

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

ABDUL SHARIFF, on behalf of himself and all  
others similarly situated,

Plaintiff,

vs.

GLENN GOORD, et al.,

Defendants.

RULE 41 VOLUNTARY  
STIPULATION OF  
PARTIAL DISMISSAL  
SUBJECT TO CONDITIONS  
04-CV-6621 (CJS)

The parties, by their attorneys, hereby stipulate and agree as follows:

**WHEREAS** Plaintiff commenced this action on December 10, 2004 on behalf of himself and a class of others similarly situated ("the class") to challenge Defendants' alleged policy and practice of transporting inmates in wheelchairs without the use of appropriate wheelchairs, vans and restraint equipment; and

**WHEREAS** Plaintiff Abdul Shariff also seeks compensatory damages on behalf of himself but not on behalf of the class; and

**WHEREAS** Plaintiff alleged that the challenged policies and practices violate the Americans with Disabilities Act ("ADA") 42 U.S.C. § 12132, 12182, Section 504 of the Rehabilitation Act, 29 U.S.C. §§ 794 et seq., and 42 U.S.C. § 1983 for violations of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution; and

**WHEREAS** the Defendants have answered the Complaint and denied that they have violated the ADA and/or Section 504 and/or the Fifth, Eighth or Fourteenth Amendments to the United States Constitution; and

**WHEREAS** the plaintiff class of all prisoners in the custody of the New York State Department of Correctional Services who use a wheelchair during vehicular transportation was certified by the Court on April 5, 2006; and

**WHEREAS** the Defendants now utilize transport vehicles that have Vehicular Restraint Systems and Security Restraint equipment; and

**WHEREAS** the Defendants have purchased fifteen (15) new WC19 compliant wheelchairs to transport wheelchair using prisoners who do not have a particularized need for a custom-fit wheelchair that can address his/her postural stability (hereinafter referenced as the “generic WC19” wheelchairs); and

**WHEREAS** the transportation safety needs of the vast majority of wheelchair using inmates are met with transportation in a generic WC19 compliant wheelchair; and

**WHEREAS** a small subset of the wheelchair using prisoners have a particularized need for a custom-fit wheelchair to address his/her postural stability; and

**WHEREAS** the Defendants have placed the fifteen (15) new WC19 compliant wheelchairs at the following correctional facilities: Livingston (2); Five Points (4); Green Haven (6); Bedford Hills (3); and

**WHEREAS** the New York State Department of Corrections and Community Supervision (DOCCS) routinely confines wheelchair using prisoners to correctional facilities other than Livingston, Five Points, Green Haven and Bedford Hills; and

**WHEREAS** DOCCS seeks to evaluate the use of the fifteen (15) new WC19 compliant wheelchairs before it proceeds to purchase additional WC19 compliant wheelchairs for use through those DOCCS facilities where wheelchair using prisoners are confined; and

**WHEREAS** counsel for the Plaintiff and the Defendants, without conceding any infirmity in their claims or defenses, have subsequently engaged in negotiations to resolve several of the Plaintiff's claims on behalf of the class; and

**WHEREAS** the within agreement relates only to the claims for injunctive relief brought by Plaintiff on behalf of the class, but not to any individual claims for damages; and

**WHEREAS** counsel for both parties have agreed to seek the Court's approval of the settlement of several issues of this case, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, and to file this Voluntary Stipulation of Partial

Dismissal Subject to Conditions (herein "Voluntary Stipulation" or "Voluntary Stipulation of Partial Dismissal") with the Court as the statement identifying the agreement made between the parties in connection with the proposed settlement pursuant to FRCP Rule 23(e)(2); and

**WHEREAS** for the purpose of this agreement, the parties have agreed to the following definitions:

*A WC19 compliant wheelchair* is a wheelchair that has: a) at least four (4) permanently labeled securement points that can withstand the forces of a 30 mph, 20 g impact; b) specific securement point geometry that will accept a securement strap end fitting hook; c) a clear path of travel for allowing proper placement of vehicle mounted occupant safety restraints next to the body; d) anchor points for an optional wheelchair anchored pelvic safety belt, that is designed to withstand a 30 mph, 20 g impact and; e) a standard interface on the pelvic belt to connect to a vehicle-anchored shoulder belt.

*Vehicular restraint systems* refers to the mechanical restraint system installed in vans and buses for the purpose of physically attaching a wheelchair to the vehicle, usually by means of a four (4) point restraint system and the occupant of the wheelchair to the wheelchair by means of a shoulder harness and lap belt.

*Security restraint equipment* refers to devices used by correction officers and other security personnel to maintain custody and control of prisoners. Such devices include, but are not limited to handcuffs, leg irons, waist chains and black boxes.

*Wheelchair using prisoners* refers to prisoners who use wheelchairs for ambulation and cannot independently and safely transfer to a regular vehicle seat.

*Substantial noncompliance* refers to a systemic failure to comply with the term of the agreement that is more substantial and pervasive than an isolated instance of non-compliance.

It is **STIPULATED AND AGREED** by and between the parties and their respective counsel as follows;

1. Defendants' WC19 compliant wheelchairs will not be assigned to any individual prisoner for his/her personal use, but instead shall be used for transportation of any wheelchair using prisoner.

2. Defendants will transport wheelchair using prisoners confined in the Livingston Correctional Facility, the Five Points Correctional Facility, the Green Haven Correctional Facility, and the Bedford Hills Correctional Facility (hereinafter referred to as the "pilot facilities") in WC19 compliant wheelchairs, unless the prisoner is transported via ambulance.
3. Defendants will transport all wheelchair using prisoners in their custody in vehicles equipped with appropriate vehicular restraint systems for wheelchair occupants.
4. When transporting any wheelchair using prisoner in a wheelchair, Defendants will apply vehicular restraint systems to the prisoner's wheelchairs which at minimum meet the SAE J2249 Standard for Wheelchair Tiedowns and Occupant Restraint Systems, including securing the wheelchair to the vehicle and the application of the seatbelt and shoulder harness to the wheelchair occupant.
5. While transporting individual prisoners, defendants shall proceed in accordance with DOCCS' Directive 4901 "Transporting Prisoners" and other Department protocol.
6. Defendants shall train all Bid Transport Officers, Temporary Bid Transportation Officers, and Resource Staff ("transportation staff") assigned to facilities where wheelchair using prisoners are confined, as that term is used in this Agreement, in the proper orientation of a wheelchair in a vehicle and the proper application of vehicular restraint systems, including securement of the wheelchair to the vehicle and the correct positioning of the shoulder harness and seat belt. Such training will be part of the annual training for all transportation staff at those facilities. The training referred to in this paragraph will at a minimum instruct officers: a) that at pilot facilities wheelchair using prisoners must be transported in WC19 compliant wheelchairs; b) in the proper use of any vehicular restraint system in use in any van used by DOCCS to transport wheelchair using prisoners; c) that wheelchairs must always face forward in the vehicle and; d) that wheelchair using prisoners should be secured with a lap belt and shoulder harness.
7. Notwithstanding any other provision of this agreement, where an emergency medical transport is required, and/or where an ambulance is used to transport a prisoner for any reason, the wheelchair using prisoner may be transported in accordance with DOCCS' protocols for utilizing an ambulance.
8. The Defendants will review and analyze accident reports, complaints and grievances involving the transportation of wheelchair using inmates to determine the success of the WC19 compliant wheelchairs at the pilot facilities within six

(6) months of the date this Stipulation is So Ordered, and upon completion of its review will serve a written report upon plaintiff's counsel and the Court. Upon receipt of the written report counsel will confer in regard to any modifications needed to the pilot program, and plan the expansion of the program into all other DOCCS facilities where wheelchair using prisoners are regularly confined. In the event that the parties are unable to reach agreement in regard to the expansion of the pilot program, then Plaintiff's counsel may request a meeting with all parties before the Honorable Charles J. Siragusa, United States District Court for the Western District of New York, or another Judge of said Court if Judge Siragusa is unavailable, to discuss the possible filing of a motion to reinstate the issues of this lawsuit, as provided for in paragraph 14 infra.

9. Upon the signing of this Voluntary Stipulation of Partial Dismissal, the parties will jointly move the Court for entry of an Order dismissing those portions of this action having to do with any injunctive relief and will attach a copy of this Voluntary Stipulation to such motion. This dismissal shall be without prejudice to Plaintiff's right to move to reinstate those portions of the action pursuant to Paragraph 15 below within one hundred twenty (120) days following a meeting held between counsel for the parties in accordance with the provisions of Paragraph 14 below. Should the Court deny the parties' motion for dismissal as provided herein, this Voluntary Stipulation of Partial Dismissal shall become null and void.
10. Within sixty (60) days of the entry of the Order referred to in Paragraph 9, pilot facilities will provide a copy of the Notice, attached hereto as **Exhibit A**, to each wheelchair using inmate, prior to transport.
11. Within sixty (60) days of the entry of the Order referred to in Paragraph 9, each member of the class will be provided with a copy of the Notice attached hereto as **Exhibit B**.
12. Notwithstanding any other provision herein, any class member who believes that he/she has a particularized need for a custom-fit WC19 wheelchair to address his/her postural stability during transport may request a reasonable accommodation pursuant to DOCCS' Directive 2614 in regard to his/her specific transportation needs. DOCCS shall assign a qualified staff member to conduct the evaluation of the class member's particularized transportation needs, and shall report the findings in writing to the class member, and, in the event the request is denied, shall contemporaneously provide the class member with the name, address and phone number of class counsel. Consent to purchase an

individual WC19 compliant wheelchair for a wheelchair using prisoner who has a particularized need for a custom-fit wheelchair to address his/her postural stability during transport shall not be unreasonably withheld.

13. Within a period of one (1) year from the time this Voluntary Stipulation of Partial Dismissal is signed by the parties, if Plaintiff's counsel believes that the Defendants are not in substantial compliance with the terms of this Voluntary Stipulation of Partial Dismissal, Plaintiff's counsel may request a meeting with counsel for Defendants and DOCCS counsel at a mutually agreeable time and place to discuss and attempt to resolve the dispute(s). Any such request made by Plaintiff's counsel shall be made in writing. The parties will use their best efforts to schedule and attend such meeting(s) within sixty (60) days of Defendants' receipt of Plaintiff's written request for a meeting pursuant to this Paragraph. Nothing said by either party or counsel for either party during those meetings may be used by the opposing party in any subsequent litigation in this or any other lawsuit or for any purpose other than implementing the provisions of paragraphs 1 through 8 of this agreement. Plaintiff's counsel will request a meeting(s) pursuant to this Paragraph only upon Plaintiff's counsel's good faith belief that there is a failure on the part of Defendants to comply with the terms of this Voluntary Stipulation that is more substantial and pervasive than an isolated instance of a prisoner in a wheelchair being transported in a fashion which is not in accordance with this agreement.
14. If, after sixty (60) days following any meeting held pursuant to Paragraph 13 above, Plaintiff's counsel believes that Defendants have not complied with the terms of this Voluntary Stipulation, Plaintiff's counsel may request a meeting with all parties before the Honorable Charles J. Siragusa, United States District Court for the Western District of New York, or another Judge of said Court if Judge Siragusa is unavailable, to discuss the possible filing of a motion to reinstate the issues of this lawsuit which are the subject of this Voluntary Stipulation of Partial Dismissal, as provided in Paragraph 15 below. Plaintiff's counsel may request such a meeting with the Court no earlier than three (3) months from the date this Voluntary Stipulation of Partial Dismissal is signed by the parties. Plaintiff's counsel will request a meeting(s) pursuant to this Paragraph only upon Plaintiff's counsel's good faith belief that there is a failure on the part of Defendants to comply with the terms of this Voluntary Stipulation that is more substantial and pervasive than an isolated instance of a prisoner in a wheelchair being transported in a fashion which is not in accordance with this agreement.
15. Following any meeting with the Court as set forth in Paragraph 14 above, Plaintiff's counsel may file a motion with the Court for an Order reinstating the

issues of this lawsuit which are the subject of this Voluntary Stipulation of Partial Dismissal. Plaintiff may not file such a motion without first requesting a pre-motion meeting with the Defendants and the Court as provided in Paragraphs 13 and 14 above and, if granted by the Court, participating in such meeting. Plaintiff shall make such a motion for reinstatement only upon Plaintiff's counsel's good faith belief that there is a failure on the part of Defendants to comply with the terms of this Voluntary Stipulation that is more substantial and pervasive than an isolated instance of a prisoner in a wheelchair being transported in a fashion which is not in accordance with this agreement.

16. The terms of this Voluntary Stipulation of Partial Dismissal shall remain in effect for a period of one (1) year from the date this Voluntary Stipulation of Partial Dismissal is signed by the parties or one hundred twenty (120) days following a meeting held between counsel for the parties pursuant to Paragraph 13 above, whichever date is later, and shall be binding on the parties, their successors, agents, employees and all persons acting in concert with them. After the above stated period of time, the terms and conditions of this Voluntary Stipulation of Partial Dismissal shall automatically cease to bind the parties, as well as their successors, agents, employees, assigns and those acting in concert with them; all claims on behalf of the plaintiff resolved by the Voluntary Stipulation are discontinued and dismissed with prejudice; and the jurisdiction of the Court over the issues in this action covered by the Voluntary Stipulation shall automatically end.
17. This Voluntary Stipulation of Partial Dismissal is a "private settlement agreement" as that term is used in the Prison Litigation Reform Act (PLRA), 18 USCA 3626(c). If any provision of this Voluntary Stipulation of Partial Dismissal is declared invalid, illegal or unenforceable in any respect, the remaining provisions shall remain in full force and effect, unaffected and unimpaired.
18. This Voluntary Stipulation of Partial Dismissal shall resolve all claims or potential claims for injunctive relief identified in the Complaint having to do with the use of vehicles, vehicular restraint systems for wheelchairs, training of corrections staff and the use of the "Black Box" on prisoners in wheelchairs. This Voluntary Stipulation is not intended to restrict any defenses that may be available to Defendants to any future claims, or the legal requirements, procedures, or standards to be employed in determining any such future claims.
19. Defendants agree to reimburse Plaintiff's counsel the sum of Seventy-Four Thousand, Nine Hundred Forty-Two Dollars and Eleven Cents (\$74,942.11) for attorney's fees and disbursements which shall be payable out of the fund

established pursuant to Section 17 of the NYS Public Officer's Law. This amount is also stated in plaintiff's stipulation and order of settlement and will be paid only once to counsel. Reimbursement for Plaintiff's attorneys' fees and costs expended on behalf of the class related to the monitoring of defendants' compliance with this agreement as defined in paragraph 8-15 shall not exceed forty-thousand dollars (\$40,000.00) absent a further showing of good cause. Payment of the above amounts is subject to the approval of all appropriate New York State officials in accordance with the provisions for indemnification under New York Public Officers Law, Section 17, subdivision 3(a). Should such approval be denied, this Voluntary Stipulation of Partial Dismissal shall become null and void. In the event payment of these sums is not made within one hundred twenty (120) days after the receipt by Defendants' counsel from Plaintiff's counsel of a copy of this Voluntary Stipulation of Partial Dismissal, fully executed and "So Ordered" as entered by the Court, interest shall accrue on the outstanding principal balance at the rate set forth in 28 U.S.C. sec. 1961, beginning on the one hundred twenty-first day after said receipt by Defendants' counsel of the fully executed "So Ordered" Voluntary Stipulation of Partial Dismissal and continuing until payment is made.

20. This Voluntary Stipulation of Partial Dismissal does not constitute a) an admission of liability by any Defendant of any violation of law or wrongdoing; b) an admission by any Defendant that any standard, policy, practice, or procedure addressed in this action violated or failed to comply with either the language or the intent of any applicable law, rule or regulation; or c) an admission by any Defendant that its position in this litigation was not substantially justified. This agreement and its terms shall have no preclusive effect except between the parties to the agreement.
21. This Voluntary Stipulation of Partial Dismissal may not be used for any purpose other than enforcement of the provisions of this Voluntary Stipulation and shall not in any way be construed as precedent for any other present or future litigation.
22. This Voluntary Stipulation of Partial Dismissal contains the entire agreement of the parties in these matters and no oral agreement entered into at any time, nor any written agreement entered into prior to the execution of this Voluntary



Stipulation of Partial Dismissal regarding these issues, shall be deemed to exist or to bind the parties hereto or to vary the terms and conditions contained herein.

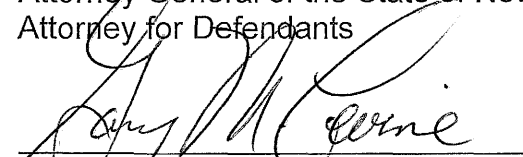
Dated: Yonkers, New York  
September 30, 2011

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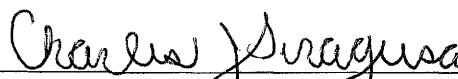
Dated: Rochester, New York  
October 18, 2011

HON. ERIC T. SCHNEIDERMAN  
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SO ORDERED:

Dated: Rochester, New York  
OCT. 19, 2011

  
HON. CHARLES J. SIRAGUSA  
United States District Judge

## Exhibit A

If you are traveling in this van and seated in a wheelchair, you should be aware that, as a result of litigation in the lawsuit Shariff v. Goord, 04 Civ. 6621 (N.D.N.Y.), the New York State Department of Corrections and Community Supervision (“DOCCS”) has agreed to take the following steps when transporting wheelchair-using prisoners; that is, prisoners who use wheelchairs for ambulation and cannot independently and safely transfer to a regular vehicle seat.

1. DOCCS has agreed to initiate a pilot program at the Livingston Correctional Facility, the Five Points Correctional Facility, the Green Haven Correctional Facility, and the Bedford Hills Correctional Facility (hereinafter referred to as the “pilot facilities”) regarding the use of WC19 compliant wheelchairs during the transport of wheelchair using prisoners. DOCCS will transport all wheelchair using prisoners confined in the pilot facilities in WC19 compliant wheelchairs, unless the prisoner is transported via ambulance.
2. DOCCS has agreed that wheelchairs will be secured to the floor of this vehicle at four (4) different points, in such a way that the wheelchair will not move back and forth with the motion of the vehicle.
3. DOCCS has agreed to transport wheelchair using prisoners so that the prisoner is facing forward.
4. DOCCS has agreed that a lap belt and shoulder harness will be used for any prisoner who is transported in a wheelchair.
5. DOCCS has agreed to transport wheelchair using prisoners in accordance with DOCCS’ Directive 4901 “Transporting Prisoners” and other Department protocol.

If you are traveling in a vehicle operated by DOCCS while seated in a wheelchair, and any of these steps are not taken, you may contact class counsel in Shariff v. Goord at the following address: Koob & Magoolaghan, 221 Devoe Avenue, Yonkers, New York 10705.

**[Spanish translation on same page]**

Exhibit B

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

ABDUL SHARIFF, on behalf of himself and all  
others similarly situated,

Plaintiff,

vs.

GLENN GOORD, et al.,

Defendants.

NOTICE TO CLASS MEMBERS

04-CV-6621 (CJS)(JWF)

**NOTICE TO ALL WHEELCHAIR USING PRISONERS**

On April 5, 2006, the Honorable Charles J. Siragusa, United States District Court, Western District of New York, ordered that this action, Shariff v. Goord, 04 Civ. 6621, proceed as a class action. The case concerns the methods used by the New York State Department of Corrections and Community Supervision (“DOCCS”) to transport wheelchair using prisoners. The named plaintiff alleges that the defendants’ policies and practices of transporting wheelchair using prisoners violate the United States Constitution and other federal laws. If you are a New York State wheelchair using prisoner as that term is defined below, you are a member of the class.

*Wheelchair using prisoners* refers to prisoners who use wheelchairs for ambulation and cannot independently and safely transfer to a regular vehicle seat.

The purpose of this notice is to advise you that the parties have reached a tentative agreement to settle some of the claims brought on behalf of the class. In summary, the proposed settlement provides that the defendants will take the following steps: a) ensure that wheelchair using prisoners at the Livingston Correctional Facility, the Five Points Correctional Facility, the Green Haven Correctional Facility, and the Bedford Hills Correctional Facility (hereinafter referred to as the “pilot facilities”) are transported in WC19 compliant wheelchairs, unless they are transported via ambulance; b) analyze the success of the WC19 compliant wheelchairs at the pilot facilities within six (6) months of the date the Court So Orders the parties Stipulation of Settlement, and plan the expansion of the program into all other DOCCS facilities where wheelchair using prisoners are regularly confined; c) evaluate a request for a reasonable

accommodation by any class member who believes that he/she has a particularized need for a custom-fit WC19 wheelchair to address his/her postural stability during transport; d) ensure that all vehicles used to transport prisoners in wheelchairs will have the appropriate equipment necessary to safely secure the wheelchair to the floor of the transport vehicle; e) train all correctional officers who participate in prisoner transportation in the proper use of the equipment used to secure wheelchairs to the floor of the transport vehicle, facing forward; f) train all correctional officers who participate in prisoner transportation to use a lap belt and shoulder belt on the prisoner whenever transporting prisoners in wheelchairs; and g) transport wheelchair using prisoners in accordance with DOCCS' Directive 4901 "Transporting Prisoners" and other Department protocol. This agreement only relates to changes in policy, equipment, and training and not to any claims that you may have for damages as a result of the past policies and practices.

Any class member has a right to receive notice of the terms of the proposed settlement agreement and to make objections to the agreement. Class members should contact the law firm Koob & Magoolaghan to inquire about the terms of the proposed settlement or about anything else regarding the case. You may contact Koob & Magoolaghan by writing: Koob & Magoolaghan, Attn: Shariff Class Action, 221 Devoe Avenue, Yonkers, New York 10705, (914) 964-8888.

All class members are entitled to state any objections that they may have to the proposed settlement. Such objections must be in writing and may be sent either to the lawyers for the class at the address stated above or directly to the Court. The address for the Court is: Hon. Charles J. Siragusa, United States District Courthouse, 1360 United States Courthouse, 100 State Street, Rochester NY 14614.