

2002 WL 1752279

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United States District Court, S.D. Ohio, Western  
Division.

Anthony ALLEN, Plaintiff,  
v.  
Simon L. LEIS, Jr., et al., Defendants.

No. C-1-00-261. | July 12, 2002.

On pending motions in class action suit brought by pretrial detainee challenging constitutionality of county jail’s pay-for-stay program, the District Court, Spiegel, Senior District Judge, held that: (1) motion to stay proceedings pending appeal of class certification was moot; (2) county would be entitled to set-off for unpaid costs assessed after conviction against any damages awarded individual class members; and (3) county and other defendants were responsible for paying cost of class notice.

Motions granted in part and denied in part.

West Headnotes (3)

<sup>[1]</sup> **Federal Courts**  
🔑 Class actions

Motion to stay proceedings pending appeal from class certification was mooted when Court of Appeals denied permission to appeal.

Cases that cite this headnote

<sup>[2]</sup> **Set-Off and Counterclaim**  
🔑 Parties to and mutuality of cross-demands in general

In class action challenging of county jail’s pay-for-stay program, county would be entitled to setoff, against any individual class member judgments, for any unpaid costs assessed after conviction.

1 Cases that cite this headnote

<sup>[3]</sup> **Federal Civil Procedure**

🔑 Parties responsible; expense

In class action challenging county jail’s pay-for-stay program, county and other defendants would be required to pay for cost of providing class notice where liability already had been established and cost involved would be substantial.

1 Cases that cite this headnote

**Opinion**

**ORDER**

SPIEGEL, Senior District J.

\*1 This matter is before the Court on Plaintiffs’ Motion for an Order Approving Notice to the Class (doc. 46), Defendants’ Motion to Stay Proceedings Pending a Decision from the Sixth Circuit Court of Appeals (doc. 47), Defendants’ Memorandum in Opposition to Plaintiff’s Motion for an Order Approving Notice to the Class (doc. 47), Plaintiffs’ Memorandum in Opposition to Defendants’ Motion to Stay Proceedings Pending a Decision from the Sixth Circuit Court of Appeals (doc. 49), Defendants’ Motion for Leave to File Counterclaims and/or Set-offs Against Class Members (doc. 54), Plaintiffs’ Memorandum in Opposition to Motion for Leave to File Counterclaims and/or Set-Offs Against Class Members (doc. 55), Defendants’ Reply (doc. 57), Plaintiffs’ Motion for Partial Summary Judgment as to Liability (doc. 59) and Defendants’ Memorandum in Opposition to Plaintiffs’ Class Motion for Partial Summary Judgment (doc. 61).

<sup>[1]</sup> The Court will deny Defendants’ Motion to Stay Proceedings Pending a Decision from the Sixth Circuit Court of Appeals (doc. 47). On February 5, 2002, the Sixth Circuit Court of Appeals denied Defendants’ Motion for Permission to Appeal this Court’s Order Granting Plaintiffs’ Motion for Class Certification (doc. 53). Therefore, Defendants’ Motion to Stay and Plaintiffs’ Response to that Motion are both now moot.

**Allen v. Leis, Not Reported in F.Supp.2d (2002)**

<sup>12]</sup> In regard to Defendants' Motion for Leave to File Supplemental Pleadings, Plaintiffs' Response and Defendants' Reply (docs.54, 55, 57), it has never been the intention of the Court that class members who have been determined to be indebted to Hamilton County for costs assessed after conviction not be responsible for the payment of those sums. Therefore, if and when the class prevails on the theory of recovery, Defendants will certainly be permitted to set-off against any individual class member judgments or sums owed to the Defendants by way of judgments for costs where that individual class member has been convicted.

The Court now turns to Plaintiffs' Motion for an Order Approving Notice to the Class (doc. 46), Motion by Plaintiff for Summary Judgement as to Liability (doc. 59) and Defendants' Memorandum in Opposition to Plaintiffs' Class Motion for Partial Summary Judgment (doc. 61). The Court will deny Plaintiffs' Motion for an Order Approving Class Notice and Orders Plaintiffs to revise it such that the notice establishes that Summary Judgment has been granted on the question of liability of the County in regard to all individual class members. However, the Court further orders Plaintiffs to revise the Notice to inform any class member for whom there has been a judgment following conviction that the amount of such judgment and any other judgment against the class members in favor of Defendants will be set off or credited against any sums the County may owe the individual plaintiff as a result of the County's liability in this suit. Included in Plaintiffs' Motion for an Order Approving Notice to the Class is a Motion that Defendants are ordered to pay the cost of notice to which Defendants object (docs.46, 47).

\*2 <sup>13]</sup> Defendants argue that Plaintiffs should be required to pay the cost of sending notice to the class (doc. 47). Defendants assert that the United States Supreme Court has explicitly upheld the principle that the expense of class notice must usually be borne by plaintiffs (*Id.*) citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178-179, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974), *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 359, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978). Defendants correctly cite Supreme Court precedent. However, they ignore the crucial word "usually." Obviously, there are exceptions to this rule and, given the decisions in a number of other federal

district court cases, this Court determines that the instant case fits those exceptions.

It is important to note that the Court has already determined Defendants' liability in this case. The court in *Meadows v. Ford Motor Company*, 62 F.R.D. 98 (W.D.Ky.1973) considered a similar case in which notice to the class was not accomplished until liability had been established. The court here ordered the defendants to pay costs reasoning that the rationale for the general rule requiring plaintiffs to pay costs was based on the fact that class notification often happens early in court proceedings where there is strong doubt that the plaintiff will prevail. *Id.* at 102. The court, in *Catlett v. Missouri Highway and Transportation Commission*, 589 F.Supp. 949 (W.D.Miss.1984), likewise determined that a number of cases have decided that cost allocation [to defendants] is proper once the liability of the defendant has been established." *Id.* at 951. The court here also emphasized that a decision to shift the notice costs is not based on a defendant's ability to pay; rather, it is based on the fact that the liability of the defendant has already been established and the cost involved would be substantial. *Id.* at 952. See also *Kyriazi v. Western Electric Co.*, 465 F.Supp. 1141 (D.M.J.1979), *United States of America v. City of Warren, Michigan*, 1993 WL 260681 (E.D.Mich.1993).

Therefore, the Court hereby DENIES Defendants' Motion to Stay Proceedings Pending a Decision from the Sixth Circuit Court of Appeals and Plaintiffs' Memorandum in Opposition to Defendants' Motion to Stay Proceedings Pending a Decision from the Sixth Circuit Court of Appeals (docs.47, 49) as MOOT, GRANTS Defendants' Motion for Leave to File Counterclaims and/or Set-offs Against Class Members (doc. 54), DENIES Plaintiffs' Motion for an Order Approving Notice to the Class (doc. 46), ORDERS Plaintiffs to revise the Notice in accordance with this Order, GRANTS Plaintiffs' Motion for Partial Summary Judgment as to Liability (doc. 59) and ORDERS Defendants to pay the cost of class notification.

SO ORDERED.