship form required to obtain a deceased Class Member’s Individual Settlement Amount.

This Notice provides important information that (a) explains this Lawsuit and the proposed Settlement, (b) instructs you on how to object to the Settlement if you wish to do so, and (c) notifies you of a hearing the Court has scheduled (“Final Settlement Hearing”) on October 23, 2023, to consider whether to give final approval to the Settlement, including how the settlement funds will be distributed to Class Members. At the Final Settlement Hearing, the Court will also consider the request for fees and expenses (“Fee and Expense Application”) being made by the attorneys for the Class (“Class Counsel”), and the request for payment to the Class Representatives of additional funds to compensate them for their time and effort spent in prosecuting the Lawsuit (“Service Awards”). The full Class Action Settlement Agreement (“Settlement Agreement”) is available on the Settlement website, www.ctaretireesettlement.com. Class Counsel’s Fee and Expense Application (including the request for Class Representative Service Awards) will be available on the Settlement website upon its filing with the Court no later than September 11, 2023.

WHAT IS THIS LAWSUIT ABOUT?

This is a class action Lawsuit in which one or more persons known as “Class Representatives” sue on behalf of themselves and others who have similar claims. Here, the Class Representatives are CTA retirees Jerry Williams and Larry Whitehead.¹ The Class Representatives sued Defendants, alleging they violated the Pension Protection Clause of the Illinois Constitution and breached the CTA Retirement Plan Agreement by charging the Class Members monthly premiums for health care coverage.

¹ Stewart Cooke passed away during the pendency of this case and is no longer a Class Representative. His son and Estate Representative Stewart Cooke III was substituted as a Plaintiff after Mr. Cooke’s death.

ANY QUESTIONS? Contact the Claims Administrator at (833) 747-6924 or visit the Settlement website at www.ctaretireesettlement.com

On July 1, 2009, the Trust began charging the Class Members monthly health care premiums and the Plan began deducting those premiums from the monthly pension checks of certain Class Members. Plaintiffs contend in the Lawsuit that Class Members are entitled to lifetime, premium-free retiree health coverage. Defendants have vigorously defended against these claims for 15 years, deny the claims in this Lawsuit, and deny that they are doing anything wrong by charging the Class Members monthly premiums or otherwise.

The Class Representatives and Defendants have reached a Settlement of all claims asserted in the Lawsuit. The Settlement has been preliminarily approved by the Court and will be the subject of a Final Settlement Hearing. The Settlement is not an admission of liability or wrongdoing by Defendants. Because you are a Class Member, you will receive benefits from the Settlement if the Court gives its final approval at the Final Settlement Hearing, and after any appeals have been resolved.

WHO IS IN THE CLASS?

The Class consists of approximately 6,354 CTA retirees. You are receiving this Notice because records maintained by Defendants establish that you meet the Class definition above and are therefore a Class Member, or you are the surviving spouse of a deceased Class Member. When notice of the Court's certification of the Class was mailed to you in October 2020, you did not elect to exclude yourself from the Class, but chose to remain a part of the Class.

If the Class Member to whom this Notice is addressed is deceased, a court-appointed estate representative, surviving spouse or relative of the deceased Class Member ("Estate Representative") may be entitled to receive the Class Member's Individual Settlement Amount by following the instructions set forth included with this Notice.

WHY IS THERE A SETTLEMENT?

The Court has not decided this Lawsuit in favor of the Class or Defendants. While you may be aware that there have been various rulings by the Court throughout this litigation in favor of either the Class or Defendants, the Court never issued a final ruling resolving the claims or defenses of the parties in the Lawsuit. Instead of continuing the litigation and obtaining a final decision, both sides have agreed to a Settlement. By settling, they avoid the costs and delay of a trial and likely appeals, and settlement benefits go to the Class Members now. The Class Representatives and Class Counsel feel strongly that this Settlement is in the best interests of the Class Members, taking into account the benefits of the Settlement, the uncertain outcome and the risks of continuing to litigate this highly complex case, and the extensive delay in obtaining relief for the Class if the Lawsuit continues, even if Plaintiffs prevail.

DOES A LAWYER REPRESENT ME IN THE LAWSUIT?

Yes. All Class Members are represented by Class Counsel Robinson Curley P.C., whose contact information is included at the end of this Notice. If you want to be represented by your own lawyer, you may hire one at your own expense but it is not necessary.

WHAT ARE THE PRINCIPAL TERMS OF THE SETTLEMENT?

The principal terms of the proposed Settlement are as follows:

- A. **Settlement Fund:** If the Settlement Agreement gains final approval from the Court, the Trust will pay \$80,000,000 to fully and finally settle the entire case. This is the total amount that will be paid on behalf of all Defendants to settle the case.

ANY QUESTIONS? Contact the Claims Administrator at (833) 747-6924 or visit the Settlement website at www.ctaretireesettlement.com

Before the Settlement funds are divided among the Class Members and their Estate Representatives, amounts approved by the Court will be deducted for the following:

- (a) the cost to send this Notice and distribute the settlement funds (“Notice and Administration Expenses”);
- (b) any taxes owed by the Settlement Fund;
- (c) up to 33 $\frac{1}{3}$ percent of the Settlement Fund for the attorneys’ fees of Class Counsel for their work on the case for 15 years;
- (d) reimbursement of approximately \$480,000 of costs and expenses advanced by Class Counsel in the case; and
- (e) a combined total of up to \$75,000 for Service Awards to the three Class Representatives (or their heirs) to compensate them for their substantial time and effort in prosecuting the case and making this Settlement possible.

The amount of Settlement funds remaining after the above deductions is referred to as the “Net Settlement Fund.”

- B. Settlement Payments: Each Class Member will be eligible to receive a payment from the Net Settlement Fund in accordance with the Plan of Distribution set forth below in this Notice.
- C. Release: Each Class Member will release certain claims against Defendants and their Related Parties (as defined in the Settlement Agreement). This is referred to as the “Release.” If the Settlement is approved, all Class Members will be deemed to have released any and all claims that were brought or could have been brought in the Lawsuit. This includes claims arising from the charging of premiums by the Trust for retiree health coverage both in the past and the future, subject to the anti-discrimination provision described below in Section D. If final approval is given, you may not assert any of these claims in any other lawsuit or proceeding. This includes any other lawsuit or proceeding already in progress. The final judgment order entered by the Court in this case will bind all Class Members.

The Release is effective and binding as to every Class Member who did not request exclusion from the Class in accordance with the Class Notice sent in October 2020, regardless of whether the Class Member receives and cashes a settlement payment check.

- D. Future Allowed Actions By the Plan and the Trust To Charge or Deduct Premiums: Under the terms of the Settlement Agreement, for those Class Members who elect to obtain or continue coverage from the Trust in the future, the Trust may continue to charge a monthly premium and the Plan may continue to deduct those premiums from the pension checks of retirees who pay for health care coverage through a pension deduction. The Settlement Agreement has no impact on the Trust’s current (a) eligibility requirements for retiree coverage of Class Members, (b) eligibility requirements for dependents and surviving spouses of Class Members, or (c) ability to charge retirees a premium for individual retiree and/or dependent and surviving spouse health care coverage. This means the Trust may maintain or even increase the current premium levels charged to Class Members, their surviving spouses and dependents. The Settlement requires, however, that the Trust not discriminate against Class Members by imposing more stringent eligibility rules, or by charging Class Members higher premiums, deductibles, co-pays, or out-of-pocket limits for

retiree, surviving spouse or dependent coverage, than it charges non-Class retirees who are similarly situated to Class Members.

E. Dismissal of the Lawsuit: All claims in the Lawsuit will be dismissed with prejudice.

Sections A-E above provide only a general summary of the proposed Settlement. You may consult the Settlement Agreement for more information about the exact terms of the Settlement. The Settlement Agreement is available at the Settlement website, www.ctaretireesettlement.com.

HOW ARE INDIVIDUAL SETTLEMENT AMOUNTS CALCULATED?

Determination of Individual Settlement Amounts (Plan of Distribution):

Your estimated Individual Settlement Amount is set forth on the first page of this Notice. It is only an estimate because your final Individual Settlement Amount may be higher or lower depending on the full amount of the Notice and Administration Expenses incurred, the Court's rulings with respect to the Fee and Expense Application and Service Awards, and whether certain Class Members or their Estate Representatives cannot be found or fail to cash or deposit their settlement checks. Each Class Member's final Individual Settlement Amount will be determined as follows:

1. Determining Each Class Member's "Claim": The starting point for quantifying each Class Member's Individual Settlement Amount is determining the amount of each Class Member's individual "Claim."
2. Time Period for Claim Determinations: Claim amounts will be determined for the period beginning July 1, 2009, and ending on March 31, 2023 ("Claim Period").
3. Participant and Non-Participant Claims:
 - a. To understand how the amount of each Class Member's Claim will be determined, there are a couple of important items to understand.
 - During the Claim Period, the premiums paid by retirees covered only approximately one-third of the actual cost of health coverage provided to retirees. In other words, even after imposing the premiums, the Trust subsidized (paid) approximately two-thirds of the cost of coverage for retirees.
 - The Class consists of some Class Members who paid premiums and obtained coverage from the Trust for the entire Claim Period, others who elected not to obtain coverage from the Trust and never paid premiums during the Claim Period, and others who paid premiums and obtained coverage during some but not all of the Claim Period.
 - For each month during the Claim Period that a Class Member paid a premium to the Trust and participated in the Trust's health plan, the Class Member is referred to as a "Participant."
 - For each month during the Claim Period that a Class Member did not pay the premium and therefore did not obtain coverage from the Trust, the Class Member is referred to as a "Non-Participant."
 - Class Members who paid premiums and obtained coverage for some but not all of the Claim Period are Participants during the months they paid premiums, and Non-Participants during the months they did not.

ANY QUESTIONS? Contact the Claims Administrator at (833) 747-6924 or visit the Settlement website at www.ctaretireesettlement.com

b. Calculation of Each Class Members' Participant Claim:

Participants paid the premiums and thereby obtained the full value of the Trust's health coverage (including the subsidized portion). Therefore, for each month during the Claim Period that a Class Member paid a premium to the Trust and participated in the Trust's health plan, the Class Member or Estate Representative will have a claim equivalent to the amount of premium paid to obtain such coverage. The total of such monthly amounts is the Class Member's "Participant Claim." Records maintained by Defendants have already been used to quantify these amounts and you need not provide any evidence to support them.

c. Calculation of Each Class Member's Non-Participant Claim:

Non-Participants declined to pay the premiums and therefore obtained none of the value of the coverage to which Plaintiffs contend they were entitled. However, Non-Participants could have paid the premiums and thereby obtained the full value of the coverage from the Trust (including the subsidized portion). Therefore, for each month during the Claim Period that a Class Member did not pay a premium to the Trust or obtain coverage under the Trust's health plan, the Class Member or Estate Representative will have a claim equivalent to the amount of premium that could have been paid by the Class Member to obtain coverage. The total of such monthly amounts is the Class Member's "Non-Participant Claim." This measure of Non-Participant Claims is supported by Class Counsel's analysis of the legal and evidentiary strengths and weaknesses of the Non-Participant Claims, including the fact that Defendants have asserted additional legal and factual defenses to the Non-Participant Claims, and that any measure of Non-Participant Claims must rely upon actuarial assumptions and calculations, while the Participant Claims do not. Class Counsel has consulted with Milliman, a leading, worldwide actuarial firm, to determine the appropriate measure of Non-Participant Claims for this Settlement. Records maintained by Defendants have already been used to quantify the Non-Participant Claims and you need not provide any evidence to support such claims.

d. Calculation of Total Claim

The sum of each Class Member's Participant Claim and Non-Participant Claim will equal each Class Member's total Claim against the Net Settlement Fund.

4. Determining Each Class Member's Individual Settlement Amount:

The Net Settlement Fund will be divided among the Class Members based on the ratio of each Class Member's Claim to the sum of all Class Members' Claims. The amount calculated under this formula is the Class Member's Individual Settlement Amount.

By way of example, if a Class Member paid \$20,000 of premiums and obtained health coverage from the Trust for several years during the Class Period, the Class Member would have a Participant Claim of \$20,000. If in the other years during the Class Period the same Class Member did not take coverage from the Trust but could have paid \$5,000 of premiums to obtain such coverage, the Class Member would have a Non-Participant Claim of \$5,000, making the Class Member's total Claim \$25,000. If the sum of all Class Members' Claims is \$90,000,000, and the Net Settlement Fund is \$53,000,000 after all court-approved deductions, then the Class Member would be entitled to an Individual Settlement Amount of 0.02778 percent ($25,000 \div 90,000,000$, stated as a percentage) of the Net Settlement Fund, or \$14,723 ($0.0002778 \times 53,000,000$).

At the Final Settlement Hearing, the Court may approve this method of distributing the Net Settlement Fund or modify it without additional notice to the Class.

WHEN WILL I RECEIVE MY INDIVIDUAL SETTLEMENT AMOUNT?

The Court must determine that the Settlement is fair and reasonable and give final approval to the Settlement before it can go into effect. If the Settlement is approved, a final Judgment will be entered and the Claims

ANY QUESTIONS? Contact the Claims Administrator at (833) 747-6924 or visit the Settlement website at www.ctaretireesettlement.com

Administrator will mail checks to the Class Members or their Estate Representatives for the Individual Settlement Amounts within 30 days after the Judgment becomes final and any appeals are resolved. If there is any appeal filed, distribution of the Individual Settlement Amounts will be delayed while the appeal is being resolved, which can take significant time, sometimes a year or longer.

WHAT HAPPENS IF THE SETTLEMENT IS NOT APPROVED?

If the Court does not approve the Settlement or the Settlement is terminated on any grounds provided in the Settlement Agreement, then the parties will be returned to their previous positions in the Lawsuit and the case will proceed as if no Settlement had occurred. If this occurs, no Individual Settlement Amounts will be distributed to Class Members.

WHAT ARE MY OPTIONS AND WHAT DO I NEED TO DO TO RECEIVE MY INDIVIDUAL SETTLEMENT AMOUNT?

Class Members have the following options in responding to this Notice:

DO NOTHING	You will receive a check for your final Individual Settlement Amount and be bound by the Settlement Agreement. You will give up the claims that are released by the Settlement Agreement.
FILE A STATEMENT IN SUPPORT OR OBJECTION	You may submit a timely written statement in support of or objection to the Settlement. If the Settlement is approved despite any objection you submit, you will remain a member of the Class and still give up your rights to bring any claims that are released by the Settlement Agreement. Class Members need not submit a statement in support of the Settlement to obtain their Individual Settlement Amount.

WHAT IF THE ADDRESS ON THIS NOTICE IS NO LONGER VALID?

If the address to which this Notice has been sent is no longer valid, the Change of Address form included with this Notice must be completed, notarized and mailed to the Claims Administrator. Checks will be mailed to the same address to which this Notice was sent unless a completed Change of Address Form is sent to the Claims Administrator postmarked or received by September 25, 2023. Checks may be cashed or deposited only by the payee and not any third party. Checks not cashed or deposited within 90 days will be void and replacement checks will not be provided. If a check is lost or destroyed and a request is received by the Claims Administrator within those 90 days, a replacement check may be issued.

WHAT IF THE CLASS MEMBER IS DECEASED?

Defendants' records establish that approximately 2,346 Class Members are deceased as of March 31, 2023. To obtain any deceased Class Member's Individual Settlement Amount, the Estate Representative of a deceased Class Member must complete and send the Proof of Kinship Form provided with this Notice to the Claims Administrator, postmarked or received on or before September 8, 2023. An Estate Representative can be the court-appointed representative of a deceased Class Member or, if there is no court-appointed representative, the surviving spouse, children, parents, or any other properly verified next of kin of the deceased Class Member, in that order of priority.

ANY QUESTIONS? Contact the Claims Administrator at (833) 747-6924 or visit the Settlement website at www.ctaretireesettlement.com

The Proof of Kinship Form must be sworn in person before a Notary Public. If a proper Proof of Kinship Form is not submitted to the Claims Administrator, or if the Notice addressed to a deceased Class Member is returned as undeliverable to the Claims Administrator, no payment will be made from the Settlement Fund on behalf of the deceased Class Member unless, after reasonable investigation, the Claims Administrator is able to identify and locate the deceased Class Member’s court-appointed representative or next of kin.

ARE THERE TAX IMPLICATIONS FOR CLASS MEMBERS?

You may receive an IRS form 1099 for your Individual Settlement Amount for each tax year in which any part of your Individual Settlement Amount is paid to you. You should consult with your tax professional regarding whether these payments must be reported on your federal and state income tax returns and any taxes you may owe as a result of receiving your Individual Settlement Amount.

HOW CAN CLASS MEMBERS OBJECT TO THE SETTLEMENT?

You can object to the Settlement if you do not like any part of the Settlement Agreement, the Plan of Distribution, or the Fee and Expense Application, and the Court will consider your objection. Any such objection must (a) clearly indicate your name, mailing address, telephone number, and e-mail address; (b) identify what aspect(s) of the Settlement you are objecting to and the reasons for the objection, including legal support, if any; and (c) be signed by you. Any such objection must be filed with the Circuit Court of Cook County, Illinois on or before September 25, 2023 and delivered by hand, overnight delivery service, or U.S. First Class Mail to Class Counsel and Defendants’ counsel at the addresses listed below by that same date. You are not required to appear at the Settlement Hearing if you object to the settlement. Nevertheless, if you wish to address the Court personally during the Settlement Hearing concerning your objection, you must so indicate in your objection letter. If the Court rejects your objection, you will still be bound by the terms of the Settlement.

WHEN IS THE FINAL SETTLEMENT HEARING?

The Court will hold a hearing via the Zoom teleconferencing service on October 23, 2023, at 10:00 a.m. to decide whether to give final approval to the Settlement. The hearing date may be changed without notice to the Class, and you should check the Settlement website at www.ctaretireesettlement.com or the public court file for this Lawsuit for any updates. During the hearing, the Court will consider whether the Settlement, the Plan of Distribution, and the Fee and Expense Application are fair, reasonable, and adequate. If there are objections, the Court will consider them. You may attend but you are not required to do so. You can also speak in favor of or against the Settlement at the Settlement Hearing, but only if you have indicated your intention to do so in your written statement in support or objection. You may view the proceedings by Zoom using any one of the log-in methods below, but you may not speak or address the Court unless you have indicated your intention to do so in a timely submitted, written statement in support or objection.

Zoom Log-In Information for Settlement Hearing:

1. Direct link to hearing:
<https://circuitcourtofcookcounty.zoom.us/j/95658991093?pwd=VUYvQUZxcTA2K2x4YUhhZnpMTFBIQT09>
2. Log-in through Zoom website or app:
Meeting ID: 956 5899 1093; Password: 129359
3. Telephone (audio only; also requires Meeting ID and Password identified above):
312-626-6799

ANY QUESTIONS? Contact the Claims Administrator at (833) 747-6924 or visit the Settlement website at www.ctaretireesettlement.com

FILED DATE: 9/19/2023 10:20 AM 2011CH15446

IMPORTANT SETTLEMENT DATES AND DEADLINES

Deadline to Submit Proof of Kinship Form: September 8, 2023 (postmark/receipt date)
Deadline to Submit Change of Address Form: September 25, 2023 (postmark/receipt date)
Objection Deadline: September 25, 2023 (filing/receipt date)
Final Approval Hearing: October 23, 2023, 10:00 a.m. (by Zoom)

CONTACT INFORMATION FOR THE CLAIMS ADMINISTRATOR, CLASS COUNSEL, AND DEFENDANTS' COUNSEL

Claims Administrator:

Kroll Settlement Administration, LLC
Williams, et al. v. Retirement Plan for CTA Employees, et al.
c/o Kroll Settlement Administration LLC
PO Box 225391
New York, NY 10150-5391
Telephone (833) 747-6924

Class Counsel:

C. Philip Curley
Robinson Curley PC
200 North LaSalle Street, Suite 1550
Chicago, Illinois 60601
Telephone (312) 546-5221
CTARetireeClassAction@robinsoncurley.com

Trust Defendants' Counsel:

Katheleen A. Ehrhart
Smith Gambrel & Russell LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606

Plan Defendants' Counsel:

Victoria R. Collado
Burke, Warren, MacKay & Serritella P.C.
330 North Wabash Avenue, Suite 2100
Chicago, Illinois 60611

This Notice provides only a summary of the Settlement Agreement. If you would like to see a full copy of the Settlement Agreement, it is available on the Settlement website, www.ctaretireesettlement.com. If you have any questions about the Settlement or this Notice, please visit the Settlement website or contact Class Counsel or the Claims Administrator.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT, THE COURT CLERK'S OFFICE, DEFENDANTS, OR DEFENDANTS' COUNSEL TO ASK QUESTIONS ABOUT THE SETTLEMENT

ANY QUESTIONS? Contact the Claims Administrator at (833) 747-6924 or visit the Settlement website at www.ctaretireesettlement.com

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

Judge Cecilia A. Horan, Calendar 9

No. 11 CH 15446

Williams, et al. v. Retirement Plan for CTA Employees, et al.

CHANGE OF ADDRESS FORM

If the address to which the Notice of Proposed Class Action Settlement (“Notice”) was sent has changed or is inaccurate, please complete this form, have it notarized, and return it to the Claims Administrator at the address on page 2 of this form by September 25, 2023.

Under penalty of perjury, I certify that the address to which the Notice was sent has changed or is inaccurate, and the true and accurate address of the Class Member is stated above.

Member ID (found on the first page of the Notice): _____

Name of Class Member: _____
First Name Last Name

Address to which this Notice was sent:

Address

City State Zip Code - Zip 4 (optional)

New or corrected mailing address to which future notices and settlement checks should be sent:

Address

City State Zip Code - Zip 4 (optional)

Name of person completing this form: _____

Your relationship to Class Member: _____

Your telephone number: (_____) _____ - _____

Your email address: _____ @ _____



FILED DATE: 9/19/2023 10:20 AM 2011CH15446

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Under penalty of perjury, I certify that the address to which the Notice was sent has changed or is inaccurate, and the true and accurate address of the Class Member is stated above.

Your signature

Subscribed and sworn to before me this _____ day of _____, 2023

Notary Public

[Notary Seal]

Return this Form by U.S. First Class Mail to the Claims Administrator at the following address:

Williams, et al. v. Retirement Plan for CTA Employees, et al.
c/o Kroll Settlement Administration LLC
PO Box 225391
New York, NY 10150-5391

**This form must be postmarked or received by the Claims Administrator on or before
September 25, 2023.**


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COA


Page 2 of 2

FILED DATE: 9/19/2023 10:20 AM 2011CH15446

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

Judge Cecilia A. Horan, Calendar 9

No. 11 CH 15446

Williams, et al. v. Retirement Plan for CTA Employees, et al.

PROOF OF KINSHIP FORM

If the Class Member to whom the Notice of Proposed Class Action Settlement (“Notice”) was sent is deceased, please complete this form, have it notarized, and return it to the Claims Administrator at the address on page 4 of this form by September 8, 2023.

Member ID (found on the first page of the Notice): _____

Name of deceased Class Member: _____

Name of person completing this form: _____

Your relationship to deceased: _____

Your mailing address: _____

City State Zip Code Zip 4 (optional)

Your telephone number: (_____) _____ - _____

Your email address: _____@_____



FILED DATE: 9/19/2023 10:20 AM 2011CH15446

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Complete the Other Relatives section below only if there is no court-appointed estate representative or surviving spouse.

3. Other Relatives: If there is no court-appointed estate representative or surviving spouse, identify other relatives of the deceased Class Member in the table below, following these instructions carefully:

- a. List all living children of the deceased Class Member;
- b. Only if there are no living children, list all living parents of the deceased Class Member;
- c. Only if there are no living children or parents, list all living brothers and sisters of the deceased Class Member;
- d. Only if there are no living children, parents, brothers or sisters, list all living nieces or nephews of the deceased Class Member.

The deceased Class Member's Individual Settlement Amount will be divided equally between and sent to the relatives you list below.

Name	Address	Phone	Relationship
_____ First Name _____ Last Name	_____ Address _____ City _____ State Zip Code	_____ - - _____ - - _____	_____ _____
_____ First Name _____ Last Name	_____ Address _____ City _____ State Zip Code	_____ - - _____ - - _____	_____ _____
_____ First Name _____ Last Name	_____ Address _____ City _____ State Zip Code	_____ - - _____ - - _____	_____ _____
_____ First Name _____ Last Name	_____ Address _____ City _____ State Zip Code	_____ - - _____ - - _____	_____ _____

FILED DATE: 9/19/2023 10:20 AM 2011CH15446

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Under penalty of perjury, I certify that the Class Member to whom this Notice was sent is deceased, and above is a true and accurate identification of the deceased Class Member's court-appointed estate representative, or if there is no court-appointed estate representative, the Class Member's surviving spouse, or if there is no surviving spouse, the Class Member's other relatives as set forth above.

Your signature

Subscribed and sworn to before me this _____ day of _____, 2023

Notary Public

[Notary Seal]

Return this Form by U.S. First Class Mail to the Claims Administrator at the following address:

Williams, et al. v. Retirement Plan for CTA Employees, et al.
c/o Kroll Settlement Administration LLC
PO Box 225391
New York, NY 10150-5391

**This form must be postmarked or received by the Claims Administrator on or before
September 8, 2023.**

71494

KIN

Page 4 of 4

FILED DATE: 9/19/2023 10:20 AM 2011CH15446

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Williams, et al. v. Retirement Plan for CTA Employees, et al.
c/o Kroll Settlement Administration LLC
PO Box 225391
New York, NY 10150-5391

<<refnum barcode>>
 <<refnum>>
<<Company>>
<<First Name>> <<Lastname>>
<<Address1>>
<<Address2>>
<<City>>, <<State>> <<Zip Code>>
<<country>>

Exhibit B

FILED DATE: 9/19/2023 10:20 AM 2011CH15446

Williams, et al. v. Retirement Plan for CTA Employees, et al.
c/o Kroll Settlement Administration LLC
P.O. Box 225391
New York, NY 10150-5391

August 31, 2023

<<RefNum Barcode>>
Class Member ID: <<RefNum>>
Member ID: <<MemberID>>

<<FirstName>> <<LastName>>
<<Address1>> <<Address2>>
<<City>> <<State>> <<Zip>>

Re: Williams, et al. v. Retirement Plan for CTA Employees, et al.—Insufficient Documentation

Dear <<First Name>> <<Last Name>>:

We received the Change of Address Form you submitted in connection with the *Williams, et al. v. Retirement Plan for CTA Employees, et al.* Settlement. However, your form was deemed deficient for insufficient documentation.

Some common reasons for deficient forms include:

- missing pages
- partial information and sections
- incomplete notarization

To change your address to which the Notice of Proposed Class Action Settlement was sent, you must complete, notarize, and mail the attached Change of Address Form to the Claims Administrator, postmarked or received on or before **September 25, 2023**. Please complete all pages of the Change of Address Form and re-notarize the document in order for it to be considered valid.

If you have questions regarding the required documentation, please contact us via the Contact Us section of the Settlement Website at www.ctaretireesettlement.com or by calling the toll-free number (833) 747-6924.

Williams, et al. v. Retirement Plan for CTA Employees, et al.
c/o Kroll Settlement Administration LLC
P.O. Box 225391
New York, NY 10150-5391

Regards,
Kroll Settlement Administration LLC

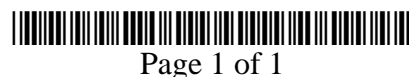


Exhibit C

FILED DATE: 9/19/2023 10:20 AM 2011CH15446

Williams, et al. v. Retirement Plan for CTA Employees, et al.
c/o Kroll Settlement Administration LLC
P.O. Box 225391
New York, NY 10150-5391

August 31, 2023

<<RefNum Barcode>>
Class Member ID: <<RefNum>>
Member ID: <<MemberID>>

<<FirstName>> <<LastName>>
<<Address1>> <<Address2>>
<<City>> <<State>> <<Zip>>

Re: Williams, et al. v. Retirement Plan for CTA Employees, et al.—Insufficient Documentation

Dear <<First Name>> <<Last Name>>:

We received the Proof of Kinship Form you submitted in connection with the *Williams, et al. v. Retirement Plan for CTA Employees, et al.* Settlement. However, your form was deemed deficient for insufficient documentation.

Some common reasons for deficient forms include:

- missing pages
- partial information and sections
- incomplete notarization

To obtain any deceased Class Member’s Individual Settlement Amount, you must complete, notarize, and mail the attached Proof of Kinship Form to the Claims Administrator, postmarked or received on or before **September 8, 2023**.

Pages 1 and 4 must be completed in their entirety, including the Notary certification on page 4; and pages 2 and 3 must be filled in as applicable. The Notary certification on page 4 must be completed again in its entirety even if it was completed as part of the prior deficient submission.

If you have questions regarding the required documentation, please contact us via the Contact Us section of the Settlement Website at www.ctaretireesettlement.com or by calling the toll-free number (833) 747-6924.

Williams, et al. v. Retirement Plan for CTA Employees, et al.
c/o Kroll Settlement Administration LLC
P.O. Box 225391
New York, NY 10150-5391

Regards,
Kroll Settlement Administration LLC

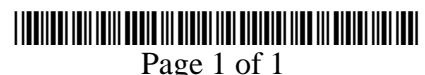


Exhibit 4

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

**Jerry Williams and Larry Whitehead,)
Individually and on Behalf of All Others)
Similarly Situated; and Stewart F. Cooke, III,)
as Special Representative of the Estate of)
Stewart Cooke,)**

Plaintiffs,)

v.)

**Retirement Plan for Chicago)
Transit Authority Employees;)
Board of Trustees of the)
Retirement Plan for Chicago)
Transit Authority Employees;)
Retiree Health Care Trust; and)
Board of Trustees of the)
Retiree Health Care Trust,)**

Defendants.)

Case No. 11-CH-15446

Calendar 9

Hon. Cecilia A. Horan

DECLARATION OF JERRY WILLIAMS

Plaintiff Jerry Williams declares as follows:

1. I have been a Plaintiff in this case from its start in federal court in 2008, through its filing in this Court in 2011, through the present. I submit this Affidavit in support of (i) Plaintiffs' Motion for Final Approval of Class Action Settlement; and (ii) Class Counsel's Application for Award of Attorneys' Fees and Expenses and Class Representative Service Awards.

2. I began working for the Chicago Transit Authority ("CTA") on May 22, 1979. I became a member of Amalgamated Transit Union Local 308 ("Local 308") at or about the same time. I served as President/Business Agent of Local 308 from 1994 through 2002, during which time I took an authorized leave of absence from the CTA. After my leave of absence ended, I worked for the CTA as a management-level instructor. I retired from the CTA on May 1, 2006.

3. When it became apparent in 2008 that CTA retirees would begin to be charged premiums for retiree health coverage, I started meeting with other retirees and decided that we needed to file a lawsuit. When other retirees reacted favorably to the idea of a lawsuit, I and some of the other original Plaintiffs in the case started meeting with attorneys about possible representation. I and other Plaintiffs signed written retainer agreements with Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich LLP (“Dowd”), Robinson Curley P.C. (“RC” or “Class Counsel”), Klausner, Kaufman, Jensen & Levinson, and attorney Mark W. Solock (collectively, “Counsel”). I have actively worked with Counsel throughout the course of this case. I have met and worked frequently with Counsel to discuss substantive issues in the case as well as case strategy.

4. In 2008, I assisted with investigating the claims leading up to the federal court complaint. The federal lawsuit was originally filed on behalf of both active CTA employees and CTA retirees. I was the sole retiree plaintiff.

5. After the federal court dismissed the lawsuit, I met with RC and Dowd several times in connection with the drafting of the state court complaint.

6. When the state court complaint was dismissed, I recommended and advised that we appeal, and worked with Counsel as necessary throughout the appeal process.

7. The Illinois Supreme Court allowed the retiree claims to go forward, leaving me as the only remaining plaintiff when the case came back to the Circuit Court of Cook County. I suggested retirees Larry Whitehead and Stewart Cooke join me as plaintiffs, because Counsel and I felt it was important to have more than one plaintiff in the case, given my age. Since I was a representative from Local 308, I felt it was also important to have a representative from Local 241

(Larry Whitehead) and the Craft Unions (Stewart Cooke), whose members are also within the Class.

8. During the roughly fifteen years that this lawsuit has been pending in two different courts and on appeal, I worked actively to support the interests of retirees in many ways.

9. I would estimate that I have participated in several hundred meetings, phone calls, and email communications with Counsel related to the case. I traveled downtown to meet with Counsel many times.

10. When the case was in its discovery phase, I responded to multiple discovery requests from the Defendants, which included producing documents, and answering interrogatories and supplemental interrogatories.

11. I worked with Class Counsel to prepare for and then sit for my deposition in the case.

12. I provided an affidavit in support of the successful class certification motion, which was also used to support Plaintiffs' motions for summary judgment and summary determination.

13. I also worked with Class Counsel to prepare for the damages hearing in April of 2022, and attended the entire hearing.

14. Class Counsel consulted with me during negotiation of the Settlement and in developing the Plan of Distribution once the Settlement was reached.

15. Since the Settlement has been made public, I have fielded dozens of calls from retirees, including Class Members seeking information. Where I could, I answered their questions. Otherwise I referred them to Class Counsel and to the Class Settlement website. I am still receiving calls to this day.

16. I will continue to work with Class Counsel as needed throughout the settlement process. I intend to be present for the Final Approval Hearing, and will continue to work on behalf of the Class until all of the settlement funds are distributed.

17. In addition to my efforts within the lawsuit, I have spent substantial amounts of time and my own money to keep retirees informed of developments over the fifteen-year history of the case. I have traveled throughout the State of Illinois to conduct meetings with retirees to discuss developments in the lawsuit. I would estimate that I have conducted on average six or seven such meetings every year. These include informal breakfasts with groups of retirees as well as larger presentations in union halls and other facilities. In some instances, I had to rent the space in which the meeting would be held. In connection with promoting those meetings, I would send letters to retirees and retiree groups. I paid the costs of my travel, any costs for the meeting space, and postage costs for promoting the meetings out of my own pocket.

18. I also have over the past several years posted nearly 100 videos on a YouTube channel informing retirees about issues relevant to them, including updating them about developments in the lawsuit.

19. Prior to the Settlement, I responded to hundreds of individual inquiries from retirees, including phone calls and emails.

20. I would estimate that I have gone out-of-pocket thousands of dollars and spent over a thousand hours of time related to all of these efforts.

21. From 2008 through the present, I have remained fully committed to enforcing my rights and the rights of the Class that I serve as Class Representative. Having had active involvement with this case from its inception, and knowing all that I do about the benefits of the Settlement, I wholeheartedly support approval of the Settlement.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: September 11, 2023

/s/ Jerry Williams
Jerry Williams