

ROBERT F. CHERRY, JR., ET AL.

Plaintiffs

v.

**MAYOR & CITY COUNCIL OF
BALTIMORE CITY**

Defendant.

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Civil Case No.: 24-C-16-004670

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**ORDER MODIFYING CLASS CERTIFICATION ORDER AND
PROVIDING REQUESTED CLARIFICATION AS TO DAMAGES**

The court has considered Plaintiffs’ Motion for Clarification of the Court’s Orders and Memorandum Opinion Dated May 13, 2019 (Doc. No. 126; filed May 23, 2019; hereafter the “Motion for Clarification”) to which the City responded on June 6, 2019, and the parties’ respective supplemental letter briefs of June 18, 2019 (Doc Nos. 128/3 and 128/4). As set forth in the accompanying Memorandum Opinion issued this same date, in response to the Motion for Clarification and the parties’ respective briefings as to same, this order modifies the Class Certification Order of May 13, 2019, regarding the notice required by Maryland Rule 2-231(f)¹ and the deadline for the parties to submit a jointly proposed class notice. This order also answers questions raised by Plaintiffs regarding calculation of damages pursuant to the Memorandum Opinion of May 13, 2019, and related order as to liability on Counts II and III.

The court has reconsidered its original class notice requirements (per the Class Certification Order of May 13, 2019) such that the parties are no longer required to set forth in the

¹ The notice provision of Maryland Rule 2-231 was set forth at subsection (e) of the rule at the time the Class Certification Order was issued. Since then, it has been amended and is now found at subsection (f). The amendments to the rule do not affect the substance of the court’s rulings as to class certification or class notice.

notice the dollar sum of damages, if any, each notice recipient will be entitled to receive if he or she does not elect to be excluded from the applicable Sub-Class. Further, the deadline imposed for the parties to submit a proposed class notice (as set forth in the Class Certification Order) is suspended pending further order; the court will revisit this issue at or before the conference scheduled for July 25, 2019.

It is further

ORDERED, in accordance with Maryland Rule 2-231(f), notice shall be given to the Retired and Retirement-Eligible Sub-Classes for purposes of relief under Counts II and III; no other notice is required. In addition to fulfilling the express requirements of Maryland Rule 2-231(f), the notice shall inform recipients of the method of calculation of damages, including material actuarial assumptions embedded in same, to provide notice recipients a fulsome basis on which to determine if he or she prefers to be excluded from the applicable Sub-Class relative to Counts II and III.

The notice shall state that those notice recipients who do not request to be excluded from the appropriate Sub-Class for purposes of relief under Counts II and III (1) may be required to return COLA benefits paid following the effective date of Ordinance 10-306, and/or any damages to be awarded may be subject to a set-off to account for COLA benefits paid following the effective date of Ordinance 10-306, and (2) that benefits of a retiree beneficiary shall be aggregated with those of the beneficiary's retiree such that damages awarded will reflect the net difference of a Sub-Class member's and his or her beneficiaries' past and future benefits subject to the Variable Benefit and the COLA under Ordinance 10-306; and further it is

FOUND that the parties reached agreement regarding the mortality tables to be used for calculation of Count II and III damages in the form of the present value of the Variable Benefit

increases to which the Retired and Retirement-Eligible Sub-Class members (or their beneficiaries) would be entitled pursuant to the pre-10-306 Plan post-final judgment, if any. Therefore, it is **ORDERED**, in accordance with the parties' agreement, for purposes of present value damages calculations, the parties shall adopt and use the mortality tables proposed by Plaintiffs and outlined in a June 5, 2019 memo by Plaintiffs' actuary, Mr. Thomas Lowman; and the Rule 2-231(f) class notice shall identify same to ensure recipients have a fulsome basis on which to determine whether to opt out of the applicable Sub-Class; and further it is

ORDERED that a discount rate of five percent (5%) shall be used for calculations of individual damages to be awarded for liability on Counts II and III in the form of the present value of the Variable Benefit increases to which the Retired and Retirement-Eligible Sub-Class members (or their beneficiaries) would be entitled pursuant to the pre-10-306 Plan post-final judgment, if any; and the Rule 2-231(f) class notice shall so state to ensure recipients have a fulsome basis on which to determine whether to opt out of the applicable Sub-Class; and further it is

ORDERED that damages awarded as to Counts II and III for Variable Benefits from June 30, 2010 through the date of judgment shall include prejudgment interest at the legal rate of six percent (6%); damages reflecting Variable Benefits going forward from the date of judgment and reduced to present value shall not be subject to prejudgment interest; the class notice shall so state and shall further state that damages awarded, if any, are subject to post-judgment interest at the legal rate; and further it is

ORDERED, although the notice is not required to set forth individual damages sums, to be clear as to calculation of damages of Retired and Retirement-Eligible Sub-Class members who do not opt out, as set forth on the record in open court on June 7, 2019, and in accordance with the Memorandum Opinion and orders of May 13, 2019, the Retirement-Eligible Sub-Class shall not

be treated as having opted out of the Plan and, subject to opt-outs, shall be included in the calculation of damages to be awarded, if any; and further it is

FOUND that this order does not address the requested point of clarification set forth in the Motion for Clarification at item VI: “What marriage assumptions should be used for calculating the present value of future benefits.” (Motion for Clarification at p. 11.) The court understands and expects that the parties are attempting to reach agreement on that issue and will address it further with the court at or before the conference scheduled for July 25, 2019. The court will update the notice requirement to accommodate that issue upon consideration of the parties’ stipulation, if any. The court expects that this feature is the final item remaining for finalization of class notice requirements; and further it is

ORDERED subject to the modifications/clarifications set forth above, the Class Certification Order of May 13, 2019, and the order determining liability as to Counts II and III (also issued May 13, 2019), remain in full force and effect.

June 25, 2019

[JUDGE’S SIGNATURE APPEARS ON ORIGINAL]

Judge Julie R. Rubin

Madam Clerk: Please mail copies to all counsel and named parties of record.