



PC-VT-001-002

SETTLEMENT AGREEMENT

I. PREAMBLE

WHEREAS, on December 13, 1993, the National Prison Project ("NPP") of the American Civil Liberties Union ("ACLU") brought an action pursuant to 28 U.S.C. § 1331, §§ 1343(a)(3) and (4), §§ 2201 and 2202, 42 U.S.C. § 1983, and § 12101 et seq. to redress the alleged deprivations of rights protected by federal law and by the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution, Goldsmith, et al. v. Dean, et al., No. 2:93-CV-383 (D.Vt. filed Dec. 13, 1993) (the "lawsuit" or the "litigation"); and

WHEREAS, on March 9, 1994, the plaintiff class was certified as "persons who are now or who will in the future be confined in Vermont prisons and all persons who are now or will in the future be subject to the policies and practices of the Vermont Department of Corrections and the Vermont Parole Board with respect to the Vermont Treatment Program for Sexual Aggressors and the Violent Offender Program," and,

WHEREAS, the named plaintiffs and the class they represent seek to remedy alleged unconstitutional and unlawful conditions of confinement through declaratory and injunctive relief, and

WHEREAS, the defendants to this lawsuit dispute the standing of the plaintiffs to bring this suit and the allegations that they have violated plaintiffs' rights and deny any liability, and have asserted various defenses to the plaintiffs' claims, and do not admit or concede by entering into this Agreement that any of the plaintiffs' rights under the United States or Vermont Constitutions or under any law or regulation are or have been violated by the State, and

WHEREAS, nothing in this Agreement is intended to, nor shall be construed as, an

admission of liability of or by any party; and

WHEREAS, the plaintiffs and the defendants are involved in the discovery phase of the litigation as of the date of this Agreement; and

WHEREAS, it is mutually advantageous for both parties to settle this dispute without further discovery or a trial;

NOW THEREFORE, in consideration for the mutual covenants contained herein the parties to this Agreement agree as follows:

II. DEFINITIONS

1. "Facilities" means the facilities of the DOC, which currently are:

- a. Northwest State Correctional Facility ("NWSCF" at St. Albans);
- b. Northeast Regional Correctional Facility ("NERCF" at St. Johnsbury);
- c. Southeast State Correctional Facility ("SESCF" at Windsor);
- d. Chittenden Regional Correctional Facility ("CRCF" at So Burlington);
- e. Marble Valley Regional Correctional Facility ("MVRCF" at Rutland);
- f. Woodstock Regional Correctional Facility ("WRCF" at Woodstock);
- g. Northern State Correctional Facility ("NSCF" at Newport);
- h. The Caledonia Community Work Camp ("CCWC" at St. Johnsbury).

2. "Impartial Expert" or "Experts" shall mean the consultant or consultants chosen by the parties whose function shall be to determine whether the State has achieved substantial compliance with the terms of Section IV of the Agreement for those substantive areas assigned to that Impartial Expert.

3. The "Parties" shall mean the State and the Plaintiffs.

4. "Plaintiffs' Counsel" shall mean Mitchell L. Pearl, Esq., Langrock, Sperry & Wool.

Vermont, and staff attorneys of the National Prison Project of the American Civil Liberties Union Foundation, Washington, D.C.

5. "Plaintiffs" shall mean the plaintiff class.

6. "State" shall mean the named defendant(s) to this lawsuit, except the independent medical care providers named in the December 13, 1993, Complaint.

7. "State's Counsel" shall mean the Attorney General for the State of Vermont or his designee.

III. PROCEDURE

A. Dismissal Of Action

8. Upon signing the Agreement, the Parties shall seek approval of this Agreement from the Court pursuant to Fed.R.Civ.P. 23(e).

9. Upon the District Court's approval, this action shall be dismissed pursuant to Fed.R.Civ.P. 41(a)(1)(ii). As to the independent medical care providers named in the December 13, 1993 Complaint, this action shall be dismissed with prejudice.

B. Effective Date Of Agreement

10. This Agreement shall become effective upon: (a) approval of the Agreement by the Court; and, (b) dismissal of the action as provided above.

C. Litigation During 24-Month Compliance Period

11. Except as expressly allowed in ¶ 31, below, in the case of fire safety at WRCF, from the date of approval of this Agreement and during the 24-month compliance period provided herein, plaintiffs, individually or as a class, shall not file any action or seek an injunction in either state or federal court, under any federal or state law cause of action, on the basis of any allegation

of fact or claim set forth in the December 13, 1993 Complaint

12. Nothing in ¶¶ 9 or 11 shall preclude an individual from seeking exclusively on his or her own behalf: (a) damages for a specific claim based upon operative facts occurring either before or after the effective date of this Agreement, or; (b) equitable relief based upon operative facts existing after the effective date of this Agreement, including but not limited to claims relating to the Vermont Treatment Program for Sexual Aggressors ("VTPSA"). In addition, paragraph 11 shall not preclude any individual or individuals from seeking relief under Vermont State law provided that the relief sought is not based on any allegation of fact or claim set forth in the December 13, 1993 Complaint.

13. In any action brought pursuant to ¶ 12(b), above, for declaratory or injunctive relief relating to VTPSA, the Parties shall not object to the admissibility of the record of proceeding in the class action Goldsmith, et al. v Dean, et al., Civ. Action No. 2: 93-CV-293 (D. Vt.), except as to relevance. Nothing in this paragraph shall limit a party's right to object on any grounds to the weight a court should give to the record.

D. Determination of Substantial Compliance and Impartial Experts

14. In order to determine whether the State has reached substantial compliance with the terms of Section IV of the Agreement, the parties agree to the appointment of no more than four (4) Impartial Experts as provided herein.

15. An Impartial Expert or Impartial Experts shall: (a) monitor the State's compliance with the specific terms of Section IV of this Agreement; and, (b) at the conclusion of the 24-Month Compliance Period decide whether the State is in substantial compliance with Section IV of this Agreement. The 24-Month Compliance Period shall be defined as follows: (a) it shall

begin on the effective date of this Agreement and shall end on the last day of the 24th month following; (b) if the last day of the 24-Month Compliance Period is not the last business day of the month, then the compliance period shall continue through the last business day of the month, and (c) if, because of an Impartial Expert's unavoidable inability to make his or her final determination of substantial compliance as provided for by this Agreement, a determination of substantial compliance has not been made upon the expiration of the 24-Month Compliance Period, the Impartial Expert may extend for a reasonable period not to exceed sixty days the expiration date of the 24-Month Compliance Period as to the necessary subject areas to allow for the Impartial Expert to make promptly his or her final determination of substantial compliance. The Impartial Expert shall promptly notify the Parties in writing of the extension.

16. Nothing in this Agreement shall change the State's obligation to comply with the specific fire safety provisions relating to the WRCF, as provided in ¶¶ 38 & 39, below, within nine months from the effective date of this Agreement.

17. The Parties agree to the selection of the following Impartial Experts for the corresponding compliance areas: Robert Powitz, Section IV (B) and to select an Impartial Expert acceptable to the Parties as to Section IV (A) as it relates to the WRCF and the SESCOF, Allen Breed, Section IV (C); and, Ronald Shansky, M D , Section IV (D) & (E).

18. Except as provided in ¶ 39, below, as it applies to the WRCF, the determination of whether the State is in substantial compliance with the terms of Section IV of this Agreement shall occur on the last day of the 24-Month Compliance Period.

19. Each Impartial Expert's determination of substantial compliance shall take into account the extent to which the State has achieved and sustained compliance during the course of

the 24-Month Compliance Period.

20. Six months following the effective date of this Agreement, and every nine months thereafter during the 24-Month Compliance Period, the Impartial Expert(s) shall conduct on-site tours of the Vermont Facilities. The Impartial Expert assigned to determine compliance with the Fire Safety provisions of Section IV of this Agreement shall conduct an on-site tour of the WRCF nine months following the effective date of this Agreement in addition to his or her regular on-site tours, and shall prepare a report that complies with the provisions of ¶ 24, below and includes a statement indicating whether the State is in compliance with the requirements of ¶¶ 38 & 39, below, as they pertain to the WRCF. The State has a responsibility to permit, but does not have a responsibility to guarantee, an Impartial Expert's attendance at these agreed-upon intervals.

Plaintiffs' Counsel and the State's Counsel may each select representatives to accompany the Impartial Experts during these on-site visits. Plaintiffs' Counsel shall not select as representatives any employee, agent, contractor, and/or representative in any capacity of the State of Vermont

21. The State shall pay fees, expenses and costs associated with the work of the Impartial Experts up to, but in no event exceeding, the total aggregate amount of \$45,000.00 per year.

22. The Impartial Expert(s) may review all documents not privileged under Vermont State law, speak with any Defendant or staff member at the DOC Facilities, and may engage in private conversations with any class member.

23. Following each of the on-site visits referenced above, each of the Impartial Experts shall prepare a written interim report of his or her findings within thirty (30) days and shall send one copy each to Plaintiffs' and the State's Counsel.

24. Within thirty (30) days following an Impartial Expert's final on-site visit, as to those specific areas to which the Impartial Expert has been assigned, the Impartial Expert shall prepare a report including a statement indicating whether, in the Impartial Expert's opinion, the State is in substantial compliance with the specific terms of Section IV of this Agreement

25. An Impartial Expert's determination of substantial compliance shall take into account the extent to which exceptions to compliance are isolated or noncontinuing in nature, or are unintentional, or are the temporary result of actions by members of the plaintiff class, and are addressed by corrective action.

26. A finding of substantial compliance in one or more of the subject areas set forth in Section IV of this Agreement shall not be defeated by findings of non-compliance with any other subject area or areas.

27. In the event that an Impartial Expert learns at any time of conditions that may pose imminent and significant health or safety risks to the plaintiffs, he or she shall immediately report such conditions to the Commissioner of the Department of Corrections and to counsel to the parties.

28. If counsel to either party communicates with an Impartial Expert, counsel shall promptly prepare and produce to counsel to the other party memoranda of conversations and copies of all written communications with the Impartial Expert.

29. The State shall afford the Impartial Experts reasonable access to the State's Facilities, documents, staff and inmates and the parties shall provide their full cooperation to the Impartial Experts, to enable them to carry out their responsibilities.

E. Effect Of A Determination Of Substantial Compliance.

30. If, upon the expiration of the 24-Month Compliance Period, or in the case of fire safety at WRCF, following the nine month on-site tour pursuant to ¶ 20, above, and ¶¶ 38 & 39, below, an Impartial Expert finds that the State is in substantial compliance with any of the subject areas of Section IV of this Agreement, as to any such subject area such a finding shall be a complete defense to any class action complaint by the plaintiffs, having the same effect as a dismissal with prejudice by stipulation of the class action Goldsmith, et al. v Dean, et al., Civ Action No. 2: 93-CV-293 (D. Vt.), pursuant to Fed R Civ P 41(a)(1)(ii).

31. If, upon the expiration of the 24-Month Compliance Period, or in the case of fire safety at WRCF, following the nine month on-site tour pursuant to ¶ 20, above, and ¶¶ 38 & 39, below, an Impartial Expert finds that the State is not in substantial compliance with any of the subject areas of Section IV of this Agreement, the plaintiffs may file a complaint seeking relief with respect to those areas for which that Impartial Expert has determined that the State is not in compliance.

32. The parties agree to accept and be bound by the determinations of the Impartial Experts.

F. Plaintiffs' Counsel Access To Clients

33. During the 24-Month Compliance Period of this Agreement, Plaintiffs' counsel reserve their right to meet with their clients privately.

G. Remedies and Expiration Of Agreement

34. Either of the Parties may commence, by and through the Plaintiffs' or the State's Counsel, an action to enforce the terms of Section III and V of this Agreement; provided however

that (a) any such action for breach of this Agreement shall be filed in the Washington Superior Court in the state of Vermont; and, (b) the exclusive remedy available in any such action shall be limited to specific performance.

35. Prior to filing any such action under the preceding paragraph, the Parties shall make good faith efforts to resolve the dispute.

36. In any such action described in ¶ 34, above, each party shall bear its own costs and fees.

37. Except for ¶¶ 26, 30, 31, 32, 89, and Section VI, this Agreement shall expire and be of no force or effect upon the expiration of the 24-Month Compliance Period.

IV. COMPLIANCE AREAS

A. Fire Safety

38. The State shall comply with the Vermont Fire Prevention and Building Code, which incorporates by reference and amends relevant portions of the (a) Building Officials and Code Administrators National Building Code; (b) National Fire Prevention Association ("NFPA") National Fire Prevention Code; and, (c) NFPA Life Safety Code, as it is applied to the Vermont prison system by the State of Vermont Department of Labor and Industry.

39. Within nine months of the effective date of this Agreement the State will make specific physical plant modifications to the WRCF which are necessary to comply with ¶ 38, above, in response to the Department of Labor and Industry Audit for the WRCF dated January 5, 1996, a copy of which shall be provided to the Impartial Expert assigned to determine compliance with the Fire Safety provisions of this Agreement. Prior to the expiration of the 24-Month Compliance Period, the State will make specific physical plant modifications to the SESCOF

which are necessary to comply with ¶ 38, above, in response to the Department of Labor and Industry Audit for the SESCOF dated January 5, 1996, a copy of which shall be provided to the Impartial Expert assigned to determine compliance with the Fire Safety provisions of this Agreement.

40. If a failure by the State to meet the requirements of ¶¶ 38 & 39, above, is due to unavoidable construction delay(s) beyond the control of the State, and work is otherwise proceeding to completion, the Impartial Expert may, in his discretion, extend for up to sixty (60) days the nine-month compliance period established for the WRCF.

B. Environmental Health and Safety

41. The State shall sufficiently maintain and repair, as needed, plumbing at WRCF, CRCF, NERCF, MVRCF, NWSCF, and SESCOF.

42. The State shall sufficiently maintain and clean, as needed, the ventilation systems at CRCF, NERCF, MVRCF, WRCF, and NWSCF.

43. The State shall sufficiently maintain the heating system so that it is capable of regulating temperatures throughout the facilities at WRCF, MVRCF, NERCF, and SESCOF.

44. The State shall take reasonable measures, including necessary repairs, to avert the backup of sewage at WRCF, CRCF, and SESCOF.

45. The State shall sanitize mattresses between users and replace or repair, as needed, torn and dirty mattresses at WRCF, CRCF, NERCF, MVRCF, and SESCOF.

46. The State shall provide mattresses made of fire retardant material at WRCF.

47. The State shall provide, as needed, inmates with mattresses that fit the bedframes at MVRCF.

48. The State shall maintain a program for vermin and insect control and extermination in the kitchen and food storeroom at WRCF.

49. The State shall require that kitchen workers cover their hair at CRCF.

50. The State shall repair, as needed, any leaks to the roof over B and D pods at MVRCF.

51. The State shall repair, as needed, windows at MVRCF.

52. The State shall maintain sufficient food temperatures at MVRCF.

53. The Impartial Expert touring the facilities referenced herein, i.e., WRCF, CRCF, MVRCF, NERCF, SESCOF, and NWSCF, in addition to monitoring the State's substantial compliance with the specific items listed herein, shall determine whether the State maintains sufficient levels of environmental health and safety at these facilities.

C. Crowding and Systemic Correctional Issues

1. Exercise

54. The State shall make available, for those inmates housed in the general population with a custody and security rating of medium or lower, and with no disciplinary sanction limiting outside recreation in force, not less than seven hours of outside recreation per week, except in emergency or adverse weather conditions not conducive to outside recreation. The State shall provide all prisoners with access to out-of-cell time, during which the prisoners may exercise, no less than one hour per day, five days per week.

2. Overcrowding of Women Prisoners

55. The State shall provide adequate and safe housing for women prisoners.

3. Americans With Disabilities Act

56. The State shall ensure, to the extent required by the Americans with Disabilities Act (ADA), that inmates with disabilities are not excluded from participation in, or denied the benefits of services, programs, or activities because of their disabilities.

4. Use of Force and Restraints

57. The State shall videotape cell extractions and uses of force in accordance with DOC Directive No. 413.02, dated September 22, 1993, and shall maintain these videotape records of any cell extractions and uses of force in the DOC's possession upon the effective date of this settlement agreement and any recorded during the 24-Month Compliance Period for at least as long as necessary to allow reasonable access to the videotapes by the Impartial Experts.

58. The State shall forbid the restraint of inmates by securing an inmate's hands behind his or her back and securing the inmate's ankles to his or her wrists.

5. Areas Not Designed As Living Areas

59. Areas in DOC Facilities not originally designed and built for housing inmates shall not be utilized for the housing of inmates without necessary redesign and remodelling.

D. Medical Care

1. Standard of Care

60. The State shall provide inmates with health care in accordance with constitutional standards. Nothing set forth below shall prevent the State from implementing additional procedures which will improve the provision of health care to inmates.

2. Quality Assurance

61. The State shall establish and maintain a system to assure the quality of medical

care for inmates. The quality assurance program shall be designed to ensure that the provision of medical care to inmates meets the standard set forth above in ¶ 60.

3. Medical Administration

62. The State shall employ or otherwise contract for a licensed physician or a team comprised of a physician and other medical professionals with a Health Care Organization (HCO) to serve as Medical Director to the State's prison system. The Medical Director or HCO shall institute centralized health care policies and shall review health care staffing levels and operations at each facility and shall be responsible for overseeing the quality assurance program. In addition, the Medical Director shall oversee the clinical treatment of prisoners.

63. The State shall maintain adequate policies, directives and procedures for medical care throughout the system, including policies, directives and procedures for the treatment of inmates with chronic diseases and inmates who require specialty care.

64. The State shall maintain liaisons with local hospitals. The State shall ensure an adequate and appropriate response for all inmates who need immediate medical attention and shall maintain 24-hour access to emergency room care.

4. Intake

65. The State shall conduct timely and adequate intake screening for inmates by qualified medical personnel. The screening shall include an appropriately administered test for tuberculosis.

66. The State shall use best efforts: (a) to screen newly-admitted female inmates for sexually-transmitted diseases; and, (b) to provide such inmates with pap tests and urinalysis pregnancy screening.

67. The State shall conduct an intake physical assessment by qualified medical personnel.

5. **Eyeglasses**

68. The State shall provide eyeglasses to inmates in accordance with DOC Procedure No. 412PP, dated March 2, 1992.

6. **Dental Care**

69. The State shall provide dental care to treat inmates' known serious dental needs.

70. The State shall schedule a comprehensive dental screening of all prisoners within 60 days of admission.

71. The State shall provide toothbrushes, toothpaste, and dental floss for all prisoners, except when reasonably deemed a security, custody, or safety risk by the DOC.

7. **Medical Records**

72. The State shall maintain a standardized format for medical records including, but not limited to:

- a. lab test results;
- b. medical flow charts;
- c. medical history, and;
- d. physical exam information.

73. The State shall protect the confidentiality of medical records and medical information.

8. **Therapeutic Diets**

74. The State shall maintain therapeutic diets based upon medical staff orders.

9. **CPR Training**

75. The State shall provide CPR training for all medical staff and correctional officers

10. Infectious Disease Training

76. The State shall provide training to corrections and medical staff on infectious diseases such as tuberculosis, hepatitis and AIDS.

11. HIV Care

77. The State shall offer voluntary testing for AIDS and shall provide appropriate care to HIV positive inmates.

12. Women's Health Care

78. The State shall provide women prisoners access to: (a) gynecological and prenatal care; (b) breast examinations and mammograms for age-appropriate or symptomatic inmates, and (c) routine pap tests.

13. Medication Distribution.

79. The State shall maintain an appropriate medication distribution system. The State shall ensure that asthmatic inmates have access to inhalers and inmates with coronary conditions have access to nitroglycerin or other prescribed medication.

E. Mental Health Care

80. The State shall provide prisoners with mental health care in accordance with constitutional standards. Nothing shall prevent the State from doing more than what is required in this Agreement.

81. The State shall maintain policies and directives for screening, evaluation, housing, and treatment of inmates with serious mental illnesses and those indicating withdrawal from alcohol and drugs. This paragraph does not apply to individuals lodged pursuant to 33 V S A §708(d)(1) & (2).

82. A suicide risk assessment shall be conducted by appropriately trained staff during the admission process utilizing the current Initial Needs Survey form, a copy of which shall be provided to the Impartial Expert assigned to evaluate compliance with this Mental Health Section

83. The State shall maintain a system to assure the quality of mental health care for inmates. The quality assurance program shall be designed to ensure that the provision of mental health care to inmates meets the standard set forth above in ¶ 80.

84. All inmates shall be adequately screened for any signs of serious mental illness

85. The State shall maintain liaisons with local hospitals. The State shall ensure an adequate and appropriate response for all inmates who need immediate mental health care, and shall maintain 24-hour access to on-call emergency mental health care.

86. The State shall maintain written policies, directives and procedures for suicide prevention.

87. The State shall maintain appropriate policies, directives, and procedures governing distribution and review of psychoactive medication, informed consent; and, evaluation, observation and treatment of suicidal prisoners.

88. The State shall provide a Secure Care Unit ("SCU") and an Intermediate Care Unit ("ICU"), to be adequately staffed with qualified mental health professionals and specially trained correctional personnel.

V. ATTORNEYS' FEES

89. Without any admission, implication, or suggestion by the State of liability or that the plaintiffs are a prevailing party pursuant to 42 U S C §1988, the State agrees to pay and the plaintiffs agree to accept a payment of one hundred ninety five thousand dollars (\$195,000 00) to

be made in three payments, the first to occur on or before July 1, 1996 in the amount of twenty five thousand dollars (\$25,000.00), the second to occur on or before June 30, 1997 in the amount of \$85,000.00 and the third to occur on or before July 31, 1997 in the amount of \$85,000.00 to the National Prison Project, in full satisfaction of any and all claims or demands for any and all fees, costs, and/or expenses that the National Prison Project, its agents, assigns, or those acting in its place, have claimed in the past, have now, or could have in the future, up to and including the expiration of the 24-Month Compliance Period, in full settlement of any and all potential fee and cost demands that have been or could be made by the plaintiffs in the action Goldsmith, et al. v. Dean, et al., Civ. Action No. 2:93-CV-383 (D. Vt.).

VI. MISCELLANEOUS

90. This Agreement is a document which all parties have negotiated and drafted and since all parties participated equally in drafting its terms, the general rule of construction interpreting a document against the drafter shall not be applied in future interpretation of this Agreement.

91. This Agreement represents the entire and only Agreement between the parties in Goldsmith, et al. v. Dean, et al., Civ. Action No. 2: 93-CV-383 (D. Vt.). All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

92. No changes, modifications, or amendments to the terms and conditions of this Agreement shall be effective unless reduced to writing, numbered and signed by Plaintiffs' Counsel and the State's Counsel.

93. The law of the State of Vermont regarding the construction of contracts shall govern any dispute regarding the construction of this Agreement.

94. None of the terms contained in this Agreement, such as "agree," "shall," "will," "establish," "implement," "continue," "maintain," and/or any combination or modification of these terms as used in this Agreement, nor the assumption of any obligation contained within the Agreement, imply that the State is not now doing or must do any of the items contained in this Agreement in order to comply with the United States or Vermont Constitutions or any statute or regulation.

95. The Court's approval of the dismissal of this action is sought to comply with Rule 23(e) of the Federal Rules of Civil Procedure. This Settlement Agreement is not a consent decree nor do the parties intend it to be construed as such. It does not operate as an adjudication of the merits of the litigation.

96. This Agreement shall not be construed as contemplating, requiring or causing the relinquishment or ceding of any control by the State of Vermont over any facility or activity of the DOC.

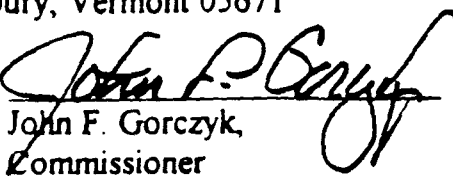
97. The terms of this contract are not severable and the finding that any terms contained herein are illegal or void shall work to defeat all of the terms contained herein.

98. By the signatures below and for the consideration contained herein, the Parties agree to be bound by the terms and conditions of this Agreement.

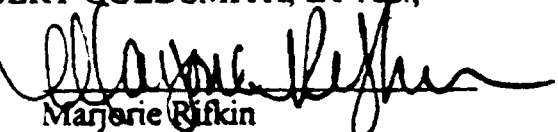
VII. Authority

99. The undersigned representatives of each party to this private agreement certify that each is fully authorized by the party or parties he or she represents to enter into the terms and conditions of this settlement agreement and to execute and bind that party to it.

STATE OF VERMONT
DEPARTMENT OF CORRECTIONS
103 South Main Street
Waterbury, Vermont 05671

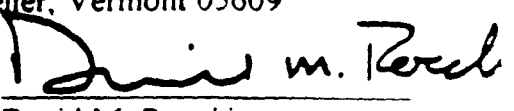
By: 
John F. Gorczyk,
Commissioner
For the Defendants

DATED: 4/11/96

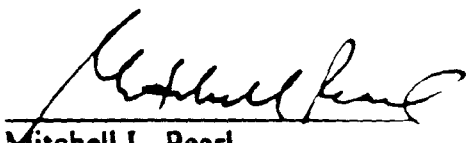
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By: 
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DATED: 4/11/96

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Assistant Attorney General
For the Defendants

DATED: April 11, 1996

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DATED: 4/11/96

