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CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NORTHEAST OHIO
CORRECTIONAL CENTER

: Case No. 4:97-CV-1995/
Judge Dan A. Polster
:

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**TO: ALL DOC INMATES WHO HAVE BEEN INCARCERATED AT THE
NORTHEAST OHIO CORRECTIONAL CENTER ON OR SINCE MAY 20, 1997.**

*Si usted desea obtener una copia de este documento legal en Espanol, favor de actuar
inmediatamente y escribna Alphonse A. Gerhardstein, 1409 Enquirer Bldg., 617 Vine
Street, Cincinnati, Ohio 45202.*

I. DESCRIPTION AND STATUS OF THE LAWSUIT

A. Introduction

This is a civil rights class action alleging the violation of inmate rights at the Northeast Ohio Correctional Center ("NOCC"). Plaintiffs have alleged injuries due to alleged excessive force, failure to protect, and failure to provide adequate medical care. Plaintiffs have also asserted rights under the contract between defendants District of Columbia Government ("District Government") and the Corrections Corporation of America (CCA). Plaintiffs have requested court orders requiring a reclassification of the inmate population, improved security, improved medical care, damages and attorneys fees. Defendants deny all liability in the case.

A Settlement Agreement has been signed on behalf of the Plaintiffs and the Defendants settling all claims in the lawsuit held by all class members through October 19, 1998. If finally approved by the Court, this settlement will be binding on all class members. The Honorable Dan Aaron Polster, United States District Judge, has

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PC-OH-009-005

preliminarily approved the settlement as fair, adequate and reasonable. He has further ordered that this notice be sent to the class members and posted in class member living areas.

B. What is a Class Action?

A class action is a lawsuit in which the claims of many people are decided in a single court proceeding. The class representatives bring the lawsuit on behalf of the entire class. This avoids the necessity of a large number of people filing separate lawsuits making the same claims against the same defendants and allows the court system to resolve similar claims in an efficient and economical manner. Class actions assure that people with similar claims are treated alike. In a class action, the court is the guardian of class interests and supervises the work of class counsel to assure that representation is fair.

C. Who are the Class Representatives in this case?

The class representatives in this case are Eugene Busey, James Neal and Leon Richardson. Mr. Busey and Mr. Neal have been continuously incarcerated at NOCC since May, 1997. Mr. Richardson was incarcerated at NOCC from May, 1997 until November, 1998.

D. Who is a Member of This Class?

The class was originally certified on October 21, 1997. The definition of the class in the settlement agreement includes only the District of Columbia inmates; excludes the estates of inmates who died at NOCC; and excludes inmates convicted of felonies causing injury to other class members and reads as follows:

All inmates, living or deceased who have been committed to the custody of the District Government and incarcerated at Northeast Ohio Correctional Center

(NOCC) on or since May 1, 1997, except those who have been convicted of a felony resulting in an injury to an inmate at NOCC and those inmates who have been murdered or who have died of other causes between May 1, 1997 and October 19, 1998 and who, through counsel or through personal representatives, have consented to the exclusion of the deceased inmate and the estate of the deceased inmate from this class.

SUBCLASS 1

All members of the class who suffered injuries as a result of excessive force, failure to protect, or denial of adequate medical assistance.

Seven class members have died through October 19, 1998. The court has already excluded the estates of six of these inmates from this litigation so they cannot participate in the settlement of this case. There are approximately 1,900 class members who are eligible to participate in the monetary settlement.

E. Which Attorneys Represent the Inmate Class Members?

Alphonse A. Gerhardstein is lead class counsel and he is assisted by Jennifer Branch. They are both from the firm of Laufman, Rauh & Gerhardstein in Cincinnati, Ohio. Also on the class counsel team is Marie-Ann Sennett of the D.C. Prisoner's Legal Services Project, Inc. Her predecessor was Jonathan Smith who recently left the case when he changed employment.

F. What has Happened in the Case to Lead to This Settlement?

This lawsuit was filed on August 1, 1997. Hearings were held on requests for a temporary restraining order and on a request for preliminary injunction. Additional hearings were held after the murders of Derrick Davis and Bryson Chisley. In response to a request by the plaintiffs, Senior District Judge Sam Bell ordered all of the inmates at NOCC reclassified and any inmate reclassified above medium removed from the facility. An appeal from this order was filed by the District of Columbia and is currently pending.

in the Sixth Circuit Court of Appeals. The City of Youngstown joined in the Spring of 1998 as a party plaintiff.

The plaintiffs have had medical, security and classification experts tour NOCC and examine records at the facility. Two of these experts have presented testimony both by deposition and live in court. Various officials of CCA and the District Government have also been subject to cross-examination in court and during sworn depositions. Thousands of documents have been produced by the defendants and many of those documents have been used by class counsel as evidence in the case. Simultaneously with the federal court litigation, plaintiff class counsel has also advocated in the Ohio legislature for laws regulating private prisons, including NOCC. Legislation containing many of the provisions requested by class counsel was passed into law in March, 1998.

Settlement negotiations commenced in July, 1998 at the request of the Sixth Circuit Conference Attorney. Negotiations progressed while the litigation continued. Recently, negotiations have been pursued under the supervision of United States District Judge Dan Aaron Polster. Under the new state law, ORC §9.07, the City of Youngstown must enter into a contract with CCA regarding the operation of the private prison ("9.07 contract"). The parties have coordinated the negotiations regarding this class action settlement with the negotiations for the terms of the 9.07 contract. All settlement negotiations have been at arms length and have been pursued with the approval of the class representatives.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. What do Class Members Get In This Settlement?

The class members receive two types of relief under the proposed settlement: (1) relief that maintains or improves the conditions of inmate confinement and (2) those class members who were present at the facility on or before October 19, 1998, may claim monetary damages from a \$1,650,000.00 settlement fund.

B. Summary of Settlement Terms Affecting Conditions of Inmate Confinement.

For those class members who are incarcerated or who may become incarcerated at NOCC, the settlement, if approved, will require the defendant CCA, the District Government, or both to do the following (in summary form):

1. *Custody Level.* Only medium or lower custody inmates shall be housed at NOCC.
2. *Classification.* Classification will be reviewed every 12 months. Those classified above medium will be transferred out of the prison within 30 days.
3. *Security.* (a) The institutional and medical files for each inmate will accompany the inmate to NOCC; (b) contact between inmates from different jurisdictions will be limited; (c) separatees shall not both remain at NOCC; (d) the housing and other information on each inmate will be properly recorded; (e) CCA will act consistently with American Correctional Association (ACA) standards and its own policy and procedure manual;
4. *Medical.* CCA will act consistently with National Commission on Correctional Health Care (NCCHC) standards and its own medical policies on all medical issues.

5. *Monitors.* Class counsel will work with Intervening Plaintiff City of Youngstown to select a full-time prison monitor to review compliance on a daily basis with the class action agreement and the 9.07 agreement. Similarly, a medical monitor shall also review compliance with medical standards. The determination of the monitors on any issue covered by these agreements shall be binding unless CCA successfully challenges the monitor's ruling through arbitration. The monitors will work on behalf of plaintiffs City of Youngstown and the class in this litigation, and will not be in the employ of CCA or the District Government.

6. *Programming and Privileges.* No reduction in programming or privileges for inmates at NOCC shall be permitted solely as a result of the obligations imposed on the defendants through this agreement. A 30 minute open dialogue will be permitted between the class representatives and Warden Turner. That dialogue will be videotaped and played in all of the NOCC cellblocks.

C. Summary of Settlement Terms Regarding Money Damage Claims

The proposed settlement requires that CCA pay, on behalf of all defendants, **One Million Six Hundred Fifty Thousand Dollars (\$1,650,000.00)** in satisfaction of all claims for damages; \$575,000 in satisfaction of all claims for attorney fees for class counsel through the fairness hearing; \$55,000 for expenses of class counsel through the fairness hearing; and \$126,000 in satisfaction of any claims for fees and expenses incurred by class counsel while monitoring the agreement over the next three years. Those sums will be deposited in escrow accounts no later than April 9, 1999. Interest earned on these accounts will become a part of each account. Once defendant CCA

makes the payments required by the settlement agreement then all defendants shall have fully discharged their payment obligations under the agreement.

Under the distribution plan proposed by plaintiffs, **each member of the class will be entitled to receive a monetary settlement if he resided at NOCC at any time prior to October 19, 1998 as follows:**

1. Class members assigned to E, F, L, and M on May 30, 1997: \$1000.00 each or submit a claim to the common fund,
2. Class Representatives: \$9500.00 each or submit a claim against the common fund.
3. All class members reclassified to maximum or close security under the court order of 3/31/98 (Doc. 184): \$300.00 each or submit a claim against the common fund.
4. All other class members: \$500.00 each or submit a claim against the common fund.
5. Common Fund. Class members filing claims under this category are not guaranteed any recovery. The total amount of money to be assigned to this category shall be no less than \$700,000.00. Claims may include but are not limited to, class members (a) who suffered injury as a result of the use of force by staff or as the result of a failure to protect from other inmates; (b) who suffered injury as a result of alleged inadequate medical care; (c) who lost property as a consequence of improper behavior by defendants; (d) who were listed as plaintiffs on one or more lawsuits that have been consolidated with In re NOCC or that will be impacted by the settlement in this case; or (e) who establish any other reason

for which recovery under ¶1, 2, 3, or 4 would pose an injustice. Class members shall recover only under one of the above categories, regardless of the number of categories for which they qualify.

The class action monetary settlement is in addition to and does not replace the agreement of CCA to compensate inmates at NOCC for the personal property lost or destroyed during the shakedowns and property reductions that took place at NOCC between March, 1998 and May, 1999.

Postage to class counsel for class members at NOCC will be provided at no cost by CCA to the class members. Limits on collections against the settlement money are established. Telephone and canteen prices at NOCC shall not be raised for a six month period after the distribution of money under this agreement.

D. What do Class Members Give Up In This Settlement?

Since the class members receive guarantees on their conditions of confinement and monetary relief in this settlement, they forever give up their individual right to sue based on the facts and circumstances giving rise to this class action lawsuit for all claims known and unknown arising at NOCC from May 20, 1997 to October 19, 1998.

III. FURTHER PROCEEDINGS

If the settlement is approved by the Court, detailed procedures will be established to guide the class members through the claims process, and the settlement will be distributed. If the settlement is not approved by the United States District Court, the proposed settlement will be void, the money will be removed from the escrow accounts and returned to defendant CCA, and the case will be reinstated before the Court for trial.

IV. HEARING AND OBJECTIONS

A hearing will be held in the Courtroom of Dan A. Polster, U.S. Courthouse, 2 South Main Street, Akron, Ohio at 12:00 P.M. on April 20, 1999, to consider whether the settlement should be given final approval. All objections to the proposed settlement of the lawsuit must be filed in writing with the Clerk of Court by mail postmarked no later than March 29, 1999 at the following address:

Clerk of Court
United States District Court
568 U.S. Courthouse
2 South Main Street
Akron, OH 44308

At the hearing, class member objections will be thoroughly reviewed by the Court. Your failure to timely file an objection will be a waiver of your right to file an objection to the overall settlement. If the settlement is approved, you will have an opportunity to seek any appropriate action regarding the application of the distribution plan to your individual situation. For example, if you have never been classified maximum but on Exhibit B you are incorrectly listed as a maximum security inmate, you will have an opportunity to seek a correction of that listing after the settlement is approved.

Class members who support the proposed settlement do not need to file anything although they may do so.

V. ADDITIONAL INFORMATION

Any class member currently incarcerated may examine the entire settlement agreement by requesting it through the staff at each pod and the library at NOCC, or the library at any CCA Facility or any District Government Facility where he may be incarcerated. Class members who are not incarcerated in one of the above facilities or

who are otherwise unable to get a copy of the agreement may contact Class Counsel Alphonse A. Gerhardstein or Jennifer Branch at the address set out below.

Any questions you have about the matters in this notice should not be directed to the Court. Rather, they should be directed *in writing* to the following:

Alphonse A. Gerhardstein
Jennifer L. Branch
Class Counsel, In Re NOCC
1409 Enquirer Building
617 Vine Street
Cincinnati, OH 45202
513-621-9100

You may, of course, seek the advice and guidance of your own attorney if you desire. The pleadings in this litigation including a complete copy of the proposed settlement agreement may be examined and copied between 9:00 a.m. and 4:00 p.m., Mon.-Fri. at Office of the Clerk of Court set out above.

3/1/99

~~February 26, 1999~~

March 1

GERI M. SMITH, CLERK

Geri M. Smith, Clerk
United States District Court
Northern District of Ohio

By: Robert P. [Signature]
Deputy Clerk