

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

BRIAN MAST, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 2:05-cv-37
	)	
J. DAVID DONAHUE, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER FINDING PRIVATE SETTLEMENT AGREEMENT TO BE FAIR,  
REASONABLE AND ADEQUATE PURSUANT TO RULE 23(E) OF THE  
FEDERAL RULES OF CIVIL PROCEDURE**

This cause comes before the Court following the parties tendering of their Private Settlement Agreement. On November 21, 2007, the Court held a fairness hearing, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to determine whether the Private Settlement Agreement is a fair, reasonable and adequate resolution of this matter. Both parties appeared by counsel at the hearing.

Having considered the Private Settlement Agreement, the arguments of counsel at the fairness hearing, and the Court's prior proceedings and record in this matter,

IT IS HEREBY FOUND that:

1. The Court has jurisdiction over the subject matter of this cause and over all of the parties, including the members of the certified class.
2. The class has been given proper and adequate notice of the proposed Private Settlement Agreement, such notice having been posted in some institutions and hand delivered in others in compliance with the prior orders of this Court. Notice was provided at least thirty (30) days prior to class counsel filing his reports to this Court.

3. The notice invited class members to notify class counsel of any objections or comments on the Private Settlement Agreement. The notice provided valid, due, and sufficient notice of these proceedings and the matters set forth herein and including information regarding the procedures for making any objections to the Private Settlement Agreement.

4. The notice fully satisfied the requirements of Rule 23, Federal Rules of Civil Procedure, and the requirements of due process.

5. The proposed resolution of this case, the entering by the parties into the previously tendered Private Settlement Agreement, is fair, reasonable, and adequate for the following reasons:

A. The settlement in this case grants to the plaintiffs everything they requested in their Complaint, the removal of seriously mentally ill prisoners from the Secured Housing Unit (“SHU”) at Wabash Valley Correctional Facility. Plaintiffs assert that the strength of their case was high. Given that they have attained everything they requested the Court finds that the comparing the strength of the case to the settlement offered favors the settlement in this case.

B. The complexity, length, and expense of continued litigation weigh in favor of finding the Private Settlement Agreement is fair, reasonable and adequate. Continued litigation would require a lengthy trial and extensive trial preparation including multiple experts and extensive further discovery. Given that the Private Settlement Agreement grants plaintiffs the relief they have sought, albeit in the form of a private settlement

agreement, rather than a judgment, further cost and delay in litigating this claim would not be in the best interest of the parties, particularly the class members.

C. It does not appear that any class member is opposed to the settlement insofar as it removes seriously mentally ill prisoners from the SHU and sets up standards and procedures to ensure that seriously mentally ill prisoners are not returned there. The objections that have been raised are to the fact the Private Settlement Agreement does not prohibit prisoners deemed to be seriously mentally ill by the Private Settlement Agreement from being housed in other segregation units throughout the DOC. Plaintiffs' counsel expressed concern over this situation and indicated that it may lead to future litigation. However, plaintiffs' counsel noted, and the Court agrees, that this case focused on the SHU and concerns over other segregation units are outside of the scope of this litigation.

D. There is no evidence of any collusion between the parties in entering into this Private Settlement Agreement. The Court is satisfied that the Private Settlement Agreement is the result of an arms-length negotiation.

E. The opinion of class counsel that the Private Settlement Agreement is fair, reasonable, and adequate weighs in favor of the Court so finding. Counsel is experienced in class action litigation.

F. The stage of the proceedings and amount of discovery weigh in favor of finding that the Private Settlement Agreement is fair, reasonable, and adequate. The case has been ongoing since February of 2005. Extensive discovery has occurred and the parties have engaged in a number of conferences with two Magistrate Judges. Experts have made trips to Indiana to assist plaintiffs. The settlement arose after counsel had conducted thorough discovery in this case.

6. The Private Settlement Agreement provides that the defendants will agree to pay plaintiffs the sum of \$150,109.60 in full satisfaction of any claim for attorneys' fees and costs that could be claimed by plaintiffs for any work done in the case to the date of tendering of the Private Settlement Agreement. The notice to the class accurately and adequately described this fee agreement. There was very little objection to the fee agreement by the prisoners receiving notice of the settlement and no evidence that the fees were unreasonable was presented.

For the foregoing reasons, the Court finds that the Private Settlement Agreement is fair, reasonable and adequate under Rule 23 of the Federal Rules of Civil Procedure and is therefore deemed to be effective as of this date.

Pursuant to paragraph 29 of the Private Settlement Agreement, it is ORDERED that this matter is hereby STAYED for two years from this date, thereafter to be dismissed without prejudice to being reinstated by plaintiffs or class members pursuant to the terms of paragraph 28 of the Private Settlement Agreement.

2:05-cv-37 LJM-WGH MAST, *et al.* v. DONAHUE, *et al.*

IT IS SO ORDERED this 11/26/2007

cc:

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