

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 97-2806-CIV-HUCK/BROWN

MARK OSTERBACK, et al.,

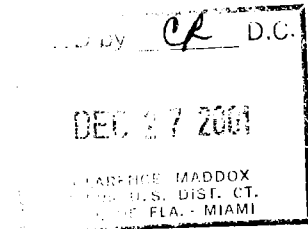
Plaintiffs,

v.

MICHAEL W. MOORE, et al.,

Defendants.

---



**ORDER ENTERING DEFENDANTS' REVISED OFFER OF JUDGMENT**

This matter came on to be heard pursuant to the Order entered October 10, 2001 approving the Notice of Class Action Settlement and giving notice that the fairness hearing required by Rule 23(e), Fed.R.Civ.P., would be conducted December 26, 2001 at 1:30 p.m. The Order entered October 10, 2001, also outlined the procedures to be followed for giving notice to the class members and gave them notice of the opportunity to file comments, support of, or objections to the Defendants' Revised Offer of Judgment which had been accepted by the Plaintiffs and filed on October 1, 2001.

Several factors may be considered in determining whether a proposed settlement is fair, adequate and reasonable: "(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage

383

of proceedings at which the settlement was achieved.” Bennett v. Behring Corp., 737 F.2d 982, 986 (11<sup>th</sup> Cir. 1984) (citations omitted).

Because the defendants offered, and plaintiffs accepted, an offer of judgment prior to trial, the Court is not in a position to predict what the outcome would have been. However, the Court notes that the parties agree that defendants have an obligation to provide for the food, clothing, shelter and necessary medical treatment, including mental health treatment, to inmates in Close Management in the Florida Department of Corrections. The Court further notes that plaintiffs seek only injunctive and declaratory relief. As evidenced by the defendants’ motion for summary judgment and the plaintiffs’ response thereto and the documents submitted in support thereof, both parties have legal and factual arguments in support of their respective positions. The Offer of Judgment and acceptance thereof sets forth a plan that, if implemented, the parties believe should result in a system that provides at least minimum requirements of the Eighth Amendment for inmates held in close management. The Court finds that the scope of relief provided meets or exceeds that which would be ordered by the Court after a full trial on the merits.

The Court further notes that both class counsel and counsel for defendants support and urge approval of the accepted Offer of Judgment.

The Court has reviewed the comments and objections submitted by class members and potential class members, conducted the fairness hearing, and considered argument of counsel, it is hereby

ORDERED AND ADJUDGED that the objections and comments of current and prospective class members have been adequately responded to by the accepted Revised Offer of Judgment or, otherwise, by the Defendants and that the relief set forth in

Defendants' Revised Offer of Judgment is sufficient to correct the violations of the federal right complained of by the plaintiff class. It is further

ORDERED AND ADJUDGED that Defendants' Revised Offer of Judgment is found to be a fair and just resolution of this cause. It is further

ORDERED AND ADJUDGED that Defendants' Revised Offer of Judgment is adopted and entered as a Final Order and Judgment as of this date. It is further


ORDERED AND ADJUDGED that all pending motions are denied as moot. It is further

ORDERED AND ADJUDGED that the Court shall retain jurisdiction over Defendants' Revised Offer of Judgment, entered this date as a Final Order and Judgment for the term stated therein. It is further

ORDERED AND ADJUDGED that the Court shall retain jurisdiction over awarding plaintiffs' attorneys' fees, expenses, and costs. It is further

ORDERED AND ADJUDGED that the Clerk of the Court administratively close this case for statistical purposes.

DONE and ORDERED in chambers in Miami, Miami-Dade County, Florida this 26<sup>th</sup> day of December, 2001.

  
Paul C. Huck  
United States District Judge

cc: Charles Fahlbusch, Esq.  
Randall C. Berg, Jr., Esq.  
Peter M. Siegel, Esq.  
Christopher Jones, Esq.