

IN THE CIRCUIT COURT FOR BALTIMORE CITY

ROBERT F. CHERRY, JR., <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 24-C-16-004670
)	
MAYOR AND CITY COUNCIL)	
OF BALTIMORE CITY)	
)	
Defendant.)	
)	

IF, AS OF JUNE 30, 2010, YOU WERE ELIGIBLE TO RETIRE, A RETIRED MEMBER, OR A BENEFICIARY OF A RETIRED MEMBER OF THE FIRE AND POLICE EMPLOYEES' RETIREMENT SYSTEM OF THE CITY OF BALTIMORE, A CLASS ACTION LAWSUIT MAY AFFECT YOUR RIGHTS.

The Circuit Court for Baltimore City authorized this notice.
PLEASE READ VERY CAREFULLY

1. What is a class action and who is involved?

A class action is a legal proceeding in which a court decides the claims and rights of many people in a single court proceeding. One or more people known as "Class Representatives" sue on behalf of other people who have similar claims. Class Representatives and people who have similar claims together are known as the "Class" or "Class Members." The court resolves the issues for everyone in the Class, except for people who opt out of the Class.

2. Why did I get this notice?

If, as of June 30, 2010, you were eligible to retire, a retired member, or a beneficiary of a retired member of the **FIRE AND POLICE EMPLOYEES' RETIREMENT SYSTEM OF THE CITY OF BALTIMORE ("PLAN")**, you may be a Class Member and have legal rights that you may exercise as described in this Class Notice.

3. What is this class action about?

Certain members of the Plan, the Baltimore City Fraternal Order of Police, Lodge #3, the Baltimore City Firefighters' IAFF, Local 734, and the Baltimore Fire Officers, Local 964, International Association of Firefighters (collectively, "Plaintiffs") have sued the Mayor and City Council of Baltimore City ("City") for breaching the Plan contract with members of the Plan by failing to fund the Plan adequately and by adopting Baltimore City Ordinance 10-306 effective June 30, 2010 ("Ordinance 10-306" or "Ordinance") which, among other changes to the Plan, eliminated the Variable Benefit feature and provided a fixed, age-tiered cost-of-living adjustment ("COLA") instead. The Court (defined below) has approved Plaintiffs Charles Williams and Christopher Houser as the Class Representatives for Plan members who were retired as of June 30, 2010, the effective date of the Ordinance ("Retired Members"). Mr. Williams, a firefighter, retired on March 12, 2004. Mr. Houser, a police officer who was injured in the line of duty, involuntarily retired on August 20, 2005. The Court has also approved Plaintiff Robert Sledgeski as the Class Representative for Plan members who were eligible to retire but

not yet retired from active service as of June 30, 2010 (“Retirement-Eligible Members”). Mr. Sledgeski was a firefighter who was eligible to retire as of June 30, 2010, but who had not yet retired from active service. Messrs. Houser, Sledgeski, and Williams are sometimes referred to herein as “Class Plaintiffs.”

4. Where is the case pending?

The Honorable Julie R. Rubin of the Circuit Court for Baltimore City (the “Court”) is overseeing the class action, and the case is known as *Robert F. Cherry, Jr., et al. v. Mayor and City Council of Baltimore City*, Civil Case No.: 24-C-16-004670 (“Class Action”).

5. What is the status of the case before the Court?

The case was tried before Judge Rubin beginning on October 29, 2018 through November 7, 2018. Final arguments took place on January 4, 2019.

The Court issued its Orders and Memorandum Opinion on May 13, 2019. In the Court’s Memorandum Opinion, it concluded that, by enacting Ordinance 10-306, the City unlawfully removed the Variable Benefit feature from the benefits promised to Retired Members and Retirement-Eligible Members, thereby breaching its contract with those Plan members. Although the Court determined that the City breached its contract with the Retired Members and Retirement-Eligible Members, the Court denied Class Plaintiffs’ request to reinstate the Variable Benefit feature. Consequently, under the Court’s Orders, the age-based COLA introduced in Ordinance 10-306 will continue to be paid by the Plan to all retired Plan members and their beneficiaries in the future. In addition, the Court ordered the City to compensate each Retired Member and Retirement-Eligible Member (or their beneficiaries) to the extent, if any, of his or her monetary loss following June 30, 2010, resulting from the replacement of the Variable Benefit with the age-based COLA introduced by Ordinance 10-306, in accordance with the method of general damages calculation approved by the Court.

For the reasons stated in its Memorandum Opinion, the Court adopted the methodology proposed by the City for calculating potential damages owing to Retired Members and Retirement-Eligible Members and their beneficiaries. Class Plaintiffs disagree with the methodology adopted by the Court and expect to challenge it on appeal. In evaluating proposed damages calculation methods, the Court compared the present value of the expected future Variable Benefit increases as calculated by the City’s expert to the expected present value of future benefits from the age-based COLA provided by the Ordinance. Ordinance 10-306 limited post-retirement increases to 0% for Retired Members while they are under 55 years of age, 1% for Retired Members while they are 55 years of age to 64 years of age, and 2% for Retired Members once they become 65 years of age (“the 0/1/2 COLA”). By contrast, the Variable Benefit feature of the Plan provided increases to Retired Members, without regard to their age, when the investment return on the Plan assets set aside to pay the basic pension benefits exceeded 7.5%. Under the methodology adopted by the Court, if the present value of the expected future Variable Benefit increases exceeds the present value of the benefit increases under the 0/1/2 COLA, Class Members will be entitled to damages to the extent of the difference, plus statutory pre-judgment interest at a rate of 6% per annum, commencing for each Variable Benefit increase on the date on which the first Variable Benefit increase payment would have been made to the Class Member had Ordinance 10-306 not been enacted. On the other hand, if the present value of the benefit increases under the 0/1/2 COLA exceeds the expected future Variable Benefit increases (*i.e.*, the Class Member is expected to receive more money from the 0/1/2 COLA than he or she would have from the Variable Benefit), the Class Member will have no damages and receive no recovery.

The exact amount of damages, if any, recoverable by each Class Member has not yet been calculated.

The actuaries for the Plaintiffs and the City have arrived at estimates and guidelines concerning which Class Members are likely to have damages, but they have not yet completed individual member calculations. However, the Court is requiring you to make a decision whether to opt out of the Class Action by February 28, 2020, before these calculations may become available.

All case filings are available for public review and/or copying at the Circuit Court for Baltimore City located at Courthouse East, 111 N. Calvert Street, Suite 462, Baltimore, Maryland 21202. Photocopies are available for a per-page fee. The Office of the Clerk of Court may be reached by dialing (410) 333-3722. The Court's May 13, 2019 Orders and Memorandum Opinion and its subsequent opinions and orders addressing the computation of damages dated June 25, 2019, August 27, 2019, September 4, 2019, and November 4, 2019 ("Subsequent Orders Regarding Damages") are also available on a website established by the Claims Administrator, which can be found at www.baltimorepensionlitigation.com. **To the extent that anything contained in this Class Notice or the Appendix A attached hereto is inconsistent with any opinion and/or order issued by the Court, the Court's opinions and orders shall control.**

6. What are my damages?

Individualized damages for each putative Class Member, if any, are being calculated by the parties' actuaries in accordance with the Court's May 13, 2019 Orders and Memorandum Opinion and its Subsequent Orders Regarding Damages, but are not yet complete. A detailed description of the methodology and calculations ordered by the Court can be found in Appendix A attached to this Class Notice.

Class Plaintiffs disagree with the methodology proposed by the City, adopted by the Court, and set forth in Appendix A and reserve the right to challenge the Court-ordered methodology on appeal. The guidance provided in Appendix A is subject to modifications, perhaps significant ones, relating to the calculation of Variable Benefit increases and the preparation of individual damages calculations. If there are significant modifications before the deadline for deciding whether to opt out, updated guidance will be made available to the unions and benevolent associations, so that it can be posted on their websites. It will also be posted to the Class Action website described below.

7. Will there be an appeal?

Yes. The Plaintiffs and the City expect to appeal the Court's final order, which will incorporate the decisions in its May 13, 2019 Orders and Memorandum Opinion and the Subsequent Orders Regarding Damages.

8. Are there any risks if I remain in the Class?

Yes. No assurance can be given whether the result of any appeal will be beneficial to Class Members and, under certain scenarios, a Class Member could be worse off. The Court's Orders may be affirmed or reversed, in whole or in part. **If you do not opt out of the Class Action, the result of any appeal could affect your rights.**

For example, Class Plaintiffs sought to reinstate the Variable Benefit by asking the Court to award specific performance of the Class Members' pre-Ordinance 10-306 pension contract, including the Variable Benefit feature of the Plan. The Court denied this request, finding instead that it was possible to compute the damages suffered by certain Class Members. But, if the Variable Benefit is reinstated on appeal, there is a risk that the benefit increases provided by the future investment performance of the

assets set aside in the Plan to support retirement benefits as provided in the Variable Benefit feature of the Plan may be lower than those paid by the 0/1/2 COLA provided by Ordinance 10-306.

The Court's final appealable order will not be issued until after putative Class Members have been given the opportunity, through this Class Notice, to opt out of the Class as described in Section 5, above.

9. Are there risks if I opt out of the Class?

Yes. If you opt out by submitting the Notice provided below, you will not be entitled to any damages awarded by the Court, even if Plaintiffs win on their appeal, because you will not be a part of the Class. If you opt out of the Class, you will continue to receive your pension benefits and the 0/1/2 COLA, but you will not share in any damages that may be awarded by the Court before or following an appeal. It is possible, however, that if Plaintiffs are successful in their appeal, the Court could award declaratory relief that may result in increased financial benefits to you, even if you opt out. At this point, there are too many possible outcomes of the appeal to predict with any certainty what will happen.

10. What are the chances that Plaintiffs will be successful in the appeal?

Both Plaintiffs and the City believe they will win on appeal. There is no way to predict the outcome of any appeal, as every appeal is different. Statistics show, however, that most appeals are not successful.

11. Do I have a lawyer in this case?

Yes. The Court has appointed Charles O. Monk, II and the law firm of Saul Ewing Arnstein & Lehr LLP to represent the Class Members as "Class Counsel." If, after all appeals have been taken, Plaintiffs ultimately prevail in the case, Plaintiffs may ask Class Counsel to seek an award of reasonable attorneys' fees and recovery of costs incurred in pursuing the litigation, along with incentive payments to the Class Representatives. These amounts, if awarded and approved by the Court, would be paid from the proceeds of any monetary judgment, reducing on a pro rata basis the recovery obtained by Class Members.

Mr. Monk's contact information is below:

Charles O. Monk, II
Saul Ewing Arnstein & Lehr LLP
500 E. Pratt Street, Suite 900
Baltimore, MD 21202-3133
Dedicated Telephone Number: (844) 329-9816

12. Should I get my own lawyer?

Feel free to consult with your own lawyer regarding this Class Notice and deciding whether to opt out of the Class. If you choose to remain a Class Member, you are not required to hire your own lawyer because Class Counsel is working on your behalf. You may, at your own expense, enter an appearance in this case through your own lawyer. If you are a Class Member and do not enter an appearance through your own lawyer or opt out, you will remain a Class Member, Class Counsel will continue to represent your interests as a Class Member, and the Court's final judgment will include an award of damages, if any, to which you may be entitled.

13. What happens if I do nothing?

By doing nothing, you automatically become a Class Member and the actuaries will conduct calculations to determine whether you have individual damages and, if so, in what amount.

As a Class Member, you give up the right to sue the City separately and you will be bound by the Court's decision and any decisions from the appellate courts.

14. Why might I ask to be excluded from the Class?

You might ask to be excluded from the Class if you do not wish to be a Class Member for any reason, if you want to avoid the risks of further litigation described above, or if you wish to pursue your own challenge to Ordinance 10-306 and the City's contractual duties under the Plan before the effective date of Ordinance 10-306 (June 30, 2010).

If you exclude yourself from the Class by opting out, and wish to pursue your own challenge to Ordinance 10-306, you should talk to a lawyer right away because your claims may be subject to a statute of limitations that prevents your recovery.

15. How do I ask the Court to exclude me from the Class?

To be excluded from the Class, you must fill out and sign the Official Opt-Out Form located below, and mail it to:

Baltimore Pension Litigation
c/o Settlement Services, Inc.
PO Box 10269
Tallahassee, FL 32302-2269

Settlement Services, Inc. has been retained as the claims administrator on behalf of the Class. Settlement Services, Inc. may be reached by telephone by dialing (844) 329-9816.

**THE COMPLETED OFFICIAL OPT-OUT FORM BELOW MUST BE POSTMARKED BY
FEBRUARY 28, 2020.**

16. Is more information available?

Should you have any questions or need any additional information, you may wish to consult an attorney or other advisor. In addition, you may visit the Clerk's Office in the Circuit Court for Baltimore City (Courthouse East, 111 N. Calvert Street, Suite 462, Baltimore, Maryland 21202), where you will find all court filings in the Class Action, including the Court's Opinions and Orders. The Office of the Clerk of the Court may be reached by dialing (410) 333-3722. A website has been established to provide you with information regarding this Class Notice and can be accessed at www.baltimorepensionlitigation.com. You may also contact the claims administrator, Settlement Services, Inc., by dialing (844) 329-9816.

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MAYOR AND CITY COUNCIL)	
OF BALTIMORE CITY)	
)	
Defendant.)	
)	

OFFICIAL OPT-OUT FORM

Name: _____

Address: _____

City/State/Zip: _____

I DO NOT WISH TO REMAIN A PART OF THIS LAWSUIT AND I HEREBY OPT OUT OF THIS CLASS ACTION.

I UNDERSTAND THAT, BY OPTING OUT, I WILL NOT BE BOUND BY ANY JUDGMENT, I WILL NOT RECEIVE ANY DAMAGES AS A RESULT OF THE CLAIMS IN THIS LAWSUIT, AND I WILL NOT BE REPRESENTED BY CLASS COUNSEL.

Sign Here: _____

A copy of this form must be sent to the claims administrator:

Baltimore Pension Litigation
c/o Settlement Services, Inc.
PO Box 10269
Tallahassee, FL 32302-2269

**THIS FORM MUST BE RETURNED AND POSTMARKED NO LATER THAN
FEBRUARY 28, 2020, OTHERWISE YOU WILL REMAIN A MEMBER OF THE CLASS
AND BE BOUND BY ANY JUDGMENT IN THIS CASE.**