

UNITED STATES DISTRICT COURT  
District of Maine

DALE DARE, on behalf of himself and )  
on behalf of others similarly situated, )

Plaintiffs )

vs. )

Docket No. 02-251-P-C

KNOX COUNTY, DANIEL DAVEY, )  
In his individual capacity and in his official )  
Capacity as Knox County Sheriff, )

Defendants )

**PLAINTIFF’S MOTION FOR ATTORNEY’S FEES, COST OF LITIGATION  
AND EXPENSES OF SETTLEMENT ADMINISTRATION**

NOW COME counsel for Plaintiffs to move the Court to award attorney’s fees of 30% of the Three Million Dollar (\$3,000,000.00) settlement fund, reimbursement of \$178,561.41 in litigation expenses and all claims administrative expenses, presently estimated at \$35,000.00, incurred in administering the settlement.

**I. Procedural History**

Plaintiffs filed this action on or about November 19, 2002. On November 5, 2003, Judge Gene Carter of the United States District Court for the District of Maine granted Plaintiffs’ motion for class certification and certified this case as a class action under Fed.R. Civ. P 23 (b) (3). The class was defined as follows:

All people who after November 19, 1996, were subjected to a strip search and/or visual body cavity search without evaluation for individualized reasonable suspicion while being held at the Knox County Jail:

(1) After having been arrested on charges that did not involve a weapon, drugs, or a violent felony; or

(2) While waiting for bail to be set up on charges that did not involve a weapon, drugs, or a violent felony; or

(3) While waiting for an initial court appearance on charges that did not involve a weapon, drugs, or a violent felony; or

(4) After having been arrested on a warrant at that did not involve a weapon, drugs, or a violent felony. (See Docket Item No. 21)

The decision to certify the class was affirmed on appeal by the United States Court of Appeals for the First Circuit, *Tardiff vs. Knox County*, 365 F.3d 1 (1st Cir. 2004).

Plaintiffs alleged that all arrestees or pretrial detainees at the Knox County Jail were subjected to a strip search, sometimes to include a visual body cavity search, as part of a booking procedure. The defendants have denied those allegations and have asserted that both their officially promulgated policies and their actual practices and procedures were at all times consistent with constitutional requirements.

This case has been in litigation since November, 2002. Partial Summary Judgment was granted to the plaintiffs on November 2, 2005. The Court ordered a small rollback of the Partial Summary Judgment in April of 2006 requiring Plaintiffs to prove

an unconstitutional custom and practice for class members strip-searched between September 2002 and December 2004. A trial, originally scheduled to begin April 1, 2006, was postponed until May 1, 2006 and then to October 3, 2006. The parties, like the famed light brigade, charged into summer with no thought to what September would bring. The parties interviewed, deposed, motioned and strategized fiercely aiming for the killer strike that would put them a leg up and demoralize the other side. On September 5, 2006 court decertified the class with respect to damages, disqualified all witnesses, shredded all exhibits and denied all motions. The parties retreated, seeking shelter in the chambers of Chief Judge Singal. On September 29 Chief Judge Singal brought the battle to a close through an all day Judicial Settlement Conference.<sup>1</sup> Following instructions of Chief Judge Singal to prepare a final written agreement using the Second Amended Agreement approved in *Nilsen v. York County*, (02-CV-212-P.-H.), the parties began the process while hammering out that final agreement. On December 18, 2006 the Court rewarded the parties' efforts by approving preliminarily the Third Final Settlement Agreement. (Docket Item No.: 378).

## **II. SUMMARY OF SETTLEMENT TERMS**

The Settlement reached by the parties secures a remarkable recovery for class members. Under the settlement, the Defendants have created a settlement fund of \$3 million dollars from which payments to class members, class representatives, class counsel, and the Claims Administrator will be made. This is an extraordinary outcome

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<sup>1</sup> The parties had previously attempted to mediate the dispute with the assistance of former Maine Supreme Judicial Court Chief Justice Daniel Wathen. The two days spent with the Chief Justice Wathen brought focus to the parties' perceptions but did not resolve the case.

for the Class because approximately 366 class members will share in a fund which will pay them significantly more than they might have received had they gone individually to trial.

Under the terms of the settlement agreement, each class member who timely submits a completed and signed claim form postmarked no later than February 12, 2007, will, if his claim is approved, receive a payment from the common fund (after deducting attorneys fees, costs, expenses of administration, and bonuses to the class representative and those class members who were deposed by the Defendants) calculated on the basis of one share for every class member with an approved claim. Class members wishing to opt out of the settlement are required to file a properly executed to opt-out form on or before February 12, 2007.

In the terms of the settlement agreement, a portion of the settlement fund shall be used, subject to Court approval, to pay the cost of administering the settlement as well as a plaintiffs attorneys fees and expenses. Class counsel hereby apply to the Court for an award of attorney's fees in the amount of \$900,000.00 (which represents 30% of the settlement fund of 3 million), for reimbursement of \$178,561.41 in expenses, and for \$35,000<sup>2</sup> to cover the estimated Cost of Administering the Settlement.

The settlement agreement also provides for an incentive award in the amount of \$5,000 for the class representative of record as of the date of the Final Approval of the

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<sup>2</sup> Analytics initial estimate of claims administrative expenses was \$35,000.00 (see Exhibit B, Motion for Attorney's Fees , Cost Of Litigation And Expenses Of Settlement Administration), class counsel had paid Analytics \$8,684.33 and have another invoice in transit in the amount of \$21,933.37, for a total to date of \$30,617.70 in claims administration expenses. Analytics will provide an updated estimate of the expenses expected to be necessary to close out the claims administration phase of this case.

settlement and a \$500 bonus for each of the 20 class members who were deposed by the defendants.

The Settlement Agreement will completely settle and resolve this class action. Unless a class member opted out by the timely submission of a valid opt-out form, the settlement will fully bind all members of the class. As the settlement agreement provides: "in consideration of the settlement amount, all defendants,... will be released from all liability for the class members' claims for unlawful strip searches that were part of this lawsuit, including class members who do not file claims, except for any class members who requested exclusion, opted out, and filed an individual lawsuit within the applicable statute of limitations. The parties have expressly agreed that the release of claims arising from the settlement includes all visual inspections, including without limitation visual body cavity inspections, that otherwise fall within the scope of the claims certified as a class action by the Court in this case. The parties further agree that this release of claims applies to any claims that the strip searches were conducted in a manner that was unlawful, including without limitation, claims of physical touching, cross- gender searches, or searches which were observed by persons other than the correctional officer performing the search. The parties further agree that their settlement does not release any other claims, such as wrongful arrest, excessive force, or searches that were not part of the admissions process (such as strip searches after a lockdown)."

Class members have been notified of the settlement pursuant to the Notice Plan approved by the Court in its Order granting preliminary approval of the settlement

(Docket item No. 376-2). First, a Notice Package consisting of a Notice of Class Action Settlement and of the Hearing to Approve the Settlement ("Notice of Settlement"), a Settlement Claim Form, a Frequently Asked Questions sheet and an Opt-Out Form, by first-class mail postage prepaid to all potential class members, whose addresses are known to Class Counsel at their last known address within three weeks after the Court Order granting preliminary approval. Second, creation of a website, [www.knoxcountyjailclass.com](http://www.knoxcountyjailclass.com), where Notice of Settlement and the Settlement Claim Form and the Opt-Out Form are available for downloading from the website or on request to the Claims Administrator including through a toll-free number. Third, publication of the Notice of Settlement twice in the Portland Press Herald, Rockland Courier Gazette and the Bangor Daily News. Fourth, posting the Notice of Settlement in the Knox County Jail. Fifth, the issuance of a press release detailing preliminary approval of the settlement, how to obtain the appropriate Claims and Opt-Out Forms, the dead-line for filing and Notice of the date and time of the Final Fairness Hearing. Sixth, by letter dated March 30, 2007, sent by first class mail, postage prepaid to all 366 approved class members, class counsel again notified all class members of the Fairness Hearing scheduled before the Court on April 23, 2007 at 10:00 a.m. and conveyed to all class members complete copies of Plaintiffs Motions for Final Settlement Approval and for Award of Attorney's Fees, Litigation Expenses and Administrative Costs.

### **III. ATTORNEY'S FEES**

Class counsel respectively request the Court award attorney's fees in the amount of \$900,000.00, an amount equal to 30% of the principal amount of the settlement fund of \$3,000,000.00 (Three Million Dollars).

**A. Legal Standards**

An attorney's fees award in a class action from a common settlement fund is authorized by F.R. Civ. P. 23(h) and Rule 54(d)(2). "A litigant with a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." Boeing Company v. Van Gemert, 444 U.S. 472, 478 (1980). Class counsel have pursued the Defendants in this case on behalf of the Plaintiff class to assert and recover for the violation of certain rights and privileges guaranteed under the United States Constitution and Section 1983 of Title 42 of the United States Code. It is well established that common fund principles may be applied when actions instituted under statutes containing fee-shifting provisions are resolved by settlement. See In Re: Compact Disc Minimum Advertised Price Anti-Trust Litigation, 216 F.R.D. 197, 216 (D. Me. 2003). It is also well established that the common fund doctrine is founded on the equitable principle that those who have profited from the litigation should share in its cost. See In Re: Thirteen Appeals Arising Out of The San Juan Dupont Plaza Hotel Fire Litigation, 56 Fed.3d 295, 305 N.6 (1<sup>st</sup> Cir. 1995).

In this case class counsel ask the Court to apply the percentage of fund method to calculate reasonable attorney's fees in this case. The percentage of fund method is the method preferred in this District and in this Circuit. See In Re: Compact Disc and San

Juan Dupont Plaza Hotel, supra. See also the Settlement Agreement between the parties dated September 29, 2006. (Docket Item No.: 366).

In that agreement: “The parties ... agree[d] to settle this case in exchange for Defendants establishing a common fund of Three Million Dollars (\$3,000,000.00), said amount to include all attorney’s fees and costs incurred, as well as all claims administration expenses. The parties agree that counsel for Plaintiff will seek to recover 30% of this fund to cover their fees and costs.”

“Plaintiffs’ counsel is certainly free to ask for 30% of the common fund for its own attorney’s fee and costs and separately seek to have the claims administration fees paid from the fund. The Court indicated that the ultimate decision on fees and expenses would be made by Judge Carter.” See Docket Item No. 333.

Another approach is the *Loadstar* method, which multiplies the number of hours the attorneys have expended by their hourly rates to create a “Loadstar” figure. Class counsel does not request a Loadstar calculation because (1) the First Circuit uses the percentage of fund method; and (2) fair application of the Loadstar method would result in an attorney’s fee award which would take a significantly larger bite out of the common fund and thus dilute the individual shares each class member can be expected to receive under the percentage of fund calculation advocated.

Federal Courts have increased hourly rates (“Loadstar Fees”) by multiples of three or four (or more) to account for considerations such as the risk undertaken, the quality of the services rendered, the results achieved, and the delay in receipt of payment. See, for



example, *In Re: Rite Aid Corp. Securities Litigation*, 146 Fed. Supp. 706, 736 N. 44 (E. D. Pa. 2001) (Finding “a Loadstar multiple in the range of 4.5 to 8.5” to be “unquestionably reasonable”); *Vranken v. Atlantic Richfield Company*, 901 Fed. Supp. 294, 298-299 (N.D. Cal. 1995) (applying a multiple of 3.6 and noting that “multiples in the 3-4 range are common in Loadstar awards for lengthy and complex class action litigation”); *Beahrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 549 (S.D. Fla. 1988), Aff’d. 899 Fed.2d 21 (11<sup>th</sup> Cir. 1990) (“The range of Loadstar multiples in large and complicated class actions runs from a low of 2.26 to a high of 4.5”). This Court has endorsed the Loadstar multiplier concept, see *In Re: Compact Disc*, 216 F.R.D. at 216, as has the First Circuit. See *Weinberger v. Great Northern Nekossa Corp.*, 925 Fed.2d 518, 529 (1<sup>st</sup> Cir. 1991) (“[T]he Loadstar calculation ... will be subject to possible enhancement ... by the Court if it determines that a multiplier ... should be applied.”). The fee requested here by contrast, is less than class counsel’s actual Loadstar figure.

Class counsel submits that the hours expended on this case, while substantial, are entirely reasonable and reflect the challenging nature of the lawsuit and the unwavering commitment to achieving a successful result . Every reasonable effort was made to avoid unnecessary duplication or repetition of task, and where appropriate, work was assigned to paralegals.<sup>3</sup> Given the complexity of the claims and defenses, the real risk of non-

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<sup>3</sup> Paralegal time is included in the Loadstar calculation at market billing rates and should be adjusted using the risk multiplier, since such time is subject to the same contingent risk as attorney time. See *Missouri v. Jenkins*, 491 U.S. 274, 287 (1989) “[I]f a prevailing practice in a given community were to bill paralegal time separately at market rates, fees awarded the attorney at market rates for attorney time would not be fully compensatory if the Court refused to compensate hours billed by paralegals and did so only at ‘cost’”. *Sula v. National R. Passenger Corp.*, 128 F.R.D. 210, 216 (E.D. PA 1989).

recovery, a substantial delay in receipt of payment, the exceptional result achieved and the experience and skill of class counsel, class counsel submit that a fee of \$900,000.00 is (30% of the gross common fund) fair and reasonable compensation for their work. If the Court used a Loadstar method and applied a low multiplier such as 2.26 referenced in Behrens, supra at 549, It would reverse the economic positions of class counsel and class members. Class counsel advocate that the Court preserve \$2,000,000.00 (Two Million Dollars) of the common fund of to pay the class representative incentive award of \$5,000.00, the 20 class member bonus awards of \$500.00 and distribute the remaining \$1,985,000.00 equally to class members who have filed approved claims.

Class counsel advocates that the Court fashion a reasonable fee and pay class counsels' litigation expenses and the claims administration fees out of the third million dollars of the common fund plus accrued interest on the fund.

There are a number of factors that are generally considered when determining that a fee award is fair, adequate and reasonable. Class Counsel have discussed several of those factors in their Motion for Final Settlement Approval, to wit: reaction of the class; stage of litigation, quality of class counsel, conduct of negotiations, and fairness adequacy and reasonableness of the notice plan. Also to be considered are the results achieved, the nature and complexity of the litigation; the size of the settlement fund; the risk of non-recovery; and the use of the Loadstar method as a cross check. And while there are many factors to consider, "... [t]he ultimate goal to be achieved by the reviewing Court is to award fees which are adequate to attract competent counsel and yet

not so large that they result in a windfall. Wells v. Dartmouth Bancorp, Inc., 813 Fed. Supp. 126, 127-28 (D. New Hampshire, 1993).

Judge Hornby echoes these sentiments in his analysis of the application of the percent of fund approach in Nilsen v. York County, \_\_\_\_\_ F.Supp. \_\_\_\_\_ Civil No. 02-212-P-H, November 10, 2005, at Pages 5 and 6:

Making a fair fee award from a common fund in a class action settlement is a difficult determination for a Judge. There are no adversarial presentations to test the fee claim, and our legal system does not ordinarily expect Judge's to behave as inquisitors, gathering testimony and collecting information on their own. Presented with an unopposed request, therefore, I depend upon my own analysis and secondary research – against a backdrop of popular dissatisfaction with large and highly publicized fees. Third Circuit Task Force Report, selection of class counsel, 208 F.R.D. 340, 343-44 (2002) (“2002 Task Force Report”) (“[T]here is a perception among a significant part of the non-lawyer population ... that class action Plaintiffs’ lawyers are overcompensated for the work that they do.”). But the lawyers here are highly skilled and experienced civil rights attorneys. Their professional performance was exemplary; they represented the class members’ interest zealously, achieving an excellent result for the class under the circumstances. For these reasons they deserve a reasonable fee that duly recognizes their professional excellence and performance and provides an appropriate incentive for lawyers to take on future meritorious cases on behalf of the client class. *f.n.* 10. At the same time, they do not deserve a windfall at the expense of the class and I do not want the size of the award to encourage frivolous litigation that benefits primarily lawyers.”

*f.n.* 10. “[T]he Court must also be careful to sustain the incentive for attorneys to continue to represent such clients on an ‘inescapably contingent’ basis.” Florin v. Nations Bank of Georgia, (Florin 2), 60 F3d 1245, 1247 (7<sup>th</sup> Cir. 1995).

## **B. Multi-factor Analysis**

1. Extraordinary result achieved.

Class counsel have achieved a remarkable recovery for class members. The creation of a settlement fund of Three Million Dollars (\$3,000,000.00) constitutes an extraordinary outcome for the class because each class member (366 in all) stand to recover in excess of \$5,000.00 for their “dignity” injuries. The amount of the Settlement Fund is also extraordinary given the complicated insurance issues, the complexity of the case and the aggressive defense and attorney time necessary to bring the case to conclusion. Defendants had a combination of self-pay, risk pool and residual coverage. Each dollar that the Defendants consumed in paying their attorneys to defend the case or to pay other liability claims against Knox County was one dollar less that the Defendants had available to fund the settlement in this case. The defense left no stone unturned, no issue unexplored and no argument left for later use. They were steadfast in their denial and persistent in their argument. Every issue that they lost, they raised in reconsideration and through their persistence achieved some success in rolling back the scope of custom and practice liability on Summary Judgment. Had the parties gone to trial on individual damages, the economics alone would have been a disaster. Under the circumstances the Three Million Dollar (\$3,000,000.00) fund was an extraordinary outcome for the class.

## 2. Modest Absolute Size of the Fund

Although a typical fee award in a class action settlement is in the neighborhood of 30%, see *In Re: Rite Aid Corp. Securities Litigation*, 146 F.Supp. 2<sup>nd</sup> at 745, this figure masks an unmistakable pattern of fee awards getting smaller (in percentage terms) as settlement amounts get larger. See *In Re: NASDAQ Market-Makers Anti-Trust*

*Litigation*, 187 F.R.D. 465 (486 S.D. New York 1998). See also *Nilsen*, supra at Pages 25 to 26.

The number of class members benefited here is smaller in comparison to the number of people benefited in the York County case. There are several explanations for this disparity. First, the parties estimates were that between 400 and 1,500 class members would actually file claims; These estimates were based upon national statistics for class action participation and strip search class action participation in particular; Second, the claimants in *Nilsen*, (about 1,000 class claimants) are said to have received about \$1,200.00 per person; Third, the newspapers widely published the Department of Health and Human Services efforts to capture many of those claims through their Child Support Enforcement Unit; Fourth, the desire to remain anonymous both with respect to acknowledging an arrest and to avoid exposure of being strip searched; and Fifth, concern that filing a claim and recovering would rile the police and expose the claimant to further harassment. While none of these issues is scientific, many class members have raised them at one or more points in the litigation and during the claims process. Many scoffed at the amount of money that they might receive based on what they had read and heard following the York County settlement. Others were embarrassed that they might be exposed and anxious over the thought that there might be some police retribution.

### 3. Quality of Representation

Class Counsel have over 80 years of combined trial experience in all of the trial courts in the State of Maine and in the Federal Appellate Courts, First Circuit Court of

Appeals and the United States Supreme Court. Class Counsel have tried civil and criminal cases, including complex civil matters ranging through Federal Civil Rights, employment law, product liability, financial and medical malpractice.

4. The complexity and duration of the litigation.

This case has been going on for almost five (5) years. There has been extensive discovery, extensive Motion practice, and appeal to the First Circuit Court of Appeals where the Court affirmed this Court's class action certification. The case was also prepared for trial and scheduled for trial beginning October 3, 2006. Had the case not settled on September 29, 2006, counsel would have appeared before the Court on October 3<sup>rd</sup>, prepared and ready to try the remaining issues of liability and then to move onto individual issues of damages. Despite having narrowly defined the issues for trial, there were significant factual disputes as to custom and practice liability as to class members detained at the jail between September, 2002 and December 31, 2004 and as to whether some claimants detained within that time period, were, in fact, strip searched. Decertification of the class added additional complexity to the individualized damages, the nature and scope of the emotional harm caused by the affront to dignity, including inappropriate exposure to members of the opposite sex, impermissible touching and strip search of minors. Even though the class was certified and the certification affirmed by the First Circuit Court of Appeals in *Tardiff v. Knox County*, 365 F.3d 1 (1<sup>st</sup> Cir. 2004), Knox County repeatedly challenged the certification and avowed that it would challenge

the class certification on future appeals and also challenge the underlying the premises that any individual has a constitutional right of privacy in the jail setting.

#### 5. Risk of Non-Payment

Class Counsel's fees in this case were totally contingent. There were substantial risks to non-payment ranging from the County's inability to pay through its factual and legal challenges to the constitutional claims of the class members. There was also a serious risk that a jury would have no sympathy for a person arrested on any charge, no matter how trivial, and strip searched when brought to the jail. There was also a serious risk that a jury would believe the testimony of corrections officers over the detainees, especially where the detainees frequented the jail. Even assuming liability, there were serious risks that a jury would not award damages to individuals offended by the strip search but who suffered no physical or economic harm. Class Counsel devoted more than 5,000<sup>4</sup> hours of legal effort over the span of the case and expended more than \$169,000.00, exclusive of settlement claims administration costs, to prosecute the case and to obtain the Three Million Dollar (\$3,000,000.00) Settlement Fund.

The individual claims of class members could not have been pursued except through the class action mechanism. The individual claims were too small and the individual parties financial resources too limited to warrant the substantial out-of-pocket expenditures on attorney's fees and costs to obtain legal representation. For a contingent fee representation to make economic sense for an attorney, the risk of receiving no fee

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<sup>4</sup> Plaintiffs' Counsel expended more than 4,000 hours over two years in the York County case which is some evidence that class counsel here were efficient in their work on behalf of class members expending slightly over 5,000 hours in more than a four-year period.

whatsoever if the litigation is unsuccessful, must be offset by the possibility of earning a sufficient fee in the event of a favorable outcome to justify the time, effort and expense necessary to pursue the claim to the end. Even then, especially in the class action setting, the Court must determine that the award requested is reasonable under the circumstances of the case. Loadstar provides a method of cross checking and even though the Loadstar cross check is easy to apply in this case because class counsels' Loadstar fee exceeds the percentage of fund request made by class counsel, application of Loadstar under the circumstances of this case would result in an unfair fee award.

#### **IV. LITIGATION COSTS**

Class counsel respectfully requests reimbursement of their litigation costs and expenses in the amount of \$178,561.41 (\$8,684.33 of this amount represents payment to the Settlement Claims Administrator for claims administration expenses). A table of disbursements is attached to this Motion as Exhibit B to Class Counsels' Affidavit filed in support of this Motion. The large amounts expended for experts were especially critical to evaluating the computerized data produced by the Defendants, identifying potential claimants, verifying the unconstitutional policies, customs and practices of the jail, determining the scope of potential damages and verifying the blanket strip search behavior of the guards through individual contact with the class claimants. While expensive, the database proved invaluable. Class Counsel continue to use the database to verify the validity of claims. Other significant costs were fees paid to other attorneys to brief the class certification issues on the First Circuit Appeal. Those services were



instrumental in gaining the Appellate Court's affirmation of this Court's class certification decision.

**V. CONCLUSION**

For the foregoing reasons, class counsel respectfully request that the Court award them \$900,000.00 as reasonable attorney's fees and \$178,561.41 in litigation expenses in the prosecution of this litigation and further award sufficient sums to pay the cost of settlement claims administration.

Dated: March 30, 2007

/s/ Sumner Lipman  
Sumner Lipman, Esq.  
Attorney for Plaintiffs  
Lipman, Katz & McKee  
227 Water Street, P.O. Box 1051  
Augusta, ME 04332-1051

Dated: March 30, 2007

/s/ Robert Stolt  
Robert Stolt, Esq.  
Attorney for Plaintiffs  
Lipman, Katz & McKee  
227 Water Street, P.O. Box 1051  
Augusta, ME 04332-1051

Dated: March 30, 2007

/s/ Dale Thistle  
Dale Thistle, Esq.  
Attorney for Plaintiffs  
103 Main Street, P.O. Box 160  
Newport, ME 04953

UNITED STATES DISTRICT COURT  
District of Maine

DALE DARE, on behalf of himself and )  
on behalf of others similarly situated, )  
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Plaintiffs )

vs. )  
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KNOX COUNTY, DANIEL DAVEY, )  
In his individual capacity and in his official )  
Capacity as Knox County Sheriff, )  
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Defendants )

Docket No. 02-251-P-C

**AFFIDAVIT OF LIPMAN, KATZ & MCKEE, P.A. AND DALE F. THISTLE,  
ESQ. IN SUPPORT OF CLASS COUNSELS' MOTION FOR ATTORNEY'S  
FEES, COST OF LITIGATION AND EXPENSES OF SETTLEMENT  
ADMINISTRATION**

I, Robert J. Stolt, first being duly sworn, do hereby depose and say:

1. I have personal knowledge of the facts set forth in this Affidavit. I am a member of the law firm of Lipman, Katz & McKee, P.A. and co-class counsel with Sumner H. Lipman, Esq. of my firm and Dale F. Thistle, Esq., Law Office Dale F. Thistle, in the above-captioned class action.

2. I make this Affidavit in support of Class Counsel's Motion for Award of Attorney's Fees, Cost of Litigation and Expenses of Settlement of Administration. The time expended in preparing the Motion and this Affidavit is not included.

3. Class Counsels' compensation for the services rendered is fully contingent. Any fees and reimbursement expenses will be limited to such amounts as may be awarded by the Court. The original class representative agreed to a fee not to exceed 40% of the gross recovery.

4. During the period from the inception of the case on September 4, 2002 through February 26, 2007, class counsel performed 5,237.2 hours of work in connection with the prosecution of this class action. Based upon hourly rates charged in similar matters, the Loadstar value of the time is \$936,236.00. Attached hereto as Exhibit A is a chart which indicates the attorneys and paralegals who worked on this case, their total hours by category, their hourly rates and their respective Loadstar values.

5. A detail itemization of the services rendered by Class Counsel, during the period for which fees are sought is available for the Court's review upon request.

6. During the period from the inception of the case through March 30, 2007 Class Counsel incurred expenses in the sum of \$169,885.08 in connection with this litigation and \$8,684.33 in connection with Claims Administration of the Settlement for a total to date of \$178,569.41. These expenses were reasonable and necessarily incurred in connection with this litigation and settlement claims administration and are set forth in Exhibit B. The expenses incurred are reflected on the books and records of Class Counsel. These books and records are prepared from checks, expense vouchers and invoices which are regularly kept and maintained by both firms and accurately reflect the expenses incurred.

7. The role of Class Counsel in this litigation has been as follows: We served as counsel for the class, and in that capacity participated in all aspects of the litigation and the settlement process. Our duties as class counsel included the following:

1. Investigated facts, research legal issues and prepared pleadings, discovery requests, responses and pre-trial motions and responses.

2. Worked on Motion for Class Certification, defended the Certification of the Class on appeal, filed for and obtained partial summary judgment on issues of the liability; prepared the case for trial, prepared and responded to appropriate Motions in Limine, Witness List, Exhibit List, Voir Dire, Jury Instructions and other documents filed with the Court.

3. Planned and organized the computerized discovery process and worked to resolve discovery disputes.

4. Coordinated and executed document review.

5. Prepared for and participated in the mediation conducted by former Maine Supreme Judicial Court Chief Justice Daniel Wathen, Esq.

6. Prepared for and participated in the Judicial Settlement Conference conducted by Chief Judge George Z. Singal.

7. Prepared for and participated in hearings and conferences with the Court.

8. Prepared and filed Motions for Preliminary Approval of the Settlement.

9. Prepared and filed Notice documents, claims forms and, opt out forms and other documents necessary to inform and notify potential class members of the settlement, their options in participating in or opting out of the settlement and notification

of class members of the date of the Fairness hearing by the Court for April 23, 2007 at 10:00 a.m.

10. Responded to inquires from class members and the public regarding the settlement.

11. As Counsel for the class, we also performed other tasks too numerous and varied to set forth here. This work entailed extensive communication with the Court, among co-counsel, appellate counsel and attorney's representing the Defendants.

12. Class Counsel in conjunction with filing their Motion for Attorney's Fees, Cost of Litigation and Expenses of Settlement Administration and Plaintiffs' Motion for Final Settlement Approval have served 366 approved class members with Notice of the Fairness Hearing scheduled for April 23, 2007 together with individual copies of Plaintiffs' Motion for Final Settlement Approval and Class Counsel's Motion for Attorney's Fees, Cost of Litigation and Expenses of Settlement Administration, attached hereto as Exhibit C.

13. Attached hereto as Exhibit D is information taken from the Lipman, Katz & McKee, P.A. website and Martindale Hubble regarding co-class counsel Sumner H. Lipman and Robert J. Stolt; information regarding co-counsel Dale F. Thistle and that portion of the Lipman, Katz & McKee, P.A. website relating to the Knox County Class Action.

Dated: March 30, 2007

s/Robert J. Stolt  
Robert J. Stolt

State of Maine  
Kennebec, ss.

Dated: March 30, 2007

Personally appeared before me the above-named Robert J. Stolt and stated that the facts set forth in the Affidavit are based upon his own personal knowledge swore to the truth of the foregoing statements.

Dated: March 30, 2007

s/Jan N. Bellfleur  
Name: Jan N. Bellfleur  
Title: Notary Public  
My Comm. Exp. 8/29/13

UNITED STATES DISTRICT COURT  
District of Maine

DALE DARE, on behalf of himself and )  
on behalf of others similarly situated, )  
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Plaintiffs )

vs. )  
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KNOX COUNTY, DANIEL DAVEY, )  
In his individual capacity and in his official )  
Capacity as Knox County Sheriff, )  
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Defendants )

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**AFFIDAVIT OF LIPMAN, KATZ & MCKEE, P.A. AND DALE F. THISTLE,  
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ADMINISTRATION**

I, Robert J. Stolt, first being duly sworn, do hereby depose and say:

1. I have personal knowledge of the facts set forth in this Affidavit. I am a member of the law firm of Lipman, Katz & McKee, P.A. and co-class counsel with Sumner H. Lipman, Esq. of my firm and Dale F. Thistle, Esq., Law Office Dale F. Thistle, in the above-captioned class action.

2. I make this Affidavit in support of Class Counsel's Motion for Award of Attorney's Fees, Cost of Litigation and Expenses of Settlement of Administration. The time expended in preparing the Motion and this Affidavit is not included.

3. Class Counsels' compensation for the services rendered is fully contingent. Any fees and reimbursement expenses will be limited to such amounts as may be awarded by the Court. The original class representative agreed to a fee not to exceed 40% of the gross recovery.

4. During the period from the inception of the case on September 4, 2002 through February 26, 2007, class counsel performed 5,237.2 hours of work in connection with the prosecution of this class action. Based upon hourly rates charged in similar matters, the Loadstar value of the time is \$936,236.00. Attached hereto as Exhibit A is a chart which indicates the attorneys and paralegals who worked on this case, their total hours by category, their hourly rates and their respective Loadstar values.

5. A detail itemization of the services rendered by Class Counsel, during the period for which fees are sought is available for the Court's review upon request.

6. During the period from the inception of the case through March 30, 2007 Class Counsel incurred expenses in the sum of \$169,885.08 in connection with this litigation and \$8,684.33 in connection with Claims Administration of the Settlement for a total to date of \$178,569.41. These expenses were reasonable and necessarily incurred in connection with this litigation and settlement claims administration and are set forth in Exhibit B. The expenses incurred are reflected on the books and records of Class Counsel. These books and records are prepared from checks, expense vouchers and invoices which are regularly kept and maintained by both firms and accurately reflect the expenses incurred.



7. The role of Class Counsel in this litigation has been as follows: We served as counsel for the class, and in that capacity participated in all aspects of the litigation and the settlement process. Our duties as class counsel included the following:

1. Investigated facts, research legal issues and prepared pleadings, discovery requests, responses and pre-trial motions and responses.

2. Worked on Motion for Class Certification, defended the Certification of the Class on appeal, filed for and obtained partial summary judgment on issues of the liability; prepared the case for trial, prepared and responded to appropriate Motions in Limine, Witness List, Exhibit List, Voir Dire, Jury Instructions and other documents filed with the Court.

3. Planned and organized the computerized discovery process and worked to resolve discovery disputes.

4. Coordinated and executed document review.

5. Prepared for and participated in the mediation conducted by former Maine Supreme Judicial Court Chief Justice Daniel Wathen, Esq.

6. Prepared for and participated in the Judicial Settlement Conference conducted by Chief Judge George Z. Singal.

7. Prepared for and participated in hearings and conferences with the Court.

8. Prepared and filed Motions for Preliminary Approval of the Settlement.

9. Prepared and filed Notice documents, claims forms and, opt out forms and other documents necessary to inform and notify potential class members of the settlement, their options in participating in or opting out of the settlement and notification

of class members of the date of the Fairness hearing by the Court for April 23, 2007 at 10:00 a.m.

10. Responded to inquires from class members and the public regarding the settlement.

11. As Counsel for the class, we also performed other tasks too numerous and varied to set forth here. This work entailed extensive communication with the Court, among co-counsel, appellate counsel and attorney's representing the Defendants.

12. Class Counsel in conjunction with filing their Motion for Attorney's Fees, Cost of Litigation and Expenses of Settlement Administration and Plaintiffs' Motion for Final Settlement Approval have served 366 approved class members with Notice of the Fairness Hearing scheduled for April 23, 2007 together with individual copies of Plaintiffs' Motion for Final Settlement Approval and Class Counsel's Motion for Attorney's Fees, Cost of Litigation and Expenses of Settlement Administration, attached hereto as Exhibit C.

13. Attached hereto as Exhibit D is information taken from the Lipman, Katz & McKee, P.A. website and Martindale Hubble regarding co-class counsel Sumner H. Lipman and Robert J. Stolt; information regarding co-counsel Dale F. Thistle and that portion of the Lipman, Katz & McKee, P.A. website relating to the Knox County Class Action.

Dated: March 30, 2007

s/Robert J. Stolt  
Robert J. Stolt

State of Maine  
Kennebec, ss.

Dated: March 30, 2007

Personally appeared before me the above-named Robert J. Stolt and stated that the facts set forth in the Affidavit are based upon his own personal knowledge swore to the truth of the foregoing statements.

Dated: March 30, 2007

s/Jan N. Bellfleur  
Name: Jan N. Bellfleur  
Title: Notary Public  
My Comm. Exp. 8/29/13

Dale Dare vs. Knox County, et al  
 Lipman, Katz & McKee, P.A.  
 Law Office of Dale Thistle

Attorney Time Report From: Inception of Case through March 30, 2007

- |  |                               |
|--|-------------------------------|
| (1) Investigation and Discovery            | (7) Review/Preparation        |
| (2) Pleadings, Briefs and Pretrial Motions | (8) Legal Research            |
| (3) Court Appearances                      | (9) Telephone Calls           |
| (4) Settlement                             | (10) Correspondence and Memos |
| (5) Litigation Strategy and Analysis       | (11) Interviews               |
| (6) Conference                             |                               |

	1	2	3	4	5	6	7	8	9	10	11	Hours	Rate	Cumulative Loadstar
Dale Thistle	19.1	191.9	19.8		24.5	273.90	295	121.6	78.6	59.8	30	1114.2	\$225.00	\$250,695.00
Sumner Lipman	3.2	27.9	45	13	5.2	101.5	56.4	2.5	72	22.2	7.5	356.4	\$300.00	\$106,920.00
David Lipman						5.75	0.2	0.2	1.55	0.1		7.8	\$185.00	\$ 1,443.00
Robert J. Stolt	121.6	388.6	65.45	76.1	61.4	314.95	160.15	72.15	193	96.8	107	1657.2	\$250.00	\$414,300.00
Tracie L. Adamson	.6	55	3.5		5.5	20.8	17.55	19	4.4	1.15	11.5	139	\$125.00	\$ 17,375.00
Keith Varner	32	4.7			8	15.5	28.65	4.3	8	2.95		104.1	\$150.00	\$ 15,615.00
James Billings		35.3			7.8	4.7	0.3	19.5	0.5		66.3	134.4	\$150.00	\$ 20,160.00



Dale Dare vs. Knox County, et al  
 Lipman, Katz & McKee, P.A.  
 Law Office of Dale Thistle

Attorney Time Report From: Inception of Case through March 30, 2007

- |  |   |
|--|---|
| (1) Investigation and Discovery<br>(2) Pleadings, Briefs and Pretrial Motions<br>(3) Court Appearances<br>(4) Settlement<br>(5) Litigation Strategy and Analysis<br>(6) Conference | (7) Review/Preparation<br>(8) Legal Research<br>(9) Telephone Calls<br>(10) Correspondence and Memos<br>(11) Interviews |
|--|---|

	1	2	3	4	5	6	7	8	9	10	11	Hours	Rate	Cumulative Loadstar
Benjamin Smith	13.1	15.1			6.3	8.8	2.1	9.7		2	37.7	94.8	\$ 125.00	\$ 11,850.00
Michelle Ward	30	1.2					41.7	99.5	0.6	.5		173.5	\$ 65.00	\$ 11,277.50
Joann Dorr								78				78	\$ 50.00	\$ 3,900.00
Kathryn Adams				0.5						4.6		5.1	\$ 60.00	\$ 306.00
Georgia Spencer	13.3	0.4				7.7	3.95	2.35	0.25	0.3	16.6	44.85	\$ 60.00	\$ 2,691.00
Spencer Tracy	326.2	55.95		1	15.2	238.6	183.6	25.65	109.5	33.70	70.6	1059.9	\$ 60.00	\$ 63,594.00
Tracy Leigh	207.2	8				10	10.7		4.5	2.7		243.1	\$ 60.00	\$ 14,586.00

Dale Dare vs. Knox County, et al  
 Lipman, Katz & McKee, P.A.  
 Law Office of Dale Thistle

Attorney Time Report From: Inception of Case through March 30, 2007

- |  |   |
|--|---|
| (1) Investigation and Discovery<br>(2) Pleadings, Briefs and Pretrial Motions<br>(3) Court Appearances<br>(4) Settlement<br>(5) Litigation Strategy and Analysis<br>(6) Conference | (7) Review/Preparation<br>(8) Legal Research<br>(9) Telephone Calls<br>(10) Correspondence and Memos<br>(11) Interviews |
|--|---|

	1	2	3	4	5	6	7	8	9	10	11	Hours	Rate	Cumulative Loadstar
Dorothy Bonsant						0.1						0.1	\$ 60.00	\$ 6.00
Nicole Viles	15.5	5.5				2	1.25					24.25	\$ 60.00	\$ 1,455.00
Jeanette Smith								0.5				0.5	\$ 125.00	\$ 62.50
<b>TOTAL FEES</b>												5237.2		\$ 936,236.00

Dale Dare vs. Knox County  
Lipman, Katz & McKee, P.A.  
Law Office of Dale Thistle



Expense Report: As of March 30, 2007

Description	Cumulative Total
Documents copied	\$8,190.98
Court Report	\$730.00
District Court – filing fee	\$150.00
Deputy Sheriff	\$172.06
Miscellaneous	\$2,016.23
Postage	\$1,225.82
Reports – Medical	\$70.60
Reports – Secretary of State	\$1,201.00
Superior Court – Records	\$382.00
Travel – Airfare, Meals, Lodging, Mileage	\$12,856.32
Witness Fees – Expert	\$86,074.35
Witness Fees – Regular	\$1,515.66
Photos	\$184.29
Telephone Charges	\$1,316.25
Court Reporter	\$6,577.78
Equitrac Copies	\$7,685.15
Investigator/Investigations	\$1,082.75
Westlaw	\$6,327.21
Exhibits	\$687.25
Parking – motor vehicle	\$87.25
Supplies	\$2,030.92
Publications	\$5,710.07
Other Attorneys	\$17,084.48
Arbitrators/Mediators	\$2,405.50
Outside Services	\$3,607.50
Faxing	\$513.66
Sub-Total	\$169,885.08
Claims Administration	\$8,684.33
Total	\$178,569.41

~~3649~~  
3984

OK by  
RJS  
DHL  
RML

Tardiff

OK CMP

1-12-07

**Analytics Incorporated**  
18750 Lake Drive East  
Chanhassen, MN 55317

Invoice submitted to:  
Lipman, Katz, McKee  
Attn: Robert Stolt  
P.O. Box 1051  
227 Water Street  
Augusta ME 04330

7/7/01

January 05, 2007

In Reference To: Dare v. Knox County - (895.00)

Invoice #4184

Additional Charges :

	<u>Amount</u>
1/5/2007 Publish Notices	6,367.70
Prepaid postage for Notice mailing - 7,473 @ \$0.31/ea.	2,316.63
<b>Total costs</b>	<u>\$8,684.33</u>
Balance due	<u>\$8,684.33</u>

1/12/07  
54067



**Analytics Incorporated**

18750 Lake Drive East  
Chanhassen, MN 55317

---

*Invoice submitted to:*  
Lipman, Katz, MeKee  
Attn: Robert Stolt  
P.O. Box 1051  
227 Water Street  
Augusta ME 04330

January 05, 2007

*In Reference To:* Dare v. Knox County - (895.00)

*Invoice #*4184

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Balance due	<u>\$8,684.33</u>

Schedule A

Projected Settlement Administration Fees and Expenses for Knox County Litigation

Activity	Estimated Volume (Hours or Units)	Rate	Estimated Total
----------	--------------------------------------	------	-----------------

**Mailing of Class Notice and Claim Form**

Project Management: Initial Project Design and Implementation Project Planning I/S: Receive, Load, and Process Database of Class Members - Initial Application Development.	16	\$125	\$2,000
Print and Mail Class Notice and Claim Form Print, Personalize, Insert and Mail Class Notice, Claim Form and Opt-Out Form First Class Postage (to be billed at actual cost) <i>Note: Includes standardizing addresses and updating whole mailing list with the National Change of Address database.</i>	7,473	\$1.15	\$8,575
	7,473	\$0.31	\$2,317

Media Campaign-Portland Press Herald, Rockland Courier Gazette, & Bangor Daily News	1		\$6,368
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Process Requests for Exclusions	20	\$40	\$800
Process Mail Returned as Undeliverable by the U. S. Post Office	747	\$0.25	\$187
Process Address Corrections Provided by the U. S. Post Office (Includes Postage)	224	\$1.39	\$312

**Total Projected Fees - Class Notification \$22,398**

**Toll Free and Internet Class Member Support**

<b>Toll Free Phone Support</b>			
Initial Configuration of Call Center	8	\$115	\$920

IVR (Automated System) Call Center Charges (Per minute, includes toll free charges but not payphone surcharges, \$100 per month minimum fee).

Calls (10%)	747		
Average Call Length/Minutes	3.0		
Total Minutes	2,242	\$0.25	\$560
Percent Transferring to Live operator	30%		

<b>Live Operator Support</b>			
Number of Calls	224		
Average Call Length/ minutes	3		
Total Minutes	673	\$1.00	\$673



**Web Site Support**

Configuration of Web Site (Assumes Use of Analytics' Template)  
 Dedicated Web Site Hosting ( Assuming 6 months @ \$100 per month)

**Total Projected Fees - Telephone and Web Site Support**

**Claims Processing**

Project Management: Oversight of Claims Processing and Quality Control  
 I/S: Ongoing Support, Programming, and Reporting  
 Process and Receive Claim Forms. This includes:

Receiving and logging in submitted claim forms, reviewing claims to verify whether they meet criteria for inclusion within the class; Data Entry of claim data; and, determination of claim completeness.

**Total Projected Fees - Claims Administration**

**Distribution Services**

Project Management - Distribution of Settlement Proceeds  
 I/S: Ongoing Support, Check Programming and Calculation of Final Distribution Amounts

Print and Mail Settlement Fund Distribution Checks  
 First Class Postage (Will Be Billed at Actual Amount Incurred)  
 Post Distribution Activities

**Total Projected Fees - Distribution Services**

**Post Distribution Services**

Document Retention (Two Years - \$1 per box/month)

**Total Post Distribution Services**

**Total Projected Fees and Expenses, All Phases**

Note: Miscellaneous expenses such as financial institution fees, FedEx, travel, copy, and fax charges will be itemized and incorporated into our regular bills.

	8	\$115	\$920
	6	\$100	\$600
<b>Total Projected Fees - Telephone and Web Site Support</b>			<b>\$3,673</b>
	16	\$125	\$2,000
	16	\$115	\$1,840
	747	\$1.75	\$1,308
<b>Total Projected Fees - Claims Administration</b>			<b>\$5,148</b>
	12	\$125	\$1,500
	12	\$115	\$1,380
	747	\$0.50	\$374
	747	\$0.39	\$291
	20	\$40	\$800
<b>Total Projected Fees - Distribution Services</b>			<b>\$4,345</b>
	5	\$24	\$120
<b>Total Post Distribution Services</b>			<b>\$120</b>
<b>Total Projected Fees and Expenses, All Phases</b>			<b>\$35,684</b>



Beckley

**Analytics Incorporated**  
18750 Lake Drive East  
Chanhassen, MN 55317

Invoice submitted to:  
Lipman, Katz, MeKee  
Attn: Robert Stolt  
P.O. Box 1051  
227 Water Street  
Augusta ME 04330

March 23, 2007

In Reference To: Dare v. Knox County - (895.00)

Invoice #4319

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
10/4/2006 Project Management Project Initiation, develop mailing plan, and format documents.	2.00 125.00/hr	250.00
10/18/2006 Project Management Project Initiation, develop mailing plan, and format documents,.	0.50 125.00/hr	62.50
12/12/2006 Project Management Project Initiation, develop mailing plan, and format documents.	0.75 125.00/hr	93.75
12/21/2006 Project Management Project Initiation, develop mailing plan, and format documents.	1.50 125.00/hr	187.50
12/26/2006 Programming/Systems Analyst Formatted claim form, opt out form, and notice.	3.48 115.00/hr	399.85
Project Management Project Initiation, develop mailing plan and review formatted documents.	1.00 125.00/hr	125.00
Project Management Review case documents.	1.50 125.00/hr	187.50
12/27/2006 Web Development Format web page copy.	2.50 115.00/hr	287.50
Programming/Systems Analyst Formatted claim form, opt out form, and notice.	4.49 115.00/hr	516.64
12/28/2006 Web Development Format web page copy.	0.50 115.00/hr	57.50
IVR Setup Format IVR script.	1.00 115.00/hr	115.00

	<u>Hrs/Rate</u>	<u>Amount</u>
12/29/2006 IVR Setup Format IVR script.	1.50 115.00/hr	172.50
Programming/Systems Analyst Made requested revisions to document.	0.23 115.00/hr	25.91
Project Management Review case materials.	1.00 125.00/hr	125.00
1/2/2007 Programming/Systems Analyst Format claim forms.	0.41 115.00/hr	46.93
IVR Setup Initial Configuration of Interactive Voice Response System	0.75 115.00/hr	86.25
Project Management Project Initiation, finalize mailing plan, review and initiate claimant list development.	1.50 125.00/hr	187.50
Web Development Configuration of Web Site	3.03 115.00/hr	348.99
Programming/Systems Analyst Source data import processing and parsing. Adapted source data to comply with internal data formats and standards.	1.71 115.00/hr	196.17
1/3/2007 Programming/Systems Analyst Source data import processing and parsing. Adapted source data to comply with internal data formats and standards.	1.41 115.00/hr	162.31
Project Management Project Initiation, finalize Notice and Claim Form, finalize web and phone scripts.	1.50 125.00/hr	187.50
Web Development Configuration of Web Site	2.16 115.00/hr	247.86
Web Development Review of web site.	1.00 115.00/hr	115.00
1/4/2007 Project Management Set up request for phone log and login applications.	0.50 125.00/hr	62.50
Web Development Configuration of Web Site	0.20 115.00/hr	23.32
Programming/Systems Analyst Source data import processing and parsing. Adapted source data to comply with internal data formats and standards.	5.64 115.00/hr	648.79

	<u>Hrs/Rate</u>	<u>Amount</u>
1/4/2007 Project Management Project Initiation, update claimant list, finalize Notice and Claim Form.	3.50 125.00/hr	437.50
1/5/2007 IVR Setup Initial Configuration of Interactive Voice Response System	1.75 115.00/hr	201.25
Programming/Systems Analyst Claims administration interface development and testing.	2.00 115.00/hr	230.00
IVR Setup Initial Configuration of Interactive Voice Response System	0.84 115.00/hr	96.50
Project Management Project Initiation, finalize mailing plan and Notice.	2.50 125.00/hr	312.50
1/8/2007 Programming/Systems Analyst Source data import processing and parsing. Adapted source data to comply with internal data formats and standards.	3.03 115.00/hr	348.80
Project Management Project Initiation, proof and approve Notice.	1.00 125.00/hr	125.00
Programming/Systems Analyst Claims administration interface development and testing.	3.00 115.00/hr	345.00
1/10/2007 Project Management Prepare Claim Form and Opt Out Form for processing.	0.50 125.00/hr	62.50
1/11/2007 IVR Setup Initial Configuration of Interactive Voice Response System	1.50 115.00/hr	172.50
1/12/2007 Project Management Follow up on mailing and publication notices.	1.00 125.00/hr	125.00
IVR Setup Initial Configuration of Interactive Voice Response System	2.00 115.00/hr	230.00
Programming/Systems Analyst Add Opt Out Application	1.00 115.00/hr	115.00
1/15/2007 Project Management Follow up on publication notice.	0.25 125.00/hr	31.25
Project Management Review new processing applications with IT.	0.50 125.00/hr	62.50
1/16/2007 Project Management Follow up on mailing and project plan.	0.50 125.00/hr	62.50
1/17/2007 Project Management Follow up on publication notices.	0.25 125.00/hr	31.25

	<u>Hrs/Rate</u>	<u>Amount</u>
1/22/2007 Project Management Follow up on publication notice.	0.50 125.00/hr	62.50
1/23/2007 Project Management Follow up on web changes.	0.25 125.00/hr	31.25
Project Management Per attorney's request, check status of class member's claim form.	0.17 125.00/hr	20.83
Project Management Correspondence with attorney regarding non-class members and opt out forms.	0.50 125.00/hr	62.50
1/24/2007 Programming/Systems Analyst Test Login application	0.09 115.00/hr	10.22
1/25/2007 Web Development Implement Web Site changes	0.05 115.00/hr	5.88
Project Management Per attorney's request, add paragraph to web page advising claimants not to send both their claim form and opt out form.	0.50 125.00/hr	62.50
1/29/2007 Project Management Update client regarding publication notice.	0.25 125.00/hr	31.25
1/30/2007 Programming/Systems Analyst Update Security Settings	0.19 115.00/hr	22.30
2/5/2007 Claims Processing - Project Billed on Per Piece Basis Research reference numbers missing from claim forms.	0.75 40.00/hr	30.00
2/6/2007 Claims Processing Research reference numbers missing from claim forms submitted..	0.58 40.00/hr	23.33
2/7/2007 Project Management Correspond with attorneys and send copies of non-class member claims.	0.33 125.00/hr	41.67
Claims Processing Research reference numbers for claim forms.	1.00 40.00/hr	40.00
2/8/2007 Claims Processing Research reference numbers for claim forms.	0.50 40.00/hr	20.00
2/9/2007 Claims Processing Research reference numbers for claim forms.	1.00 40.00/hr	40.00
2/12/2007 Project Management Management and review of claim information.	4.18 125.00/hr	522.67

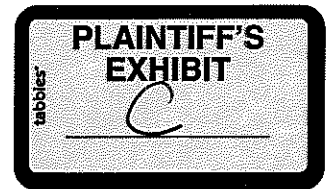
	<u>Hrs/Rate</u>	<u>Amount</u>
2/13/2007 Project Management Management and review of claimant information.	2.90 125.00/hr	363.06
2/14/2007 Project Management Management and review of claim information	2.56 125.00/hr	320.52
Claims Processing Research reference numbers for claim forms.	0.75 40.00/hr	30.00
2/16/2007 Project Management Management and review of claim information	3.16 125.00/hr	394.55
Project Management Per attorney's request, send list of names of claimants who Opted Out.	0.54 125.00/hr	67.74
2/21/2007 Claims Processing Research reference number for claim forms.	1.50 40.00/hr	60.18
2/23/2007 Project Management Correspondence with attorney - email deficient claims for approval.	0.50 125.00/hr	62.50
Claims Processing Research reference numbers for claim forms.	0.75 40.00/hr	30.11
2/26/2007 Programming/Systems Analyst Check formatting for MICR testing.	0.78 115.00/hr	89.89
Project Management Set up MICR testing.	0.50 125.00/hr	62.50
Exclusions Prepare Opt Out confirmation letters for mailing.	1.00 40.00/hr	40.00
Claims Processing Research reference numbers for claim forms.	1.00 40.00/hr	40.00
2/27/2007 Programming/Systems Analyst Create distribution report. Generate separate sheets for timely claims and late claims.	5.00 115.00/hr	575.00
2/28/2007 Claims Processing Research reference number for claim forms.	1.68 40.00/hr	67.10
<b>For professional services rendered</b>	<b>100.34</b>	<b>\$11,138.37</b>



## Additional Charges :

	<u>Amount</u>
1/10/2007 Additional postage required for Initial Notice mailing	13.32
1/15/2007 Print, Personalize, Insert and Mail Class Notice, Claim Form and Opt-Out Form - 7,370 @ \$1.15/ea.	8,475.50
1/22/2007 Postage from Analytics postage meter	36.27
1/29/2007 Postage from Analytics postage meter	29.19
Postage from Analytics postage meter	5.46
1/31/2007 Live Operator Support for January 2007 - 65.47 @ \$1.00 per min.	65.47
IVR minutes for January 2007 - 310 minutes used \$100 per month minimum fee	100.00
Dedicated Web Site Hosting for January 2007 - \$100/mo.	100.00
2/5/2007 Postage from Analytics postage meter	1.17
Process Address Corrections provided by USPS - 19 @ \$1.39/ea.	26.41
2/12/2007 Postage from Analytics postage meter	2.34
2/19/2007 Postage from Analytics postage meter	1.17
2/27/2007 FedEx to M&I Support Services for MICR testing.	11.05
2/28/2007 Print, Personalize, Insert and Mail Class Notice, Claim Form and Opt-Out Form - 115 @ \$1.15/ea.	132.25
Process mail returned as undeliverable by the USPS through February 2007 - 3,196 @ \$0.25/ea.	799.00
Dedicated Web Site Hosting for February 2007 - \$100/mo.	100.00
IVR minutes for February 2007 - 246.03 minutes used \$100 per month minimum fee	100.00
Process and receive Claim Forms through February 2007 - 443 @ \$1.75/ea.	775.25
Live Operator Support for February 2007 - 21.15 @ \$1.00 per min.	21.15
<b>Total costs</b>	<b><u>\$10,795.00</u></b>
<b>Total amount of this bill</b>	<b><u>\$21,933.37</u></b>

	<u>Amount</u>
Previous balance	\$8,684.33
1/22/2007 Payment - Thank You	(\$8,684.33)
Total payments and adjustments	<u>(\$8,684.33)</u>
Balance due	<u>\$21,933.37</u>



SUMNER H. LIPMAN      WALTER F. MCKEE  
DAVID M. LIPMAN      KAREN E. (LIPMAN) BOSTON  
ROGER J. KATZ      BENJAMIN J. SMITH  
ROBERT J. STOLT      JAMES A. BILLINGS  
KEITH R. VARNER      ABIGAIL M. HOLMAN

227 WATER STREET, P.O. Box 1051  
AUGUSTA, MAINE 04332-1051  
207-622-3711 / 800-660-3713  
FAX: 207-622-7415  
WWW.LIPMANKATZMCKEE.COM

March 29, 2007

First and Last name  
Street  
City, State Zip

Re: Dare vs. Knox County  
Our File No.: RJS-71791

Dear \_\_\_\_\_:

In January of this year you received a Notice from the Dare Claims Administrator informing you of the settlement of this class action and providing you with the forms you needed to file a claim or opt out of the class. You elected to file a claims form and did so timely by sending the form to the Dare Claims Administrator postmarked on or before February 12, 2007.

In the materials that you received from the Dare Claims Administrator was a Notice that gave you an opportunity to write the United States District Court explaining why you believe the settlement is not fair and telling you that a Fairness Hearing will be held on April 23, 2007. I am writing to you to tell you about that Fairness Hearing again and also to provide you with copies of the Motions that I have filed asking the Court to give final settlement approval to the settlement and to ask the Court to approve the payment of attorney's fees, litigation expenses and the cost of claims administration from the settlement fund.

Please read the papers that have been filed carefully.

If you object to the settlement or believe that it is not fair, please write to the Court to state your objection. If you write to the Court and state an objection, please understand that you must appear in Court at the Fairness Hearing on April 23, 2007 at 10:00 a.m. for your objection to be heard.

If you have any questions regarding the Fairness Hearing or the enclosed Motions that I have filed, please feel free to contact me.

Very truly yours,

Robert J. Stolt  
*rstolt@lipmankatzmckee.com*

RJS:jnb  
Enclosures

UNITED STATES DISTRICT COURT  
District of Maine

DALE DARE, on behalf of himself and	)	
on behalf of others similarly situated,	)	
	)	
Plaintiffs	)	
	)	
vs.	)	Docket No. 02-251-P-C
	)	
KNOX COUNTY, DANIEL DAVEY,	)	
In his individual capacity and in his official	)	
Capacity as Knox County Sheriff,	)	
	)	
Defendants	)	

**PLAINTIFFS' MOTION FOR FINAL SETTLEMENT APPROVAL**

**I. SUMMARY**

The parties agreed to settle this case on Friday, September 29, 2006 at the Judicial Settlement conference with Chief Judge Singal (Docket item No. 328), the general terms of which are set forth in a written settlement agreement signed by all parties on September 29, 2006. Under the summary agreements, the parties were required to submit, using the Second Amended Settlement Agreement approved in Nilsen v. York County, (02 -CV-212-P-H.) their final written agreement, along with a Motion to Recertify the Class.(Docket item No. 368, supra).

On December 18, 2006 the Court entered It's Order approving Plaintiff's Motion For Approval Of Third Final Settlement Agreement, thus giving preliminary approval to the agreement between the parties and authorizing the issuance of a class wide notice "in a reasonable manner" as required by Rule 23 (e) (1) (B). The court also set a hearing

under Rule 23 (e) (1) (c) to determine whether the settlement is fair, reasonable and adequate; whether any request for attorneys fees and non-taxable cost should be allowed and, if so, the extent of such allowance; and resolution of any other issues then properly before the Court. The hearing under Rule 23 (e) (1) (c) is scheduled to take place on April 23, 2007 at 10:00 a.m.(Docket item No. 378). Additionally, the Court issued an injunctive Order designed to prevent unconstitutional strip searches in the future (Docket item No. 379).

## **II. Procedural History**

Plaintiffs filed this action on or about November 19, 2002. On November 5, 2003, Judge Gene Carter of the United States District Court for the District of Maine granted plaintiff's motion for class certification and certified this case as a class action under Fed.R. Civ. P 23 (b) (3). The class was defined as follows:

All people who after November 19, 1996, were subjected to a strip search and/or visual body cavity search without evaluation for individualized reasonable suspicion while being held at the Knox County Jail:

(1) After having been arrested on charges that did not involve a weapon, drugs, or a violent felony; or

(2) While waiting for bail to be set up on charges that did not involve a weapon, drugs, or a violent felony; or

(3) While waiting for an initial court appearance on charges that did not involve a weapon, drugs, or a violent felony; or

(4) After having been arrested on a warrant that did not involve a weapon, drugs, or a violent felony. (See Docket Item No. 21)

The decision to certify the class was affirmed on appeal by the United States Court of Appeals for the First Circuit, *Tardiff vs. Knox County*, 365 F.3d 1 (1st Cir. 2004).

Plaintiffs alleged that all arrestees or pretrial detainees at the Knox County Jail were subjected to a strip search, sometimes to include a visual body cavity search, as part of a booking procedure. The defendants have denied those allegations and have asserted that both their officially promulgated policies and their actual practices and procedures were at all times consistent with constitutional requirements.

This case has been in litigation since November, 2002. Partial Summary Judgment was granted to the Plaintiffs on November 2, 2005. The Court ordered on a small rollback of the Partial Summary Judgment in April of 2006 requiring Plaintiffs to prove an unconstitutional custom and practice for class members strip-searched between September 2002 and December 2004. A trial, originally scheduled to begin April 1, 2006, was postponed until May 1, 2006 and then to October 3, 2006. The parties, like the famed the light brigade, charged into summer with no thought to what September would bring. The parties interviewed, deposed, motioned and strategized fiercely aiming for the killer strike that would put them a leg up and demoralize the other side. On September 5, 2006 court decertified the class with respect to damages, disqualified all witnesses, shredded all exhibits and denied all motions. The parties retreated, seeking shelter in the chambers of Chief Judge Singal. On September 29 Chief Judge Singal brought the battle

to a close through an all day Judicial Settlement Conference.<sup>1</sup> Following instructions of Chief Judge Singal to prepare a final written agreement using the Second Amended Agreement approved in *Nilsen v. York County*, (02-CV-212-P.-H.), the parties began the process while hammering out that final agreement. On December 18, 2006 the Court rewarded the parties' efforts by approving preliminarily the Third Final Settlement Agreement. (Docket Item No.: 378).

### **III. SUMMARY OF SETTLEMENT TERMS**

The Settlement reached by the parties secures a remarkable recovery for class members. Under the settlement, the Defendants have created a settlement fund of \$3 million dollars from which payments to class members, class representatives, class counsel, and the Claims Administrator will be made. This is an extraordinary outcome for the Class because approximately 366 class members will share in a fund which will pay them significantly more than they might have received had they gone individually to trial.

Under the terms of the settlement agreement, each class member who timely submits a completed and signed claim form postmarked no later than February 12, 2007, will, if his claim is approved, receive a payment from the common fund (after deducting attorneys fees, costs, expenses of administration, and bonuses to the class representative and those class members who were deposed by the Defendants) calculated on the basis of one share for every class member with an approved claim. Class members wishing to opt

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<sup>1</sup> The parties had previously attempted to mediate the dispute with the assistance of former Maine Supreme Judicial Court Chief Justice Daniel Wathen. The two days spent with the Chief Justice Wathen brought focus to the parties' perceptions but did not resolve the case.

out of the settlement are required to file a properly executed to opt-out form on or before February 12, 2007.

In the terms of the settlement agreement, a portion of the settlement fund shall be used, subject to Court approval, to pay the cost of administering the settlement as well as a plaintiffs attorneys fees and expenses. Class counsel have separately applied to the Court for an award of attorney's fees in the amount of \$900,000.00 (which represents 30% of the settlement fund of 3 million), for reimbursement of \$178,561.41 in expenses, and for \$35,000<sup>2</sup> to cover the estimated Cost of Administering the Settlement.

The Settlement Agreement also provides for an incentive award in the amount of \$5,000 for the class representative of record as of the date of the Final Approval of the settlement and a \$500 bonus for each of the 20 class members who were deposed by the defendants.

The Settlement Agreement will completely settle and resolve this class action. Unless a class member opted out by the timely submission of a valid opt-out form, the settlement will fully bind all members of the class. As the settlement agreement provides: "in consideration of the settlement amount, all defendants,... will be released from all liability for the class members' claims for unlawful strip searches that were part of this lawsuit, including class members who do not file claims, except for any class members who requested exclusion, opted out, and filed an individual lawsuit within the

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<sup>2</sup> Analytics initial estimate of claims administrative expenses was \$35,000.00 (see Exhibit B, Motion for Attorney's Fees, Cost Of Litigation And Expenses Of Settlement Administration), class counsel had paid Analytics \$8,684.33 and have another invoice in transit in the amount of \$21,933.37, for a total to date of \$30,617.70 in claims administration expenses. Analytics will provide an updated estimate of the expenses expected to be necessary to close out the claims administration phase of this case.



applicable statute of limitations. The parties have expressly agreed that the release of claims arising from the settlement includes all visual inspections, including without limitation visual body cavity inspections, that otherwise fall within the scope of the claims certified as a class action by the Court in this case. The parties further agree that this release of claims applies to any claims that the strip searches were conducted in a manner that was unlawful, including without limitation, claims of physical touching, cross- gender searches, or searches which were observed by persons other than the correctional officer performing the search. The parties further agree that their settlement does not release any other claims, such as wrongful arrest, excessive force, or searches that were not part of the admissions process (such as strip searches after a lockdown).”

Class members have been notified of the settlement pursuant to the Notice Plan approved by the Court in its Order granting preliminary approval of the settlement (Docket item No. 376-2). First, a Notice Package consisting of a Notice of Class Action Settlement and of the Hearing to Approve the Settlement ("Notice of Settlement"), a Settlement Claim Form, a Frequently Asked Questions sheet and an Opt-Out Form, by first-class mail postage prepaid to all potential class members, whose addresses are known to Class Counsel at their last known address within three weeks after the Court Order granting preliminary approval. Second, creation of a website, [www.knoxcountyjailclass.com](http://www.knoxcountyjailclass.com), where Notice of Settlement and the Settlement Claim Form and the Opt-Out Form are available for downloading from the website or on request to the Claims Administrator including through a toll-free number. Third, publication of the Notice of Settlement twice in the Portland Press Herald, Rockland Courier Gazette and

the Bangor Daily News. Fourth, posting the Notice of Settlement in the Knox County Jail. Fifth, the issuance of a press release detailing preliminary approval of the settlement, how to obtain the appropriate Claims and Opt-Out Forms, the dead-line for filing and Notice of the date and time of the Final Fairness Hearing.

#### **IV. The proposed settlement is fair, reasonable and adequate**

A class-action settlement that "...is fair, adequate and reasonable" may be approved by the Court. Fed.R. Civ. P 23 (e)(1)(C), and City Partnership Co. v. Atlantic Acquisition Ltd. Partnership, 100 F.3d 1041, 1043 (1st Cir.1996). The criteria relevant to determination of whether a settlements is fair, reasonable, and adequate are: (1) comparison of the proposed the settlement with the likely results of litigation; (2) reaction of the class to the settlement; (3) stage of the litigation and the amount of discovery completed; (4) quality of counsel; (5) conduct of the negotiations; and(6) prospects of the case, including risk, complexity, expense and duration. In re Compact Disc Minimum Advertised Price Antitrust Litigation, 216 F.R D. 197, 206-07 (D. Me.2003) and Alba Conte & Herbert Newberg, Newberg on Class Actions (4th ed. 2002), section 11.43. In In re Compact Disc, the Court indicated that "a settlement following sufficient discovery and genuine arm's-length negotiation is presumed fair. In re Compact Disc, supra at 207.

##### **A. A Comparison of Settlement Terms with Litigation Prospects.**

The first and six factors-comparison of proposed settlement with likely results of litigation, and prospects of the case, including risk, complexity, expense, duration-

overlap, and may be analyzed together. "In evaluating the substantive fairness of a class-action settlement, the Court cannot and should not, use as a benchmark the highest award that could be made to the plaintiff after full and successful litigation of the claim."

*Duhaimé v. John Hancock Mutual Life Insurance Co.*, 177 F.R.D.54,68 (D. Mass. 1997).

Rather, the question is "whether the plaintiffs' likelihood of success on the merits balances appropriately against the amount and form of the relief offered in settlement."

Id.. ( "quoting *Santana v. Collazo*, 714 F.2d 1172, 1175 (1st Cir. 1983); see also *Ramirez v. DeCoster*, 203 F.R.D.30, 33 (D. Me. 2001) (deferring to "the parties ... assessment of their respective risks ....").

The parties litigated this case completely through discovery. The case was hard fought with no stone left unturned. Comprehensive interrogatories and document request were made, 25 depositions were taken, a physical inspection of the Knox County Jail booking area and process was conducted and extensive information was obtained electronically by on-site inspection of the jails electronic records. Class counsel contacted numerous potential claimants and the parties interviewed more than a hundred absent class members. The Defendants also produced 25 bankers boxes of intake and release records. From the production of the paper and electronic records, the depositions, interviews and contacts with class members, both parties were able to assemble databases permitting them to narrow the field of eligible class members. While the parties' estimations of the number of eligible class members narrowed the field to about 7,000 claimants, the parties estimations of how many of those 7,000 were strip searched varied

by a wide margin. Because of the poor quality of the records, it was not possible to narrow the gap. Plaintiffs' included in their count all eligible class members held at the jail without bail as well as those whose intake records clearly indicated the class member were strip searched. The Jail's estimate included only those individuals which the records identify explicitly as having been strip searched.

The depositions taken by the Plaintiffs of the jail administrator and the State's Chief Jail Inspector established that Jail policy was to strip search everyone held at the jail. While this threshold issue of liability was strongly defended, Plaintiffs' won Summary Judgment on the issue both with respect to Knox County's "policy" and "custom and practice". The Court later rolled back Summary Judgment on the "custom and practice" count, granting summary judgment to the Plaintiffs for the period November 19, 1996 through August 31, 2002 and leaving open for trial "custom and practice" liability for those people detained between September 1, 2002 and December 31, 2004.

The parties made two efforts at settlement, both in 2006. First in April of 2006, the parties spent 2 days trying to hammer out a settlement with former Maine Supreme Judicial Court Chief Justice Daniel Wathen as mediator. The parties were unsuccessful in achieving a settlement at that time, but were able to achieve a sharper focus of the strengths and weaknesses of their respective claims and the complexities facing them in trial of the case.

If the parties did not have sufficient information to make a reasonable assessment of their risk at trial, the Court made those risks crystal clear on September 5, 2006 when it decertified the class for damages, disqualified all witnesses and shredded all exhibits. See *Luevano v. Campbell*, 93 Frd 68, 86 (D.D.C. 1981); *Ressler v. Jacobson*, 822 Fed. Supp 1551, 1554-55 (N.D. FLA 1992) and *In Re: Marine Midland Motor Vehicle Leasing Litigation*, 155 Frd 416, 420 (W.D.N.Y. 1994). Further aided by Chief Judge Singal's telescopic vision and a full day of discussion, the parties were able to settle the case for Three Million Dollars (\$3,000,000.00).

Under the terms of the settlement each class member who timely submits a valid claim should receive from the net settlement fund a cash payment in the neighborhood of \$5,000.00. This approximated share of the settlement is calculated by dividing One Million Nine Hundred Eighty-Five Thousand Dollars (\$1,985,000.00), [\$2,000,000.00 minus \$15,000.00 in incentive and bonus awards by 366 (approximate number of claims expected to be approved)]. Each approved class member will receive an equal share of this fund. Class Counsel proposes that the remaining One Million Dollars (\$1,000,000.00) of the gross settlement fund, plus accrued interest, be used to pay awarded attorneys' fees, litigation expenses and the cost of settlement administration with any excess remaining to be *cy pres'd*.

Plaintiffs ask the Court to order, as part of the requested final approval order, that the payment to each claimant be calculated such that \$2,000,000.00 of the settlement fund (net of attorney's fees and costs, settlement expenses and incentive awards) be

divided by all class members submitting valid claims. The language of the settlement agreement permits the Court to Order that the actual payment to claimants be calculated to consume the entire residual corpus of the net settlement amount. Plaintiffs fully expect this number to final out at \$2,000,000.00 dollars. Should there be some residual amount left in the fund after all expenses are paid, Plaintiffs respectfully request that the Court apply *cy pres* rules to that excess.

The \$3,000,000.00 settlement was achieved notwithstanding Defendants steadfast denial of any liability to the class. Defendants have not denied that the challenged strip search practice occurred but have vigorously asserted that it was neither unlawful nor harmful to the claimants. While the Plaintiffs believe that they were able to prove their claims and defend their verdict and summary judgment on appeal, the Defendants interposed numerous legal and constitutional defenses which they said they would continue to exert vigorously at trial and on appeal. Continuing litigation of these defenses notwithstanding, trial on the remaining issues of liability and then individual trials on issues of damages would have been extraordinarily expensive for both sides exhausting them physically and financially and also exhausting the limited resources of the Court. See *Murillo v. Texas A & M University System*, 921 F.Supp 443, 447 (S.D. Tex. 1996).

The substantial benefits of the proposed settlement compared to the nightmare ahead would the case were tried is, in and of itself, evidence that the settlement is fair reasonable and adequate. It brings closure to the issues and lays to rest all planned

appeals. The Court has issued an Injunctive Order prohibiting future strip searches of the caliber challenged by the Plaintiffs and qualified class members who have filed claims will receive a substantial monetary payment under the settlement. There have been a few opt outs. While one or more of those who chose to opt out and who move forward to litigate their individual claims to conclusion may prevail at trial and may end up with a more substantial recovery than what the settlement agreement provides, that recovery would come at a cost so prohibitive as to dwarf any additional amount recovered by them even though some may be able to use the work of Class Counsel, the Partial Summary Judgment and the Injunctive Order to their advantage.

The Settlement Agreement also provides for an incentive award in the amount of \$5,000.00 to the named class representative. The proposed incentive award is fair and reasonable given the substantial benefit the Plaintiffs have secured for the class. See *In Re: Mego Financial Corp. Securities Litigation*, 213 F3rd 454, 457, 463 (9<sup>th</sup> Cir. 2000). The bonus of \$500.00 to each of the class members who were deposed by the Defendants is also fair and reasonable given the substantial benefit the named Plaintiffs have secured for the class and the singling out that these courageous individuals endured in order to advance the cause of the entire class.

#### **B. Reaction of the Class**

The second factor, reaction of the class to the proposed settlement, also weighs in favor of final approval. Four Hundred Twenty-Three (423) people submitted claims

forms. Eight (8) people opted out. Fifty-Seven (57) claims were denied. Three Hundred Sixty-Six (366) claims were approved. The deadline for filing a claim form or opting out was February 12, 2007. No one asked for an extension of the filing deadlines and no objections to the settlement have been filed.

### **C. Stage of Litigation**

The third factor, the stage of litigation and extent of discovery completed, further supports approval of the proposed settlement. The discovery has been ongoing for four years. It was extended several times. The Plaintiffs deposed the Knox County Jail Administrator and the Chief Jail Inspector of the State of Maine. Defendants deposed 19 named class members and interviewed more than 100 absent class members. Defendants produced thousands of pages of jail records and thousands of lines of electronic data. Experts on both sides reviewed the data extracted electronically and from the paper documents to build and analyze data files. Experts on both sides also were deposed and listed for trial as damage experts. The extensive discovery in this case, extensive settlement discussions and legal challenges to the class certification and the legalities of Plaintiffs theories have given class counsel and counsel for the defense a clear understanding of the scope and strengths of the Plaintiffs claims and the Defendants' defenses and a firm conviction that the settlement constitutes a fair, reasonable and adequate resolution of those claims.

### **D. Quality of Class Counsel**



The fourth factor, quality of Class Counsel, also supports final approval. Class counsel had extensive experience in local and national class action litigation as documented in class counsel's application for award of attorney's fees and award of litigation expenses and claims administration fees.

#### **E. Conduct of Negotiations**

The fifth factor, conduct of negotiations, further buttresses the case for final approval. Hard fought, arms length negotiations extended over a period of about one-year, during which time the parties were far apart on their positions and ultimately needed the assistance of Magistrate Judge Cohen to pick a mediator. Numerous in person and telephonic conferences were conducted between counsel and among counsel to get settlement discussions going and then to consummate those discussions with the assistance of Chief Judge Singal. The parties were scrupulous in using independent mediators who could diffuse the contentious nature of the negotiations and keep the parties focused on the object of the mediation. Although a two day long session with former Maine Supreme Judicial Court Chief Justice Daniel Wathen proved fruitless, a day long session with Chief Judge Singal on the eve of trial brought the parties to terms.

Settlement negotiations were arms length, hard fought and ultimately successful. Because of those struggles, the proposed settlement is fair and reasonable. It is an excellent recovery for the Class and Plaintiffs respectfully submit that final approval should be granted.

**IV. The notice plan is fair, adequate and reasonable.**

Rule 23 requires class members to receive notice of a proposed class action settlement. The notice must be “the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle and Jacqueline*, 417 U.S. 156, 173 (1974) quoting Fed. R.C.P. 23(c)(2)(B). The notice must indicate the nature of the class and its claims, and explain that class members have the option of entertaining an appearance through counsel or opting out of the settlement, and make clear the binding effect of a judgment on class members. *Id.*

The parties, with the persistent assistance of the Court, crafted an efficient and effective plan for notifying class members of the proposed settlement and getting settlement funds into the hands of class members. The notice and claims administration plan (Docket Item No. 382-1, sets out in detail the method by which class members have been notified of their rights. Notice has been sent to each class member at his last known address where the parties had such an address. Notice of the proposed settlement was published pursuant to the Court’s Order, twice in the Portland Press Herald, Rockland Courier Gazette and the Bangor Daily News. Posters were posted in the Knox County Jail throughout the period where claims could be filed and the Claims Administrator established a website: [www.knoxcountyjailclass.com](http://www.knoxcountyjailclass.com) enabling potential class members to obtain the notice information and download claims and opt out forms.

The notice was designed to make clear to class members the existence and nature of the lawsuit, the terms of the proposed settlement and their options with respect to settlement both in filing a claim or opting out. Plaintiffs therefore believe it is fair, adequate and reasonable and should be approved.

### CONCLUSION

For the above reasons, Plaintiffs respectfully request the Court grant final approval of the settlement and the notice plan in this action.

Dated: March 30, 2007

/s/ Sumner Lipman  
Sumner Lipman, Esq.  
Attorney for Plaintiffs  
Lipman, Katz & McKee  
227 Water Street, P.O. Box 1051  
Augusta, ME 04332-1051

Dated: March 30, 2007

/s/ Robert Stolt  
Robert Stolt, Esq.  
Attorney for Plaintiffs  
Lipman, Katz & McKee  
227 Water Street, P.O. Box 1051  
Augusta, ME 04332-1051

Dated: March 30, 2007

/s/ Dale Thistle  
Dale Thistle, Esq.  
Attorney for Plaintiffs  
103 Main Street, P.O. Box 160  
Newport, ME 04953



All people who after November 19, 1996, were subjected to a strip search and/or visual body cavity search without evaluation for individualized reasonable suspicion while being held at the Knox County Jail:

(1) After having been arrested on charges that did not involve a weapon, drugs, or a violent felony; or

(2) While waiting for bail to be set up on charges that did not involve a weapon, drugs, or a violent felony; or

(3) While waiting for an initial court appearance on charges that did not involve a weapon, drugs, or a violent felony; or

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The decision to certify the class was affirmed on appeal by the United States Court of Appeals for the First Circuit, *Tardiff vs. Knox County*, 365 F.3d 1 (1st Cir. 2004).

Plaintiffs alleged that all arrestees or pretrial detainees at the Knox County Jail were subjected to a strip search, sometimes to include a visual body cavity search, as part of a booking procedure. The defendants have denied those allegations and have asserted that both their officially promulgated policies and their actual practices and procedures were at all times consistent with constitutional requirements.

This case has been in litigation since November, 2002. Partial Summary Judgment was granted to the plaintiffs on November 2, 2005. The Court ordered a small rollback of the Partial Summary Judgment in April of 2006 requiring Plaintiffs to prove

an unconstitutional custom and practice for class members strip-searched between September 2002 and December 2004. A trial, originally scheduled to begin April 1, 2006, was postponed until May 1, 2006 and then to October 3, 2006. The parties, like the famed the light brigade, charged into summer with no thought to what September would bring. The parties interviewed, deposed, motioned and strategized fiercely aiming for the killer strike that would put them a leg up and demoralize the other side. On September 5, 2006 court decertified the class with respect to damages, disqualified all witnesses, shredded all exhibits and denied all motions. The parties retreated, seeking shelter in the chambers of Chief Judge Singal. On September 29 Chief Judge Singal brought the battle to a close through an all day Judicial Settlement Conference.<sup>1</sup> Following instructions of Chief Judge Singal to prepare a final written agreement using the Second Amended Agreement approved in *Nilsen v. York County*, (02-CV-212-P.-H.), the parties began the process while hammering out that final agreement. On December 18, 2006 the Court rewarded the parties' efforts by approving preliminarily the Third Final Settlement Agreement. (Docket Item No.: 378).

## **II. SUMMARY OF SETTLEMENT TERMS**

The Settlement reached by the parties secures a remarkable recovery for class members. Under the settlement, the Defendants have created a settlement fund of \$3 million dollars from which payments to class members, class representatives, class counsel, and the Claims Administrator will be made. This is an extraordinary outcome

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<sup>1</sup> The parties had previously attempted to mediate the dispute with the assistance of former Maine Supreme Judicial Court Chief Justice Daniel Wathen. The two days spent with the Chief Justice Wathen brought focus to the parties' perceptions but did not resolve the case.

for the Class because approximately 366 class members will share in a fund which will pay them significantly more than they might have received had they gone individually to trial.

Under the terms of the settlement agreement, each class member who timely submits a completed and signed claim form postmarked no later than February 12, 2007, will, if his claim is approved, receive a payment from the common fund (after deducting attorneys fees, costs, expenses of administration, and bonuses to the class representative and those class members who were deposed by the Defendants) calculated on the basis of one share for every class member with an approved claim. Class members wishing to opt out of the settlement are required to file a properly executed to opt-out form on or before February 12, 2007.

In the terms of the settlement agreement, a portion of the settlement fund shall be used, subject to Court approval, to pay the cost of administering the settlement as well as a plaintiffs attorneys fees and expenses. Class counsel hereby apply to the Court for an award of attorney's fees in the amount of \$900,000.00 (which represents 30% of the settlement fund of 3 million), for reimbursement of \$178,561.41 in expenses, and for \$35,000<sup>2</sup> to cover the estimated Cost of Administering the Settlement.

The settlement agreement also provides for an incentive award in the amount of \$5,000 for the class representative of record as of the date of the Final Approval of the

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<sup>2</sup> Analytics initial estimate of claims administrative expenses was \$35,000.00 (see Exhibit B, Motion for Attorney's Fees , Cost Of Litigation And Expenses Of Settlement Administration), class counsel had paid Analytics \$8,684.33 and have another invoice in transit in the amount of \$21,933.37, for a total to date of \$30,617.70 in claims administration expenses. Analytics will provide an updated estimate of the expenses expected to be necessary to close out the claims administration phase of this case.

settlement and a \$500 bonus for each of the 20 class members who were deposed by the defendants.

The Settlement Agreement will completely settle and resolve this class action. Unless a class member opted out by the timely submission of a valid opt-out form, the settlement will fully bind all members of the class. As the settlement agreement provides: "in consideration of the settlement amount, all defendants,... will be released from all liability for the class members' claims for unlawful strip searches that were part of this lawsuit, including class members who do not file claims, except for any class members who requested exclusion, opted out, and filed an individual lawsuit within the applicable statute of limitations. The parties have expressly agreed that the release of claims arising from the settlement includes all visual inspections, including without limitation visual body cavity inspections, that otherwise fall within the scope of the claims certified as a class action by the Court in this case. The parties further agree that this release of claims applies to any claims that the strip searches were conducted in a manner that was unlawful, including without limitation, claims of physical touching, cross- gender searches, or searches which were observed by persons other than the correctional officer performing the search. The parties further agree that their settlement does not release any other claims, such as wrongful arrest, excessive force, or searches that were not part of the admissions process (such as strip searches after a lockdown)."

Class members have been notified of the settlement pursuant to the Notice Plan approved by the Court in its Order granting preliminary approval of the settlement



(Docket item No. 376-2). First, a Notice Package consisting of a Notice of Class Action Settlement and of the Hearing to Approve the Settlement ("Notice of Settlement"), a Settlement Claim Form, a Frequently Asked Questions sheet and an Opt-Out Form, by first-class mail postage prepaid to all potential class members, whose addresses are known to Class Counsel at their last known address within three weeks after the Court Order granting preliminary approval. Second, creation of a website, [www.knoxcountyjailclass.com](http://www.knoxcountyjailclass.com), where Notice of Settlement and the Settlement Claim Form and the Opt-Out Form are available for downloading from the website or on request to the Claims Administrator including through a toll-free number. Third, publication of the Notice of Settlement twice in the Portland Press Herald, Rockland Courier Gazette and the Bangor Daily News. Fourth, posting the Notice of Settlement in the Knox County Jail. Fifth, the issuance of a press release detailing preliminary approval of the settlement, how to obtain the appropriate Claims and Opt-Out Forms, the dead-line for filing and Notice of the date and time of the Final Fairness Hearing. Sixth, by letter dated March 30, 2007, sent by first class mail, postage prepaid to all 366 approved class members, class counsel again notified all class members of the Fairness Hearing scheduled before the Court on April 23, 2007 at 10:00 a.m. and conveyed to all class members complete copies of Plaintiffs Motions for Final Settlement Approval and for Award of Attorney's Fees, Litigation Expenses and Administrative Costs.

### **III. ATTORNEY'S FEES**

Class counsel respectively request the Court award attorney's fees in the amount of \$900,000.00, an amount equal to 30% of the principal amount of the settlement fund of \$3,000,000.00 (Three Million Dollars).

**A. Legal Standards**

An attorney's fees award in a class action from a common settlement fund is authorized by F.R. Civ. P. 23(h) and Rule 54(d)(2). "A litigant with a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Company v. Van Gemert*, 444 U.S. 472, 478 (1980). Class counsel have pursued the Defendants in this case on behalf of the Plaintiff class to assert and recover for the violation of certain rights and privileges guaranteed under the United States Constitution and Section 1983 of Title 42 of the United States Code. It is well established that common fund principles may be applied when actions instituted under statutes containing fee-shifting provisions are resolved by settlement. See *In Re: Compact Disc Minimum Advertised Price Anti-Trust Litigation*, 216 F.R.D. 197, 216 (D. Me. 2003). It is also well established that the common fund doctrine is founded on the equitable principle that those who have profited from the litigation should share in its cost. See *In Re: Thirteen Appeals Arising Out of The San Juan Dupont Plaza Hotel Fire Litigation*, 56 Fed.3d 295, 305 N.6 (1<sup>st</sup> Cir. 1995).

In this case class counsel ask the Court to apply the percentage of fund method to calculate reasonable attorney's fees in this case. The percentage of fund method is the method preferred in this District and in this Circuit. See *In Re: Compact Disc* and *San*

Juan Dupont Plaza Hotel, supra. See also the Settlement Agreement between the parties dated September 29, 2006. (Docket Item No.: 366).

In that agreement: “The parties ... agree[d] to settle this case in exchange for Defendants establishing a common fund of Three Million Dollars (\$3,000,000.00), said amount to include all attorney’s fees and costs incurred, as well as all claims administration expenses. The parties agree that counsel for Plaintiff will seek to recover 30% of this fund to cover their fees and costs.”

“Plaintiffs’ counsel is certainly free to ask for 30% of the common fund for its own attorney’s fee and costs and separately seek to have the claims administration fees paid from the fund. The Court indicated that the ultimate decision on fees and expenses would be made by Judge Carter.” See Docket Item No. 333.

Another approach is the *Loadstar* method, which multiplies the number of hours the attorneys have expended by their hourly rates to create a “Loadstar” figure. Class counsel does not request a Loadstar calculation because (1) the First Circuit uses the percentage of fund method; and (2) fair application of the Loadstar method would result in an attorney’s fee award which would take a significantly larger bite out of the common fund and thus dilute the individual shares each class member can be expected to receive under the percentage of fund calculation advocated.

Federal Courts have increased hourly rates (“Loadstar Fees”) by multiples of three or four (or more) to account for considerations such as the risk undertaken, the quality of the services rendered, the results achieved, and the delay in receipt of payment. See, for

example, *In Re: Rite Aid Corp. Securities Litigation*, 146 Fed. Supp. 706, 736 N. 44 (E. D. Pa. 2001) (Finding “a Loadstar multiple in the range of 4.5 to 8.5” to be “unquestionably reasonable”); *Vranken v. Atlantic Richfield Company*, 901 Fed. Supp. 294, 298-299 (N.D. Cal. 1995) (applying a multiple of 3.6 and noting that “multiples in the 3-4 range are common in Loadstar awards for lengthy and complex class action litigation”); *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 549 (S.D. Fla. 1988), Aff’d. 899 Fed.2d 21 (11<sup>th</sup> Cir. 1990) (“The range of Loadstar multiples in large and complicated class actions runs from a low of 2.26 to a high of 4.5”). This Court has endorsed the Loadstar multiplier concept, see *In Re: Compact Disc*, 216 F.R.D. at 216, as has the First Circuit. See *Weinberger v. Great Northern Nekossa Corp.*, 925 Fed.2d 518, 529 (1<sup>st</sup> Cir. 1991) (“[T]he Loadstar calculation ... will be subject to possible enhancement ... by the Court if it determines that a multiplier ... should be applied.”). The fee requested here by contrast, is less than class counsel’s actual Loadstar figure.

Class counsel submits that the hours expended on this case, while substantial, are entirely reasonable and reflect the challenging nature of the lawsuit and the unwavering commitment to achieving a successful result . Every reasonable effort was made to avoid unnecessary duplication or repetition of task, and where appropriate, work was assigned to paralegals.<sup>3</sup> Given the complexity of the claims and defenses, the real risk of non-

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<sup>3</sup> Paralegal time is included in the Loadstar calculation at market billing rates and should be adjusted using the risk multiplier, since such time is subject to the same contingent risk as attorney time. See *Missouri v. Jenkins*, 491 U.S. 274, 287 (1989) “[I]f a prevailing practice in a given community were to bill paralegal time separately at market rates, fees awarded the attorney at market rates for attorney time would not be fully compensatory if the Court refused to compensate hours billed by paralegals and did so only at ‘cost’”. *Sula v. National R. Passenger Corp.*, 128 F.R.D. 210, 216 (E.D. PA 1989).

recovery, a substantial delay in receipt of payment, the exceptional result achieved and the experience and skill of class counsel, class counsel submit that a fee of \$900,000.00 is (30% of the gross common fund) fair and reasonable compensation for their work. If the Court used a Loadstar method and applied a low multiplier such as 2.26 referenced in *Behrens*, supra at 549, It would reverse the economic positions of class counsel and class members. Class counsel advocate that the Court preserve \$2,000,000.00 (Two Million Dollars) of the common fund of to pay the class representative incentive award of \$5,000.00, the 20 class member bonus awards of \$500.00 and distribute the remaining \$1,985,000.00 equally to class members who have filed approved claims.

Class counsel advocates that the Court fashion a reasonable fee and pay class counsels' litigation expenses and the claims administration fees out of the third million dollars of the common fund plus accrued interest on the fund.

There are a number of factors that are generally considered when determining that a fee award is fair, adequate and reasonable. Class Counsel have discussed several of those factors in their Motion for Final Settlement Approval, to wit: reaction of the class; stage of litigation, quality of class counsel, conduct of negotiations, and fairness adequacy and reasonableness of the notice plan. Also to be considered are the results achieved, the nature and complexity of the litigation; the size of the settlement fund; the risk of non-recovery; and the use of the Loadstar method as a cross check. And while there are many factors to consider, "... [t]he ultimate goal to be achieved by the reviewing Court is to award fees which are adequate to attract competent counsel and yet

not so large that they result in a windfall. Wells v. Dartmouth Bancorp, Inc., 813 Fed. Supp. 126, 127-28 (D. New Hampshire, 1993).

Judge Hornby echoes these sentiments in his analysis of the application of the percent of fund approach in Nilsen v. York County, \_\_\_\_\_ F.Supp. \_\_\_\_\_ Civil No. 02-212-P-H, November 10, 2005, at Pages 5 and 6:

Making a fair fee award from a common fund in a class action settlement is a difficult determination for a Judge. There are no adversarial presentations to test the fee claim, and our legal system does not ordinarily expect Judge's to behave as inquisitors, gathering testimony and collecting information on their own. Presented with an unopposed request, therefore, I depend upon my own analysis and secondary research – against a backdrop of popular dissatisfaction with large and highly publicized fees. Third Circuit Task Force Report, selection of class counsel, 208 F.R.D. 340, 343-44 (2002) (“2002 Task Force Report”) (“[T]here is a perception among a significant part of the non-lawyer population ... that class action Plaintiffs’ lawyers are overcompensated for the work that they do.”). But the lawyers here are highly skilled and experienced civil rights attorneys. Their professional performance was exemplary; they represented the class members’ interest zealously, achieving an excellent result for the class under the circumstances. For these reasons they deserve a reasonable fee that duly recognizes their professional excellence and performance and provides an appropriate incentive for lawyers to take on future meritorious cases on behalf of the client class. *f.n.* 10. At the same time, they do not deserve a windfall at the expense of the class and I do not want the size of the award to encourage frivolous litigation that benefits primarily lawyers.”

*f.n.* 10. “[T]he Court must also be careful to sustain the incentive for attorneys to continue to represent such clients on an ‘inescapably contingent’ basis.” Florin v. Nations Bank of Georgia, (Florin 2), 60 F3d 1245, 1247 (7<sup>th</sup> Cir. 1995).

## **B. Multi-factor Analysis**

1. Extraordinary result achieved.

Class counsel have achieved a remarkable recovery for class members. The creation of a settlement fund of Three Million Dollars (\$3,000,000.00) constitutes an extraordinary outcome for the class because each class member (366 in all) stand to recover in excess of \$5,000.00 for their “dignity” injuries. The amount of the Settlement Fund is also extraordinary given the complicated insurance issues, the complexity of the case and the aggressive defense and attorney time necessary to bring the case to conclusion. Defendants had a combination of self-pay, risk pool and residual coverage. Each dollar that the Defendants consumed in paying their attorneys to defend the case or to pay other liability claims against Knox County was one dollar less that the Defendants had available to fund the settlement in this case. The defense left no stone unturned, no issue unexplored and no argument left for later use. They were steadfast in their denial and persistent in their argument. Every issue that they lost, they raised in reconsideration and through their persistence achieved some success in rolling back the scope of custom and practice liability on Summary Judgment. Had the parties gone to trial on individual damages, the economics alone would have been a disaster. Under the circumstances the Three Million Dollar (\$3,000,000.00) fund was an extraordinary outcome for the class.

## 2. Modest Absolute Size of the Fund

Although a typical fee award in a class action settlement is in the neighborhood of 30%, see *In Re: Rite Aid Corp. Securities Litigation*, 146 F.Supp. 2<sup>nd</sup> at 745, this figure masks an unmistakable pattern of fee awards getting smaller (in percentage terms) as settlement amounts get larger. See *In Re: NASDAQ Market-Makers Anti-Trust*

*Litigation*, 187 F.R.D. 465 (486 S.D. New York 1998). See also *Nilsen*, supra at Pages 25 to 26.

The number of class members benefited here is smaller in comparison to the number of people benefited in the York County case. There are several explanations for this disparity. First, the parties estimates were that between 400 and 1,500 class members would actually file claims; These estimates were based upon national statistics for class action participation and strip search class action participation in particular; Second, the claimants in *Nilsen*, (about 1,000 class claimants) are said to have received about \$1,200.00 per person; Third, the newspapers widely published the Department of Health and Human Services efforts to capture many of those claims through their Child Support Enforcement Unit; Fourth, the desire to remain anonymous both with respect to acknowledging an arrest and to avoid exposure of being strip searched; and Fifth, concern that filing a claim and recovering would rile the police and expose the claimant to further harassment. While none of these issues is scientific, many class members have raised them at one or more points in the litigation and during the claims process. Many scoffed at the amount of money that they might receive based on what they had read and heard following the York County settlement. Others were embarrassed that they might be exposed and anxious over the thought that there might be some police retribution.

### 3. Quality of Representation

Class Counsel have over 80 years of combined trial experience in all of the trial courts in the State of Maine and in the Federal Appellate Courts, First Circuit Court of



Appeals and the United States Supreme Court. Class Counsel have tried civil and criminal cases, including complex civil matters ranging through Federal Civil Rights, employment law, product liability, financial and medical malpractice.

4. The complexity and duration of the litigation.

This case has been going on for almost five (5) years. There has been extensive discovery, extensive Motion practice, and appeal to the First Circuit Court of Appeals where the Court affirmed this Court's class action certification. The case was also prepared for trial and scheduled for trial beginning October 3, 2006. Had the case not settled on September 29, 2006, counsel would have appeared before the Court on October 3<sup>rd</sup>, prepared and ready to try the remaining issues of liability and then to move onto individual issues of damages. Despite having narrowly defined the issues for trial, there were significant factual disputes as to custom and practice liability as to class members detained at the jail between September, 2002 and December 31, 2004 and as to whether some claimants detained within that time period, were, in fact, strip searched. Decertification of the class added additional complexity to the individualized damages, the nature and scope of the emotional harm caused by the affront to dignity, including inappropriate exposure to members of the opposite sex, impermissible touching and strip search of minors. Even though the class was certified and the certification affirmed by the First Circuit Court of Appeals in Tardiff v. Knox County, 365 F.3d 1 (1<sup>st</sup> Cir. 2004), Knox County repeatedly challenged the certification and avowed that it would challenge

the class certification on future appeals and also challenge the underlying the premises that any individual has a constitutional right of privacy in the jail setting.

#### 5. Risk of Non-Payment

Class Counsel's fees in this case were totally contingent. There were substantial risks to non-payment ranging from the County's inability to pay through its factual and legal challenges to the constitutional claims of the class members. There was also a serious risk that a jury would have no sympathy for a person arrested on any charge, no matter how trivial, and strip searched when brought to the jail. There was also a serious risk that a jury would believe the testimony of corrections officers over the detainees, especially where the detainees frequented the jail. Even assuming liability, there were serious risks that a jury would not award damages to individuals offended by the strip search but who suffered no physical or economic harm. Class Counsel devoted more than 5,000<sup>4</sup> hours of legal effort over the span of the case and expended more than \$169,000.00, exclusive of settlement claims administration costs, to prosecute the case and to obtain the Three Million Dollar (\$3,000,000.00) Settlement Fund.

The individual claims of class members could not have been pursued except through the class action mechanism. The individual claims were too small and the individual parties financial resources too limited to warrant the substantial out-of-pocket expenditures on attorney's fees and costs to obtain legal representation. For a contingent fee representation to make economic sense for an attorney, the risk of receiving no fee

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<sup>4</sup> Plaintiffs' Counsel expended more than 4,000 hours over two years in the York County case which is some evidence that class counsel here were efficient in their work on behalf of class members expending slightly over 5,000 hours in more than a four-year period.

whatsoever if the litigation is unsuccessful, must be offset by the possibility of earning a sufficient fee in the event of a favorable outcome to justify the time, effort and expense necessary to pursue the claim to the end. Even then, especially in the class action setting, the Court must determine that the award requested is reasonable under the circumstances of the case. Loadstar provides a method of cross checking and even though the Loadstar cross check is easy to apply in this case because class counsels' Loadstar fee exceeds the percentage of fund request made by class counsel, application of Loadstar under the circumstances of this case would result in an unfair fee award.

#### **IV. LITIGATION COSTS**

Class counsel respectfully requests reimbursement of their litigation costs and expenses in the amount of \$178,561.41 (\$8,684.33 of this amount represents payment to the Settlement Claims Administrator for claims administration expenses). A table of disbursements is attached to this Motion as Exhibit B to Class Counsels' Affidavit filed in support of this Motion. The large amounts expended for experts were especially critical to evaluating the computerized data produced by the Defendants, identifying potential claimants, verifying the unconstitutional policies, customs and practices of the jail, determining the scope of potential damages and verifying the blanket strip search behavior of the guards through individual contact with the class claimants. While expensive, the database proved invaluable. Class Counsel continue to use the database to verify the validity of claims. Other significant costs were fees paid to other attorneys to brief the class certification issues on the First Circuit Appeal. Those services were

instrumental in gaining the Appellate Court's affirmation of this Court's class certification decision.

## V. CONCLUSION

For the foregoing reasons, class counsel respectfully request that the Court award them \$900,000.00 as reasonable attorney's fees and \$178,561.41 in litigation expenses in the prosecution of this litigation and further award sufficient sums to pay the cost of settlement claims administration.

Dated: March 30, 2007

/s/ Sumner Lipman  
Sumner Lipman, Esq.  
Attorney for Plaintiffs  
Lipman, Katz & McKee  
227 Water Street, P.O. Box 1051  
Augusta, ME 04332-1051

Dated: March 30, 2007

/s/ Robert Stolt  
Robert Stolt, Esq.  
Attorney for Plaintiffs  
Lipman, Katz & McKee  
227 Water Street, P.O. Box 1051  
Augusta, ME 04332-1051

Dated: March 30, 2007

/s/ Dale Thistle  
Dale Thistle, Esq.  
Attorney for Plaintiffs  
103 Main Street, P.O. Box 160  
Newport, ME 04953



Dale Dare vs. Knox County, et al  
Lipman, Katz & McKee, P.A.  
Law Office of Dale Thistle

Attorney Time Report From: Inception of Case through March 30, 2007

- (1) Investigation and Discovery
- (2) Pleadings, Briefs and Pretrial Motions
- (3) Court Appearances
- (4) Settlement
- (5) Litigation Strategy and Analysis
- (6) Conference
- (7) Review/Preparation
- (8) Legal Research
- (9) Telephone Calls
- (10) Correspondence and Memos
- (11) Interviews

	1	2	3	4	5	6	7	8	9	10	11	Hours	Rate	Cumulative Loadstar
Dale Thistle	19.1	191.9	19.8		24.5	273.90	295	121.6	78.6	59.8	30	1114.2	\$225.00	\$250,695.00
Summer Lipman	3.2	27.9	45	13	5.2	101.5	56.4	2.5	72	22.2	7.5	356.4	\$300.00	\$106,920.00
David Lipman						5.75	0.2	0.2	1.55	0.1		7.8	\$185.00	\$ 1,443.00
Robert J. Stoit	121.6	388.6	65.45	76.1	61.4	314.95	160.15	72.15	193	96.8	107	1657.2	\$250.00	\$414,300.00
Tracie L. Adamson	.6	55	3.5		5.5	20.8	17.55	19	4.4	1.15	11.5	139	\$125.00	\$ 17,375.00
Keith Varner	32	4.7			8	15.5	28.65	4.3	8	2.95		104.1	\$150.00	\$ 15,615.00
James Billings		35.3			7.8	4.7	0.3	19.5	0.5		66.3	134.4	\$150.00	\$ 20,160.00

Dale Dare vs. Knox County, et al  
 Lipman, Katz & McKee, P.A.  
 Law Office of Dale Thistle

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- (10) Correspondence and Memos
- (11) Interviews

	1	2	3	4	5	6	7	8	9	10	11	Hours	Rate	Cumulative Loadstar
Benjamin Smith	13.1	15.1			6.3	8.8	2.1	9.7		2	37.7	94.8	\$125.00	\$ 11,850.00
Michelle Ward	30	1.2					41.7	99.5	0.6	.5		173.5	\$ 65.00	\$ 11,277.50
Joann Dorr								78				78	\$ 50.00	\$ 3,900.00
Kathryn Adams				0.5						4.6		5.1	\$ 60.00	\$ 306.00
Georgia Spencer	13.3	0.4				7.7	3.95	2.35	0.25	0.3	16.6	44.85	\$ 60.00	\$ 2,691.00
Spencer Tracy	326.2	55.95		1	15.2	238.6	183.6	25.65	109.5	33.70	70.6	1059.9	\$ 60.00	\$ 63,594.00
Tracy Leigh	207.2	8				10	10.7		4.5	2.7		243.1	\$ 60.00	\$ 14,586.00

Dale Dare vs. Knox County, et al  
 Lipman, Katz & McKee, P.A.  
 Law Office of Dale Thistle

Attorney Time Report From: Inception of Case through March 30, 2007

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- (9) Telephone Calls
- (10) Correspondence and Memos
- (11) Interviews

	1	2	3	4	5	6	7	8	9	10	11	Hours	Rate	Cumulative Loadstar
Dorothy Bonsant						0.1						0.1	\$ 60.00	\$ 6.00
Nicole Viles	15.5	5.5				2	1.25					24.25	\$ 60.00	\$ 1,455.00
Jeanette Smith								0.5				0.5	\$125.00	\$ 62.50
<b>TOTAL FEES</b>												5237.2		\$936,236.00



Dale Dare vs. Knox County  
Lipman, Katz & McKee, P.A.  
Law Office of Dale Thistle

Expense Report: As of March 30, 2007

Description	Cumulative Total
Documents copied	\$8,190.98
Court Report	\$730.00
District Court – filing fee	\$150.00
Deputy Sheriff	\$172.06
Miscellaneous	\$2,016.23
Postage	\$1,225.82
Reports – Medical	\$70.60
Reports – Secretary of State	\$1,201.00
Superior Court – Records	\$382.00
Travel – Airfare, Meals, Lodging, Mileage	\$12,856.32
Witness Fees – Expert	\$86,074.35
Witness Fees – Regular	\$1,515.66
Photos	\$184.29
Telephone Charges	\$1,316.25
Court Reporter	\$6,577.78
Equitrac Copies	\$7,685.15
Investigator/Investigations	\$1,082.75
Westlaw	\$6,327.21
Exhibits	\$687.25
Parking – motor vehicle	\$87.25
Supplies	\$2,030.92
Publications	\$5,710.07
Other Attorneys	\$17,084.48
Arbitrators/Mediators	\$2,405.50
Outside Services	\$3,607.50
Faxing	\$513.66
Sub-Total	\$169,885.08
Claims Administration	\$8,684.33
Total	\$178,569.41

# LIPMAN, KATZ & MCKEE, P.A.

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# WELCOME

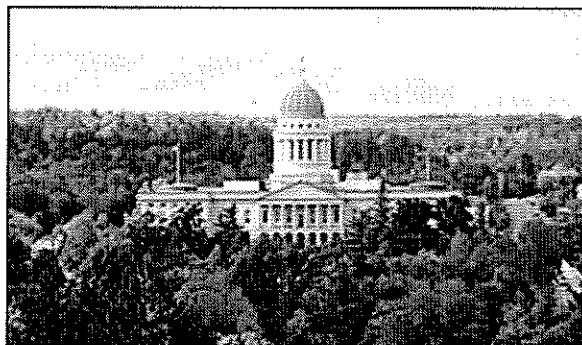
## Announcements

### Abby Holman joins Lipman, Katz & McKee

Attorney Abby Holman has joined Lipman, Katz & McKee. Holman lives in Fayette and is the newly-elected State Representative for District 83 which covers the towns of Manchester, Belgrade, Mount Vernon, Vienna and Fayette. Holman's legal experience is extensive and far reaching. She is the former Executive Director of the Alliance for Maine's Future as well as the Maine Forest Products Council. She previously practiced law at Pierce Atwood in their lobbying, environmental, governmental relations departments. She also served as counsel to Governor John McKernan and acted as his legislative director. "We are very excited to have someone with Abby's experience and legal skills come to Lipman, Katz & McKee," said David Lipman, the firm's president. "She will broaden our practice in multiple areas and provide top-notch representation to our clients."

## Welcome to LipmanKatzMcKee.com

Lipman, Katz & McKee is an Augusta - based full-service law firm that handles cases statewide. For over 30 years we have represented individuals and companies in legal matters, large and small.



We are the best. We are widely regarded and hailed as one of the state's preeminent law firms. We are professionals that get the job done and get it done well.

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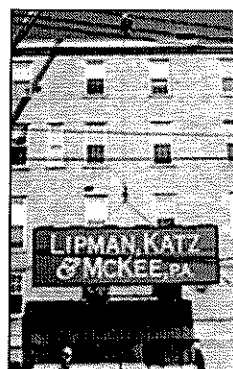
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### History

Lipman, Katz & McKee was founded in 1971 by Summer H. Lipman. Ever since the beginning Lipman, Katz & McKee has prided itself on nothing less than the very best in legal representation.

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### Experience

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Lipman, Katz & McKee is recognized as one of Maine's leading trial law firms. For over 30 years, we have successfully represented individuals and businesses in everything from the most commonplace cases to the most complex.

We've been awarded many of Maine's largest trial verdicts and have settled tens of millions of dollars of cases.

We get results. Our record proves it. The professional team of attorneys at Lipman, Katz & McKee are skilled in all legal areas and pursue each case with vigor, regardless of size. This commitment to excellence has earned our firm a reputation as one of the best in the state.

Experience makes all the difference. We have proven time and again we get the job done. We'll prove it to you as well.

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### We don't just work in your community, we're a part of it

We're your neighbors. We live in the Greater Augusta area and share and understand your concerns.

The people of Lipman, Katz & McKee have played an active role in the Greater Augusta community since the firm was founded in 1971. We



are extensively involved in area activities and organizations, and the firm sponsors many local events. Lipman, Katz & McKee was recognized for its excellence in 1998 when we received the prestigious President's Award from the Kennebec Valley Chamber of Commerce. We don't just work in your community, we're a part of it.

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General Practice, Civil and Criminal Trials in all Courts. Personal Injury, Plaintiffs' Malpractice Torts, Domestic Relations, Criminal, Administrative, Real Estate, Social Security Disability, Corporate, Banking, Estate Planning, Probate and Municipal Law. Civil Rights Action, Employment Law.

**FIRM PROFILE:** The firm has been trial oriented with significant experience in complex personal injury, employment law, and commercial trials. Members of the Firm have been active in local, state, and national bar organizations and community groups.

**SUMNER H. LIPMAN**, born Portland, Maine, October 5, 1941; admitted to bar, 1966, Maine. Education: Boston University (B.S. in Business Administration, 1963; LL.B., 1966). Member, Honorary Society at Boston University. Member: Kennebec County (President, 1972-1973), Maine State and American Bar Associations; Maine Trial Lawyers Association (Member, Board of Governors, 1975-1991; Treasurer, 1979-1981; Vice President, 1983-1984; President, 1984-1986); The Association of Trial Lawyers of America (Member, Board of Governors, 1989-1994); National Association Criminal Defense Lawyers. **REPORTED CASES:** State v. Sprout, 673 A.2d 743 (Me. 1988); Salley v. Childs, 541 A.2d 1297 (Me. 1988); Morin v. E.M. Loewes Theatres, Inc., 498 A.2d 594 (Me. 1985); State v. McDonald, 472 A.2d 424 (Me. 1984); Peaslee v. Pedco, Inc., 414 A.2d 1206 (Me. 1980); Cumberland Farms Northern, Inc. v. Maine Milk Commission, 377 A.2d 84 (Me. 1977); Loyal Erectors, Inc. v. Hamilton & Son, Inc., 312 A.2d 748 (Me. 1973); Maine State Housing Authority v. Depositors Trust Co., 278 A.2d 699 (Me. 1971); Grover v. Minnette-Mills, Inc., 638 A.2d 712 (Me. 1994); Curtis v. Porter, 784 A.2d 18 (Me. 2001). **PRACTICE AREAS:** General Litigation; Personal Injury Law; Medical Malpractice; Employment Discrimination. Email: [slipman@lipmankatzmckee.com](mailto:slipman@lipmankatzmckee.com)

**DAVID M. LIPMAN**, born Bangor, Maine, November 23, 1948; admitted to bar, 1974, Maine. Education: Phillips Exeter Academy; Columbia University; University of Michigan (A.B., 1971); Boston University (J.D., magna cum laude, 1974). Member: Kennebec County (President, 1981-1982) and Maine State (Treasurer, 1988-1991) Bar Associations; The Association of Trial Lawyers of America; Maine Trial Lawyers Association; American Board of Trial Advocacy. **REPORTED CASES:** Belfast Water District v. Larrabee, 570 A.2d 828 (Me. 1990); Roberts v. Tardif, 417 A.2d 444 (Me. 1980); White v. Allen 667 A.2d 112 (Me. 1995); Twombly v. AIG, 199 F.3d 20 (1st Cir. Me.) Nov. 2, 1999; Twombly v. Assoc. of Farm Workers, 212 F.3d 80 (1st Cir. Me.) May 16, 2000; Hoag v. Dick, 2002 WL 123, 7471, Me. 2002. **PRACTICE AREAS:** Personal Injury Litigation; Commercial Litigation; Construction Litigation; Family Law. Email: [dlipman@lipmankatzmckee.com](mailto:dlipman@lipmankatzmckee.com)

**ROGER J. KATZ**, born New York, N.Y., January 17, 1949; admitted to bar, 1975, Maine and Massachusetts. Education: Harvard University (B.A., cum laude, 1971); Boston University (J.D., 1975). Clerk for Judge Samuel W.H. Meloy, Maryland Circuit Court, Seventh Circuit, 1976-1977. Member, Maine Civil Rules Advisory Committee, 2000—. Co-Host, "Looking at the Law," monthly television show. Named in "Best Lawyers in America," in Family Law Category. Named Kennebec Valley Business Person of the Year, 2004. Recipient, Outstanding Citizen Award from LeClub Calumet, 2004. Member: Kennebec County, Maine State and American Bar Associations; The Association of Trial Lawyers of America (Member, Board of Governors, 1994—); Maine Trial Lawyers Association (Chairman, Legislative Committee, 1983; Treasurer, 1986-1988; President Elect, 1988-1989; President, 1990-1992; Board Member, 2001). **REPORTED CASES:** Dubord v. Dubord, 579 A.2d 257 (Me. 1990); Maine Bonding and Casualty Co. v. Philbrick, 538 A.2d 276 (Me. 1988). **PRACTICE AREAS:** Personal Injury Litigation; Domestic Relations Law; Criminal Trials. Email: [rkatz@lipmankatzmckee.com](mailto:rkatz@lipmankatzmckee.com)

**ROBERT J. STOLT**, born Skowhegan Maine, October 16, 1943; admitted to bar, 1973, Maine, Massachusetts and U.S. District Court, District of Maine; U.S. Supreme Court; U.S. Court of Appeals, First Circuit. Education: University of Maine (B.A., 1966); New England School of Law (J.D., cum laude, 1973). Editor-in-Chief, New England Law Review, 1972-1973. Author: Trial Handbook for Maine Lawyers, Lawyers Cooperative Publishing Company, 1991. Chapter 30, "Collateral Source/Third Party Payor, Duty to Mitigate," ATLA's Litigation Tort Cases, ATLA Press, Westgroup, 2003. Assistant Attorney General, 1973-1976. Commissioner of Personnel, 1976-1979. Deputy Attorney General, 1979-1985. Vice President, August Rotary Club, 2002. Member, Board of Visitors, University of Maine at Augusta, 2003—. Member, Litigation Advisory Board, 2004—. Member, Maine Supreme Judicial Court Media and the Courts Committee, 2002—. Member: Kennebec County and Maine State Bar Associations; Maine Trial Lawyers Association (Member, Board of Governors, 1988—; President, 1996-1997); The Association of Trial Lawyers of America (Member, Board of Governors, 1997—); American Board of Trial Advocacy (National Board of Directors, 1996 and 2001—); Maine Chapter, Treasurer, 1997-1998; Vice President, 1998-1999; President, 1999-2001); Maine Medico-Legal Society (Member, Board of Directors, 1995-2001; Vice-President, 1996-1999; President, 1999-2001); American Academy of Catastrophic Injury Attorneys, 2004—. **REPORTED**

(This Listing Continued)

**CASES:** New Hampshire v. Maine, 426 U.S. 363 (1976); Child v. Central Maine Medical Center, 575 A.2d 318 (Me. 1990); Jacobs v. Painter, 530 A.2d 231 (Me. 1987); Bowman v. Employees Appeals Board, 408 A.2d 688 (Me. 1979); Morrison v. Carleton Woolen Mills, Inc. 108 F.3d 429 (1996); Brawn v. Gloria's Country Inn 698 A.2d 1067 (Me. 1997); Michaud v. Great Northern Nekoosa Corp., 715 A.2d 955 (Me. 1998); Curran v. Ruffing, 792 A.2d 1090 (Me.2002); Brawn v. Fujl Heavy Industries-Lt (1993) (D.C.M.) 817 F.Supp 184; Tandiff v. Knox County, 365 F3d's (1st Cir. 2004). **PRACTICE AREAS:** Personal Injury Litigation; Plaintiffs Medical Malpractice; Litigation; Commercial Law; General Practice. Email: [rstolt@lipmankatzmckee.com](mailto:rstolt@lipmankatzmckee.com)

**KEITH R. VARNER**, born Superior, Wisconsin, August 19, 1948; admitted to bar, 1979, Wisconsin and U.S. District Court, Eastern and Western Districts of Wisconsin; 1980, U.S. Court of Appeals, Seventh Circuit; 1987, U.S. Tax Court; 1988, Maine, U.S. District Court, District of Maine; 2006, U.S. Court of Appeals, First Circuit. Education: Marquette University (B.A., 1976; J.D., 1979). Member: Maine State Bar Association; State Bar of Wisconsin. **REPORTED CASES:** Fortin v. Roman Catholic Bishop of Portland, 871 A.2d 1208 (Me. 2005). **PRACTICE AREAS:** Real Estate Law; Corporate Law; Probate Law. Email: [kvarner@lipmankatzmckee.com](mailto:kvarner@lipmankatzmckee.com)

**WALTER F. MCKEE**, born Easley, South Carolina; admitted to bar, 1993, South Carolina; 1994, Maine and U.S. District Court, District of Maine; 1995, U.S. Court of Appeals, First Circuit; 1999, U.S. Supreme Court. Education: University of Maine (B.A., summa cum laude, 1989); University of Maine School of Law (J.D., 1993). Phi Kappa Phi; Pi Sigma Alpha. Member: Kennebec County and Maine State (Chair, Criminal Law Committee, 2002—) Bar Associations; National Association of Criminal Defense Lawyers; Maine Association of Criminal Defense Lawyers (Member, Board of Directors, 1995-1998, 2003—; Vice President, 2004-2005; President-Elect, 2005-2006; President, 2006—); Maine Trial Lawyers Association (Member, Board of Governors, 2006—); The Association of Trial Lawyers of America. [Capt., J.A.G. Corps, Maine Army National Guard, 1996-2004]. **REPORTED CASES:** Hebert v. International Paper Co., 638 A.2d 1161 (1994); U.S. v. Lagasse, 87 F.3d 18 (1st Cir., 1996); State v. Nelson, 714 A.2d 832 (Me. 1998); Legassie v. Bangor Publishing Co., 741 A.2d 442 (Me. 1999); Gathier v. Down East Community Hospital, 735 A.2d 969 (Me. 1999); U.S. v. Destefano, 201 F.3d 429 (1st Cir. 1999); U.S. v. Meador, 195 F.3d 66 (1st Cir. 1999); Newbury v. Virgin, 802 A.2d 413 (Me.2002); U.S. v. Hartssock, 253 F.Supp.2d 24 (D.Me. 2003); Evans v. Willingham, 413 F.Supp.2d 155, (D.Conn. 2006). **PRACTICE AREAS:** Personal Injury; Criminal Defense; Litigation. Email: [wmckee@lipmankatzmckee.com](mailto:wmckee@lipmankatzmckee.com)

**KAREN E. BOSTON**, born Augusta, Maine, August 23, 1971; admitted to bar, 1996, Maine and U.S. District Court, District of Maine; 2000, U.S. District Court of Appeals, First Circuit. Education: Colby College (B.A., 1993); University of Maine School of Law (J.D., 1996). Member, Augusta Rotary Club, 2004—. Member: Kennebec County (President, 2004—) and Maine State (Past Chair, Family Law Section, 2004-2005) Bar Associations; Maine Association of Criminal Defense Lawyers; Maine Trial Lawyers Association; The Association of Trial Lawyers of America. **REPORTED CASES:** McPherson v. McPherson, 712 A.2d 1043 (Me. 1998); Twombly v. AIG Life Insurance Company, 199 F.3d 20 (Ca.1 (Me.) 1999); Twombly v. Association of Farmworkers, 212 F.3d 80 (1st Cir. (Me.) May 16, 2000; Curtis v. Porter, 784 A.2d 18 (Me. 2001); Hoag v. Dick 799 A.2d 391 (Me. 2002); Austin v. Universal Cheerleaders Assoc. 812 A.2d 253 (Me. 2002); Wrenn v. Lewis 818 A.2d.1005 (ME 2003). **PRACTICE AREAS:** Family Law; Criminal; Personal Injury; Medical Negligence; Appellate. Email: [kboston@lipmankatzmckee.com](mailto:kboston@lipmankatzmckee.com)

**TRACIE L. ADAMSON**, born Keene, New Hampshire; May 26, 1970; admitted to bar, 1996, Maine and U.S. Court of Appeals, First Circuit; 1999, U.S. District Court, District of Maine; Passamaquoddy Tribal Court. Education: University of Maine (B.A., magna cum laude, 1993); University of Maine School of Law (J.D., cum laude, 1996). Pi Sigma Alpha. Member: Kennebec County, Maine State and American Bar Associations; Maine Trial Lawyers Association; The Association of Trial Lawyers of America; National Employment Lawyers Association (NELA); Maine Employment Lawyers Association (MELA); Maine Trial Lawyers Association (Member, Board of Governors, 2003—). **REPORTED CASES:** Donatelli v. Unum Provident, CV - 2004 - 0, (ME 2005); Hinkley v. Baker, 122 F.Supp 2d48 (D.ME 2001); Hinkley v. Baker, 122 F.Supp 2d 57 (D.ME 2001); Dudley v. Hannaford Bros., 190 F.Supp 2d 69 (D.ME 2002); Dudley v. Hannaford Bros., —F.3d—, 2003 WL 214488 19 (1st Cir. ME, June 24, 2003, No. 02-1382). **PRACTICE AREAS:** Employment Law; Discrimination; Civil Rights; Special Education; Civil Litigation; Personal Injury; Family Law. Email: [tadamson@lipmankatzmckee.com](mailto:tadamson@lipmankatzmckee.com)

**JAMES A. BILLINGS**, born Ellsworth, Maine; admitted to bar, 2002, Maine and U.S. District Court, District of Maine; 2003, U.S. Court of Appeals, First Circuit. Education: University of Maine (B.A., summa cum laude, 1997); University of Maine, School of Law (J.D., magna cum laude, 2000). Editor-in-Chief, 1999-2000. Staff Member, 1998-1999, Maine Law Review. Law Clerk: Honorable John A. Dooley, Vermont Supreme Court, 2000-2001; Honorable James Z. Davis, Utah Court of Appeals, 2001-2002. Co-Author: "Maine's Sex Offender Registration and Notification Act: Wise or Wicked?" 52 Me.L.Rev. 175 (2000). Member: Cumberland County, Maine State and American Bar Associations. **PRACTICE AREAS:** Professional Liability; Construction Law; Civil Litigation.

**BENJAMIN J. SMITH**, born Presque Isle, Maine, July 17, 1978; admitted to bar, 2004, Maine; 2005, U.S. District Court, District of Maine; 2005, U.S. Court of Appeals, First Circuit. Education: University of Maine (B.A., cum laude, 2000); University of Maine School of Law (J.D., 2004). Member: Kennebec County and Maine State Bar Associations; Maine Trial Lawyers Association; Maine Association of Criminal Defense Lawyers; Association of Trial Lawyers of America. **REPORTED CASES:** Fox Island Granite Company v. American Granite Manufacturers, Inc., 2006 ME 14, Estate of John M. McPhee, 2006 ME 38. **PRACTICE AREAS:** Personal Injury; Criminal Defense; Labor Law; Litigation; Appellate Practice. Email: [bsmith@lipmankatzmckee.com](mailto:bsmith@lipmankatzmckee.com)

**COUNSEL FOR:** Blouin Motors, Inc.; Capital Franchise Association; Uncle Henry's; Saunders Mfg. Co., Inc.; Graphics Utilities Incorporated; Maine Professional Opticians; Medical Supplies, Inc.; Anaesthesia and Respiratory Care Associates, P.A.; Don Law Company, Inc.; Rhinoskin, Inc.; Returnable Services, Inc.; Visage Salon, Inc.; The Woodlands of Maine, Inc.; Capito School of Hair Design; Ready Road Service; Augusta Internal Medicine.

APPROVED ATTORNEYS FOR: First American Title Insurance Co.

REFERENCES: Northeast Bank, FSB; Gardiner Savings Institution, FSB.

# LIPMAN, KATZ & MCKEE, P.A.

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- ▶ [James A. Billings](#)
- ▶ [Abigail M. Holman](#)



**Sumner H. Lipman**

[slipman@lipmankatzmckee.com](mailto:slipman@lipmankatzmckee.com)

Sumner Lipman is the founding partner of Lipman, Katz & McKee, P.A. He started the firm in 1971.

Mr. Lipman's practice presently focuses on personal injury, medical negligence and litigation matters. In the personal injury arena, he is widely regarded throughout the state as one of the top personal injury attorneys. He regularly handles cases on behalf of plaintiffs catastrophically injured in negligence cases.

Mr. Lipman's medical negligence practice has been particularly active in the past twenty years. Mr. Lipman long held the record for the largest medical malpractice jury verdict in Maine.

Mr. Lipman also has a strong background in business and banking. He founded two commercial banks, Dirigo Bank and Trust Company and Cushnoc Bank and Trust Company. He is also actively involved in real estate development.

Mr. Lipman has been active with both the Maine Trial Lawyers Association as well as the Association of Trial Lawyers of America. He has served as President of the Maine Trial Lawyers Association and on the Board of Governors of the Association of Trial Lawyers of America.

Mr. Lipman has also been active in politics. He was elected to the Maine Legislature in 1990 and again in 1992 to represent Legislative District 90, a seat he held until 1994 when he ran unsuccessfully for Governor.

Mr. Lipman has three children: a son, Michael Lipman, who owns and runs a ticket brokerage business; a daughter, Karen (Lipman) Boston, a partner at Lipman, Katz & McKee, P.A.; and another daughter, Dr. Jennifer Shinnors, an obstetrician.

Mr. Lipman has also authored a chapter entitled "Medical and Special Damages" in the Association of Trial Lawyers of America's text, Litigation of Tort Cases.

**Areas of Practice:** General Litigation, Personal Injury Law, Medical Malpractice, Corporate Litigation, and Employment Discrimination.

Admitted to the bar in 1966, Maine.

**Education:** Boston University (B.S. in Business Administration, 1963; J.D., 1966) Member, Honorary Society at Boston University.

**Member:** Kennebec County Bar Association (President, 1972-1973), Maine State Bar Association and American Bar Association; Maine Trial Lawyers Association (Member, Board of Governors, 1975-1991; Treasurer 1979-1981; Vice President, 1983-1984; President, 1984-1986); The Association of Trial Lawyers of America (Member, Board of Governors, 1989-1994); National Association of Criminal Defense Lawyers.

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**Robert J. Stolt**

[rstolt@lipmankatzmckee.com](mailto:rstolt@lipmankatzmckee.com)

Bob Stolt has concentrated his practice on civil trial work since 1973. He has represented state and local government, testified before many legislative committees to protect the rights of his small business and personal injury clients and represented personal injury clients in all the courts of the State of Maine.

In the past 15 years, Bob has aggressively represented people for personal injuries sustained in automobile crashes, from dangerous and defective products and from the negligence of doctors and hospitals. Bob has obtained substantial verdicts and settlements for his clients.

**Areas of Practice:** Personal Injury Litigation, Plaintiff's Malpractice, and Products Liability Law.

Admitted to the bar in 1973, Maine, Massachusetts and U.S. District Court, District of Maine; First Circuit Court of Appeals; 1976, U.S. Supreme Court.

**Education:** University of Maine (B.A., 1966); New England School of Law (J.D., cum laude, 1973). Editor-in-Chief, New England Law Review, 1972-1973.

**Author:** Trial Handbook for Maine Lawyers, Lawyers Cooperative Publishing Company, 1991; Litigating Tort Cases, Chapter 30, "Collateral Source / Third Party Payor; Duty to Mitigate Damages," ATLA Press, Thomson / West (2003)

**Career:** Assistant Attorney General, 1973-1976; Commissioner of Personnel, 1976-1979; Deputy Attorney General, 1979-1985; Lipman, Katz & McKee, P.A., 1985-

**Member:** Kennebec County and Maine Bar Associations; Maine Trial Lawyers Association (Member, Board of

Governors, 1988-; President, 1996-1997); The Association of Trial Lawyers of America (Member, Board of Governors, 1997-); American Board of Trial Advocacy (National Board of Directors, 1996-2000; Treasurer, 1997-1998; Vice President, 1998-2000; President, 2000-2001); Maine Medico-Legal Society (Member, Board of Directors, 1995-2001; Vice President, 1996-1999; President, 1999-2001); Academy of Catastrophic Injury Attorneys, 2005- ; Litigation Advisory Board, 2005 - .

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## Information about "Knox County Class Action"

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
MAINE

Dare v. Knox County Civil Action No. 02-251-PC

# You could get a payment from a \$3 million dollar class action settlement

## if you meet all of the following conditions:

1. You were held at the Knox County Jail during the period November 19, 1996 to December 31, 2004.
2. You were held at the Knox County Jail after an arrest but before a bail hearing or first court appearance. This includes arrests on default and other warrants.
3. You were not charged with a crime involving drugs, weapons or a violent felony.
4. You were strip searched without evaluation to determine if there was a reason to Suspect possession of hidden contraband.

A strip search process is one in which you were required to remove all of your clothes while a corrections officer inspected and viewed your naked body. In some cases, the officer may have required you to either squat cough and open your mouth or expose your body cavity while a corrections officer inspected and viewed your naked body.

*A federal Court authorized this notice. This is not a solicitation from a lawyer.*

- A \$3 million settlement has been proposed in a class

action lawsuit about alleged illegal strip searches that took place when people were strip searched at the Knox County Jail while being held prior to trial.

- The settlement fund will pay cash to those who submit valid claims after deducting attorney's fees, and the costs and expenses for this case.
- The settlement prohibits the Knox County Jail from continuing the policy, custom and practice of strip searching people held prior to trial, charged with crimes not involving drugs, weapons or a violent felony.

Your legal rights are affected if you act or do not act. **Please Read this Notice Carefully**

You are receiving this notice because records show that you **may** be a class member. To see if you qualify, you must submit a complete Settlement Claim Form, postmarked by February 12, 2007, to:

Dare Claims Administrator, **P.O. Box 2006,**  
**Chanhassen, MN 55317-2006**

If you submit a claim form and qualify as a class member, you will share in this settlement. The amount of money you will receive depends on how many people submit claim forms. The money will be divided by the number of claims. Lawyers for the plaintiffs believe that over seven thousand people are eligible members of the Class.

**Questions? Call Toll Free (877) 797-5732 or visit [www.knoxcountyjailclass.com](http://www.knoxcountyjailclass.com)**

You have the right to opt out or request to be excluded from the settlement class. To do so, you must mail a written request to the Claims Administrator at Dare Claims Administrator, P.O. Box 2006, Chanhassen, MN 55317-2006. Use the Opt Out/Exclusion form attached to this notice. **To be valid your exclusion request must be received on or before February 12, 2007. Read the remaining paragraphs of this notice so that you fully understand what it means to opt out or exclude yourself from this settlement and what you have to do to be excluded.**

<b>THESE ARE YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
Submit a Claim Form	This is the only way to get a payment. <b>Remember: Claim Forms postmarked after February 12, 2007 will not be considered for payment.</b>
Object	You must write to the Court explaining why you believe the settlement is not fair by February 12, 2007. Second, you must appear in Court at the Fairness Hearing on April 23, 2007. Third, you must also submit a claim form.

Do Nothing	You get <u>no</u> payment. You will still be bound by the settlement and you give up your right to sue the defendant on these claims later.
Opt Out/Exclusion	You get <u>no</u> payment. You will not be bound by the settlement and you will keep your right to sue the Defendant on these claims, if the statute of limitations has not run on your claim.

## THE SETTLEMENT BENEFITS - WHAT YOU GET AND HOW TO GET IT

### *How much will my payment be?*

We do not know the amount of the payments. If you are eligible you will get a payment for only one strip search. The amount will depend on how many people submit claim forms. The amount per person will decrease as the number of forms submitted increases. Each participating person will receive an equal amount.

The settlement money will be distributed after payment of attorneys' fees, expenses and bonuses. Counsel requests a 30% attorney's fee, which includes all costs, expenses and disbursements. Class counsel requests payment of a bonus to the class representative and class members who were deposed to compensate them for the time they spent helping to bring about this settlement and for the loss of privacy to the class representative. The requested bonuses range from \$500.00 for participating in a deposition to \$5,000.00 for serving as class representative. The total amount of the requested bonuses is \$14,500.00, less than 1% of the total settlement.

### *How can I get a payment?*

You must fill out the Settlement Claim Form completely and mail it to the Claims Administrator. A Claim Form is included with this notice. You can also obtain a Claim Form from the Settlement Website at [www.knoxcountyjailclass.com](http://www.knoxcountyjailclass.com). **The envelope must be postmarked no later than February 12, 2007; if it is not, your claim will be denied.**

Questions? Call Toll Free (877) 797-5732 or visit [www.knoxcountyjailclass.com](http://www.knoxcountyjailclass.com)

The settlement check will be written in your name with your social security number. Your check will be sent to your mailing address. If you move, you must notify the Claims Administrator in writing of your new address or the check will be sent to your old address.

### **When will I get my payment?**

You cannot be paid until the settlement is approved by the Court and any appeals are over. The Court will hold a hearing on April 23, 2007, to decide whether to approve the settlement. If the Court approves the settlement and all appeals are completed promptly, you should receive your settlement check by June 1, 2007, unless there are any unforeseen delays.

### **Will I have to pay taxes on my payment?**

You may have to pay taxes on your payment. You should consult your tax preparer when you file your tax returns. The Claims Administrator will send you a 1099 Form. (If you have questions about backup withholding, Form W-9 or Form 1099, call your tax preparer or the IRS Information Reporting Program Customer Service Section, toll free at (866) 455-7438, 8:30 am to 4:30 p.m., Monday through Friday.)

### **What should I do if I do not want to participate in the class action?**

If you do not wish to participate in the class action, do nothing. If you do not send in a claim form you will not be a participating Class Member and you will not receive a payment. You will also be barred from filing a case on these claims in the future.

## **WHO IS IN THE SETTLEMENT**

### **What is a Class Action and who are Class Members?**

In a class action, one or more people, called Class Representatives (in this case, Dale Dare), sued on behalf of all people who have similar claims. All of the people who were similarly treated are known as the Class or Class Members. One court resolves the issues for all Class Members.

### **How do I know if I am a Class Member and part of the settlement?**

The Court has ruled that you are a Class Member if you meet all four factors below:

1. You were held at the Knox County Jail after November 19, 1996 and before December 31, 2004.
2. You were held at Knox County Jail after an arrest but

- before a bail hearing or first court appearance. This includes arrests on default and other warrants.
3. You were not charged with a crime involving drugs or weapons or a violent
  4. You were strip searched before a first court appearance or while awaiting bail.

NOTE: You are not a class member if you were either (1) strip searched while you were serving a sentence, (2) you were strip searched after an evaluation which determined there was reason to suspect possession of hidden contraband., or (3) you were arrested for and/or charged with a crime involving drugs, weapons or a violent felony.

### **What crimes are considered to be violent felonies?**

The following crimes are violent felonies: aggravated assault, arson, assault on an officer, criminal restraint, elevated aggravated assault, gross sexual assault, kidnapping, manslaughter, murder, rape, and robbery. This list is non-exclusive, and other felony level crimes may be determined to be "violent".

### **What if I was arrested for more than one crime?**

The most serious charge for an arrest will determine your class membership. If any one of the charges was a crime involving weapons or drugs or was a violent felony, you are not a class member for that arrest. You might be eligible for another arrest.

### **What if I was arrested on a default warrant of violation of probation or parole?**

You are a class member if you were arrested on a default or other warrant or for violating the terms of probation or parole so long as the crime for which you were on probation did not involve weapons, or rugs, or a violent felony.

### **Who makes the final decision about who qualifies as a Class Member?**

The Class Administrator makes the final decision about who qualifies as a Class Member subject to Court review. The booking records kept by the Knox County Jail will help determine if you are a class member. You can help by listing the date or dates when you feel you met the class definition. If the records do not show that you fit the class definition, your claim will be denied. You can appeal your denial to the claims administrator by sending documentation and information regarding the dates you believe you were held

and strip searched. A decision by the Claims Administrator can be appealed to the Judge. (If you are not a class member, you are not bound by this settlement. You can take action as an individual if you wish.)

**What if I was arrested and strip searched more than once, can I still participate?**

Yes. If you were arrested and brought to the Jail more than once during the class period you are a member of the class and can recover money. You can only recover one payment, however, as you will not be provided with extra payments if you were arrested and strip searched at the jail more than one time.

**What if I was at the jail on or before November 18, 1996 or after December 31, 2004?**

The time period for being a class member is based on the legal requirement that a case must be filed within a certain time period; this is called the statute of limitations. The law in Maine only allows a person to bring a claim within six years after his or her rights were violated. Because this case was filed on or about November 19, 2002, class members include anyone strip-searched in the six years before that date. If you were strip-searched on or before November 18, 1996, it may be too late to bring a lawsuit. The time period for the class ends on December 31, 2004. If you were strip-searched after this date, that search is not a part of this lawsuit; you must file your own lawsuit.

**What if I was found not guilty of the crime for which I was arrested?**

You are entitled to the same settlement amount whether you were found guilty or not guilty of the crime.

**What if I am still unsure about whether I am part of the settlement?**

If you are still unsure as to whether you are a member of the class, you may fill out and return the Settlement Claim Form. If the settlement is approved, you will be notified if you do not qualify. If you qualify you will receive a check. You may also visit the settlement website on the Internet at [www.knoxcountyjailclass.com](http://www.knoxcountyjailclass.com) or call (877) 797-5732 to speak to a Settlement Administrator or Class Counsel to answer your questions.

**How did the lawyers in this case find me and how can I protect my**



### **privacy?**

After you were arrested, you gave your name and address at the Knox County Jail during booking. This information was given to the lawyers for the plaintiffs by Knox County pursuant to a court order. The lawyers for the plaintiffs will do everything they can to protect your privacy. Only the lawyers in the case and the Court appointed Claims Administrator will know your name and, in most cases, only the Claims Administrator will see your Claim Form.

## **THE COURT'S FAIRNESS HEARING**

### **What is a Fairness Hearing?**

The Court will hold a hearing to decide whether to approve the settlement. The Court will consider whether the settlement is fair, reasonable and adequate. The Court will also decide whether to approve the request for attorney's fees, costs, expenses and the bonuses to class representatives. If the Court approves the proposed settlement, it will affect all class members.

### **When and where is the hearing?**

The Hearing will be held on April 23, 2007 at 10:00 a.m. in the U.S. District Court of Maine, 156 Federal Street, Portland, ME.

### **Do I have to come to the hearing?**

Class counsel will answer any questions the Court may have. You are welcome to come at your own expense. If you object to the settlement and you want to explain the objection to the Court you can attend the hearing or hire your own lawyer to attend for you.

### **May I or my lawyer speak at the hearing?**

Yes, but only if you or your lawyer filed a written objection before the hearing.

## **OBJECTING TO THE SETTLEMENT**

### **What if I think the proposed settlement is not fair? What can I**

## **do?**

If you wish to object to the proposed settlement, you must state your objections to the Court in a letter sent to the Dare Settlement Claims Administrator, postmarked by February 12, 2007. The Claims Administrator will forward your objection to the Court and to the lawyers for the plaintiffs and for Knox County. If you want to explain the written objection to the court you, or a lawyer on your behalf, can appear in the U.S. District Court of Maine, 156 Federal Street, Portland, ME on April 23, 2007 to present your objections.

You may object to the proposed settlement and still be eligible to receive a payment. **You must submit a valid Settlement Claim Form even if you object to the settlement, if you wish to claim money should the settlement be approved.**

## **THE LAWYERS IN THIS CASE**

### **Who are the lawyers in this case?**

The lawyers for the plaintiffs are Robert Stolt, Esq., and Sumner Lipman, Esq., Lipman, Katz & McKee, 227 Water Street, P.O. Box 1051, Augusta, ME 04332-1051, and Dale Thistle, Esq., 103 Main Street, P.O. Box 160, Newport, ME 04953.

Defendant Knox County is represented by attorney Peter Marchesi, Wheeler and Arey, P.A., 27 Temple Street, PO Box 376, Waterville, ME 04901, and John J. Wall, III, Monaghan Leahy LLP, 95 Exchange Street, PO Box 7046, Portland, ME 04112-7046.

### **How will the plaintiffs' lawyers be paid?**

The lawyers for the plaintiffs will request that the Court award an attorney's fee of 30% of the settlement fund, which will include out-of-pocket costs.

**Questions? Call Toll Free (877) 797-5732 or visit [www.knoxcountyjailclass.com](http://www.knoxcountyjailclass.com)**

## **OPTING OUT**

### **How do I opt out if I don't want to be a member of the class, but want to pursue my claims in my own lawsuit?**

If you wish to opt out of this class action to pursue your own claim against Knox County, you may do so by completing an "OPT OUT/EXCLUSION FORM" and submitting it on or before February 12, 2007 to the Dare Claims Administrator, P.O. Box 2006, Chanhassen, MN 55317-2006. You can obtain an Opt Out/ Exclusion form from the Claims Administrator at the above address, by calling the Claims Administrator toll free at 1-877-797-5732 or by downloading an Opt Out/Exclusion form at the internet website at [www.knoxcountyjailclass.com](http://www.knoxcountyjailclass.com). To be valid, the form must be postmarked by February 12, 2007.

## OTHER INFORMATION

If you wish to view the Court file or a copy of the proposed settlement agreement, you may go to the Clerk of the U.S. District Court of Maine, 156 Federal Street, Portland, ME during regular business hours. You can also view the settlement papers on the web at [www.knoxcountyjailclass.com](http://www.knoxcountyjailclass.com).

To obtain more information or ask questions about the settlement, you can call the Claims Administrator toll-free at (877) 797-5732 ; write to the Claims Administrator at Dare Claims Administrator, **P.O. Box 2006, Chanhassen, MN 55317-2006**; or visit the Internet website at [www.knoxcountyjailclass.com](http://www.knoxcountyjailclass.com). On the website you will find answers to frequently asked questions, a downloadable claim form, plus additional information that may help you determine if you are a Class Member.

***Important - Please do not call the Court directly with questions about the settlement.***

227 WATER STREET - AUGUSTA, ME 04332-1051 - P: 207.622.3711 - F: 207.622.7415

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