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VIA EMAIL

Mr. Bill Girdner  
Mr. Thomas Harrison  
Courthouse News Service  
*email:* [home@courthousenews.com](mailto:home@courthousenews.com)

Re: Requested correction

Dear Mr. Girdner and Mr. Harrison:

I am one of the attorneys representing the New York City Organization of Public Service Retirees, one of the named plaintiffs in the case you wrote about on May 15<sup>th</sup>: *Bentkowski v. NYC*. Courthouse News Service (“CNS”) published an article about that day’s oral argument in the New York Court of Appeals regarding healthcare for retired NYC workers. The article was factually accurate but 100% misleading.

The argument lasted an hour, with judges probing both parties’ positions. CNS’s article only covered the questions challenging the retirees’ claims. It completely ignored the many questions challenging the City’s (meritless) defenses. And the article failed to mention the damning admission made by the City at the end of its argument. The City admitted that it had asked the trial court to issue a ruling for all retirees, without the need to certify a class, because it wanted to proceed to an appeal as quickly as possible. As a result of that strategic decision, the City waived its argument that the trial court improperly granted relief to all retirees.

Most of the judges were focused on the doctrine of promissory estoppel, which prohibits parties from reneging on promises on which others reasonably and detrimentally rely. The lower courts held that, pursuant to this doctrine, the City must provide elderly and disabled retired City workers the health insurance it promised them for over 50 years: traditional Medicare plus Medicare supplemental insurance. Judge Jenny Rivera asked numerous questions indicating her agreement with the lower courts’ ruling on this issue. And yet the CNS article did not include a single quote, question, or comment from her.

Judge Rivera’s questions were not just pointed, they exposed the fundamental weakness of the City’s position. The City claimed that it should be allowed to violate the healthcare promise it made to hundreds of thousands of retirees for over 50 years. And it contended that former Deputy Mayor Lilliam Barrios-Paoli, who spent 25 years running the City’s Human Resources Administration and Departments of Employment

and Personnel, was simply uninformed when she testified that the City promised the retirees Medicare plus Medicare supplemental insurance. Judge Rivera grilled the City's attorney as follows:

*I'm quoting from [Deputy Mayor Barrios-Paoli's] affidavit: "City agency HR people"—she should know since she headed up HR—"reiterated this promise of choice to generations of prospective City employees. The guarantee of good healthcare in retirement, including the choice to participate in traditional Medicare with a City-paid supplemental plan was an essential recruiting and retention tool."*

*Again, how would someone so high level for so many years be so wrong and is never corrected?*

Other judges similarly struggled to understand how and under what circumstances City officials can make promises to workers without having to honor those promises.

The retirees argued that whatever limits the Court set on the doctrine of promissory estoppel, this case would fit comfortably within those limits. As Jake Gardener, the attorney arguing on behalf of the retirees explained, the unrebutted evidence in the case is that the retirees were unequivocally promised, orally and in writing, for over 50 years that when they retired and became Medicare-eligible, they would be entitled to traditional Medicare plus Medicare supplemental insurance. And that they detrimentally relied on this promise in countless ways. That is what the courts below unanimously found.

Unfortunately, last week's CNS article missed most of this in its unbalanced coverage of the case.

Readers rely on CNS to provide helpful summaries of cases pending before the Court of Appeals. By hastily publishing an article with one-sided highlights of an oral argument regarding NYC retiree healthcare, CNS presented a distorted view of a case with enormous importance to New Yorkers.

Kindly publish a correction to your one-sided article and/or this letter. Your readers deserve it.

Thank you.

Sincerely,

*/s/ Steve Cohen*