



arguments of counsel and the submissions of the various objectors to the proposed settlement.

The Plaintiff Class was certified as a mandatory class under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure on March 8, 2004. The certified class is defined as follows:

All inmates with serious medical and dental needs who are or will be incarcerated in prisons operated by or under the jurisdiction of the Ohio Department of Rehabilitation and Correction who, while so incarcerated, are or will be in need of medical and dental care.

This is the class whose claims are to be settled by the proposed agreement.

The settlement agreement, entitled Stipulation for Injunctive Relief, provides unimpeded access to health and dental services consistent with generally accepted medical science, health education, healthy food choices for inmates, and education regarding effects of smoking and second-hand smoke with the ultimate goal of achieving a smoke-free environment. The settlement agreement further provides medical staffing guidelines and training requirements for medical staff, as well as, specific requirements and standards pertaining to the provision of medical and dental care services. Included in the settlement agreement are a detailed plan for ongoing oversight of the Stipulation by a professional monitoring team and provisions for the resolution of disputes arising under, or relating to, the Stipulation.

The Court received 29 timely filed objections to the proposed settlement. One of those objections (Doc. 108), by counsel for the plaintiff class in Civil Action 4:01-CV-071 in the United States District Court for the Northern District of Ohio, was withdrawn on the record at a November 15, 2005, telephone conference. The other 28 timely objections were filed by inmates. Nine other inmate objections were filed after the November 1 deadline. The Court has considered all of the objections, timely or otherwise.

Class counsel has discussed the substance of the objections with the inmates who filed them and, with one exception, those inmates do not oppose the joint motion for approval of the settlement agreement. The purpose of the objections, as represented by those inmates, is to place issues relating to medical care in the record in this matter. The Court does not perceive any of the inmate objections as an impediment to approval of the settlement agreement.

With respect to the one objector who opposes approval of the settlement agreement, identified by class counsel as Class Member #3, the basis for opposition is distrust of the Ohio Department of Rehabilitation and Correction and not opposition to any of the terms of the settlement agreement itself. The Court is wholly unpersuaded, given the enforcement mechanisms provided by the Stipulation, that such a concern is an impediment to approval of the settlement agreement.

For those reasons, the objections of Douglas A. Ankrom (Doc. 82); William Ridenour, George Bannister, Charles Boussom, Art Schipper (Doc. 83); Charles Richard Von Schrilitz (Doc. 84); John F. Johnson (Doc. 85); Paul Nelson (Doc. 86); John T. Bragg (Doc. 87); Anthony Hoepf (Doc. 89); Yaqub A. Nur (Doc.94); R. Martin (Doc. 95); Daries Sherrills (Doc. 96); William O. Harris (Doc. 97); Carl A. Nelson (Doc. 98); Jerome E. Barnett (Doc. 99); David Zion Shie (Doc. 100); Brent L. Grace (Doc. 101); Louis Merriweather (Doc. 102); Richard J. Lemker (Doc. 104); Phillip Tate (Doc. 105); Robert D. Hunter (Doc. 106 and Doc. 110); Joe L. Deavors (Doc. 109); Edward Mayrides (Doc. 111); Shad D. Mills (Doc. 112); Arkmael Ray Stiles (Doc. 113); Lawrence E. Stewart (Doc. 114); Ronnie Lee Wallace (Doc. 115); Andre Wells (Doc. 116); Reubin J. Beavers (Doc. 118); Jeffrey Hackle (Doc. 119); Theodore B. Hoffert (Doc. 120 and Doc. 121); Tyrias Johnson (Doc. 122); Billy Renshaw (Doc. 123); Gary Roberts (Doc. 124); Wayne Allen Timmons (Doc. 126); Charles F. Stocks (Doc. 127) are hereby **OVERRULED**.

In addition to the above-referenced objections, the Court has received a motion to join parties (Doc. 103) by William E. Martin and Shannon Haynes. That motion is in the form of an objection to the proposed settlement agreement, which is hereby **OVERRULED** as not, in fact, being an objection to approval of the agreement but a request for greater levels of care than the agreement provides. In the event that the Court concludes that the agreement provides fair and adequate relief to the members of

the class, that conclusion amounts to a rejection of the contention of Messrs. Martin and Hayes that the terms of the Stipulation are inadequate. On the other hand, the Court's denial of the joint motion for approval of the settlement agreement would moot the concerns of the objectors with respect to that agreement. The Court **DENIES** the motion, in the alternative, of Messrs. Martin and Hayes to be joined as parties in this litigation. That motion is untimely, having been filed three weeks before the scheduled hearing on the joint motion for approval of the settlement agreement. The Court is not persuaded that the joinder of Messrs. Martin and Hayes is required for a just adjudication of this matter. See Fed. R. Civ. P. 19.

Counsel for the Plaintiff Class, three of the Class representatives<sup>1</sup>, and counsel for the Defendants urge this Court to approve this settlement because they perceive it to be fair, adequate and reasonable.

**Standard For Court Approval of  
Class Action Settlement**

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<sup>1</sup>A fourth class representative has yet to be named. Class counsel and counsel for the Defendants in this matter agreed at the November 15, 2005, telephone conference with the Honorable James Gwin and counsel for the parties in Civil Action 4:01-CV-071 from the Northern District of Ohio to the addition of one of the named plaintiffs from that action as a class representative in this action. That inmate will be from the Ohio State Penitentiary and will be formally added as a class representative in this action as soon as he is identified and not later than December 9, 2005.

Pursuant to Fed. R. Civ. P. 23(e) a class action settlement must be approved by the Court before the case may be dismissed or compromised. Three specific steps must be followed: (1) the Court must preliminarily approve the proposed settlement; (2) members of the class must be given notice of the proposed settlement; and (3) a hearing must be held, after which the Court must determine whether the proposed settlement is fair, reasonable, and adequate. Williams v. Vukovich, 710 F.2d 909 (6th Cir. 1983); Bronson v. Board of Education of the City School District of the City of Cincinnati, 604 F. Supp. 68 (S.D. Ohio 1984; In Re Fernald litigation, 1989 WL 267039, 2-3 (S.D. Ohio W.D.). Those three requirements have been satisfied as of this date.

The proposed settlement of this action was preliminarily approved by this Court in October of this year. Preliminary approval gives rise to a presumption that the settlement is fair, reasonable and adequate. Objectors, therefore, have the burden of persuading this Court that the proposed settlement is unreasonable. See Stotts v. Memphis Fire Dept., 679 F.2d 542, 551 (6th Cir.), rev'd. on other grounds sub nom. Firefighters Local Union No. 1784 v. Stotts, 467 U.S. 561 (1982); Bronson, 604 F. Supp. at 71.

Provisions for Notice to the members of the class, both of the proposed settlement and the fact that a hearing would be held to determine whether the settlement was fair, adequate and reasonable, were approved by this Court on October 7, 2005.

Class counsel provided notice in accordance with those provisions. The Court conducted the fairness hearing on November 16, 2005, in accordance with the notice. This Court finds that the provision of notice allowed members of the class a full and fair opportunity to consider the proposed settlement and to develop their respective responses. See Williams v. Vukovich, 720 F.2d 909 (6th Cir. 1983).

There are six factors to be considered in assessing the fairness, adequacy and reasonableness of the proposed settlement. They are (1) the potential relief that plaintiffs may realize following a full trial on the merits balanced against the relief offered by the settlement; (2) the complexity of the litigation; (3) the status of the proceedings and the amount of discovery completed; (4) the nature of the negotiations; (5) the objections of the class members; and (6) the public interest. See Williams v. Vukovich, 720 F.2d 909, 922 (6th Cir. 1983); Bronson v. Board of Education of the City School District of Cincinnati, 604 F. Supp. 68, 73 (S.D. Ohio 1984).

The Court finds that this case presents substantial obstacles to the Plaintiff class if it were to proceed to a full trial on the merits. In particular, the discovery required to support the claims of the class as they pertain to the prison system on a state-wide basis would have been well-nigh impossible, given the number of institutions involved and the likely expense of hiring the personnel required. By contrast, the proposed settlement provides timely prospective relief on a

state-wide basis without the necessity of significant discovery. On a similar note, the complexity of the litigation of this matter, were it to have proceeded with respect to all of the institutions in this state, would likely have served as an insurmountable obstacle to the prosecution of the claims. This is particularly true when the fact that the members of the class are, for all relevant purposes, impecunious and without means to bear any of the costs of litigation, which would have been extremely substantial.

The proposed settlement agreement was reached through arm's-length negotiations between counsel after very little discovery. The necessity of conducting litigation was minimized by the parties' agreement to engage the services of consultants to investigate and report on the status of medical and dental care in the prison system state-wide. The fact that the "discovery" process was not contentious resulted in a significant cost-savings and a view of the deficiencies in the system that is accepted by the parties and trusted by the Court.

The Court finds little in the way of substantive opposition to the proposed settlement agreement in the above-referenced objections. As the Court has noted, counsel for the Plaintiff class represents that only one of the inmate objectors opposes the joint motion for approval of the settlement agreement. The basis for that opposition, however, is not related to the substantive terms of the Stipulation. Rather, the objector opposes approval because of distrust in the Ohio



Department of Rehabilitation and Correction. The Court cannot assuage that distrust, either by sustaining or overruling the objection. Moreover, the Court is convinced that the agreement itself provides mechanisms for enforcement and for dispute resolution. Those provisions address, to the extent possible, the distrust expressed by the inmate objector.

Finally, the Court is convinced that approval of the settlement of this action serves the public interest. The provision of adequate and appropriate medical and dental care to inmates in the state's penal institutions is a legitimate public concern. The Stipulation provides mechanisms for assuring all citizens of Ohio that those needs are met responsibly and adequately. Moreover, it reassures the public that public funds will be used for medical and dental care of inmates wholly dependent upon the State for their health needs rather than for legal expenses of the state.

#### **Conclusion**

Having considered each of the requisite factors for determining the fairness, reasonableness, and adequacy of the modified proposed settlement, the Court is satisfied that it is fair, reasonable and adequate and does address the settlement of Plaintiffs' claims against Defendants. Consequently, the Court hereby **APPROVES** the settlement of the claims proposed by the parties, as described in the Stipulation for Injunctive Relief.

