

/s/ Mercedes Montagnes

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Email: NVora@jmbm.com

CERTIFICATE OF SERVICE

I do hereby certify that on May 2, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send a notice of electronic filing to all CM/ECF participants.

s/ Mercedes Montagnes
MERCEDES MONTAGNES, LSBA #33287
636 Baronne Street
New Orleans, LA 70113
(504) 529-5955

Defendants should not be held in contempt for their violation of this Court's Injunction which explicitly relied upon the exhaust ventilation system to achieve the diversion of cool air from the guards' pod to the Tier C cells in which Plaintiffs are incarcerated and thereby remedy the Eighth Amendment violation. (Rec. Doc. 379 at 17 ("The installation of the 27" x 34" air vent in the door connecting Tier C to the guards' pod permitted the conditioned air in the guards' pod to flow into Tier C ... and into the space in which Plaintiffs were confined. The conditioned air subsequently exited the structure through the tier's exhaust system.")). Plaintiffs also move for all appropriate sanctions, including attorneys' fees, and such other equitable relief as this Court deems just and proper.

Plaintiffs have attempted to resolve this issue with Defendants through their counsel in order to avoid bringing it before this Court. Unfortunately, Defendants maintained the position that the recent shut down of the Plaintiffs' exhaust fans was part of the status quo. Plaintiffs were unable to comprehend Defendants' position given that Plaintiffs have personally experienced a marked difference in their conditions of confinement following Defendants' alteration of the conditions that existed previously. These conditions were the subject of testimony by the Court's appointed expert Mr. Hernandez, and that were ultimately described in this Court's Injunction. Shortly before filing this motion, it appears Defendants' position may have altered and that the vents will be restored to full operation. However, in light of the ongoing lack of clarity in Defendants' explanations in this matter, Plaintiffs file this motion to ensure that the Court is aware of Defendants' actions that could have limited the effectiveness of the Injunction and to deter other potential retaliatory actions against Plaintiffs.

I. FACTUAL BACKGROUND

The factual background and procedural history of this matter are well known to the Court. The litigation revolves around the extreme heat conditions on Death Row at Louisiana State Penitentiary. This matter is in briefing on its second appeal following this Court's issuing of a new injunction on remand from the first appeal.

Plaintiffs have been attempting to resolve this latest issue for almost a month. It arose on April 5, 2017 when Plaintiffs' counsel informed the Defendants and the Special Master that alterations to the exhaust system appear to have taken place and asked Defendants to investigate those reports. Ex. 1 (Email from Montagnes to Roper April 5, 2017). Two days later, Plaintiffs' counsel inquired about the status of Defendants' investigation. Ex. 2. (Email from Montagnes to Roper April 7, 2017). Four days later, Defendants responded that their clients reported no changes to the vents. Plaintiffs' counsel informed Defendants that Plaintiffs reported changes to the vents and to be informed of any changes in Plaintiffs conditions. Ex. 3 (Email from Montagnes to Roper April 11, 2017).

Approximately two weeks later, Plaintiffs reported that the vents had again been turned off and that the Warden reported to them that the vents had been turned off to avoid circulating the air from the central pod onto Tier C where they are housed, *i.e.* to prevent the diversion of cool air from the guards' pod onto Tier C. Plaintiffs' counsel reported this to Defendants and asked that they respond immediately. Ex. 4 (Email from Montagnes to Roper April 28, 2017). By 2:10pm the following Monday, Plaintiffs had not received a substantive response to their concerns and inquired about the status. Ex. 5 (Email from Scheckman to Special Master Hebert May 1, 2017). A lengthy email exchange took place before the parties. Ex. 6 (Various emails).

Remarkably, for the first time, Defendants alleged that as part of their implementation of the Third Heat Remediation Plan they closed the sanitation vents inside the Plaintiffs' cells. Ex. 6 Page 8-9. This assertion by Defendants is implausible. The closure of the vents was never previously known to (or experienced by) Plaintiffs, was not part of the joint stipulation of the parties detailing the alterations contained in the Third Heat Remediation Plan (Rec. Doc. 360), and is directly contradicted by the testimony of the Court appointed expert, Mr. Shane Hernandez. Ex. 7 (Transcript August 22, 2016) and Ex. 8 (Report of Shane Hernandez). Defendants further asserted that they would open the vents if that is what Plaintiffs desire but that "this will negate the cooling effect of the experiment." Ex. 6 Page 11. Again, this is not consistent with the testimony of Mr. Hernandez and the factual findings upon which the Court's Injunction was issued.

Defendants' position remains difficult to understand because of Defendants' constantly shifting justifications of the need for specific prerequisites to be met before they take corrective action. Defendants have at various times stated that they would turn the vents on Thursday May 4, 2017 with Plaintiffs' counsel present (Ex. 6 Page 11); that they required the Court's consent to open the vents because it would alter the status quo (Ex. 6 Page 8-9); that they required the Special Master's Consent to open the vents because it would alter the status quo (Ex. 6 Page 6); that they could not take a position on whether the vents were open or closed last summer when the Third Plan was voluntarily undertaken, and that Defendants would open the vents only if Plaintiffs conceded opening the vents would not be a violation of the status quo, despite Plaintiffs' repeated explanations that Defendants must have knowledge of whether alterations were made to the pre-existing conditions (Ex. 6, Page 1-2).

Then, shortly before the filing of this motion, Defense counsel sent an email stating:

In our continuing effort to resolve this issue, we have been trying to get in touch with our expert, Frank Thompson. We have just been able to reach him and he has confirmed that on the day that he conducted his inspection, that the exhaust vents appeared to be open. In light of that, we instructed LSP to open the vents and it is my understanding that this has been accomplished.

Ex. 11 (Roper Email to Scheckman May 2, 2017).

Given Defendants' inexplicable shifting rationales and failure to address matter for almost a month, Plaintiffs grave concerns about the representations made by Defendants to their own counsel in this matter, and Defendants' control and constructive knowledge of virtually all aspects of the conditions in which Plaintiffs are confined,, Plaintiffs felt that the Court should be made aware of the situation.

II. ARGUMENT

The relief voluntarily undertaken by Defendants and ordered by this Court relied on the exhaust system in the Plaintiffs' cells. It was observed by the Court appointed expert. Ex. 7 at 14-16 & 8 at 2. The Defendants never mentioned any alterations they planned to make to the exhaust system until Plaintiffs reported a change in the exhaust fan. Ex. 6 Page 11. Only then, and for the first time ever, did Defendants claim that they had altered the internal mechanisms in the Plaintiffs ventilation system. Ex. 6 Page 8-9. This claim is not only without any documentation but it also violates the pre-existing order to maintain the status quo since it was never mentioned to either Plaintiffs or the Court when Defendants sought approval of the parties and the Court to conduct experimentation during the summer of 2016.

The Defendants have refused to acknowledge recent changes to the ventilation system. They have intimated that "our clients will open the louvers within the exhaust system if that is what you want them to do. They are just concerned that you will not like the results, as the temperature in the cells is almost certain to rise." Ex. 6 Page 8-9. Given the tone of this email,

Plaintiffs are concerned that Defendants will make alterations deliberately designed to alter the status quo instead of simply doing what was in place last summer.

Furthermore, the ventilation system in place provides health and safety measures which rid the air of possible contaminants and odor. See e.g. Ex. 9 (transcript of David Garon Testimony Page 286-287) & Ex. 7 (Transcript of Testimony Hernandez, Page 14-15). This type of ventilation is required in parish jails by code and by ASHRAE standards in all buildings across Louisiana. Ex. 10 (Minimal Jail Standards). Plaintiffs are concerned that the ongoing shut down of the air circulation could cause contaminants to grow and cause unsafe conditions.

Further, even though it appears that Defendants have turned back on the ventilation system, Plaintiffs are obligated to bring this before the Court. Defendants have previously shown bad faith with respect to making alterations to Death Row. *See, e.g.*, Rec. Doc. 88 (discussing Defendants' "willful, bad faith" attempts to manipulate the court-ordered temperature data and abusing the discovery process); Rec. Doc. 214 (Order to Maintain the Status Quo). Defendants' prior actions have heightened Plaintiffs' concerns about altering the Death Row facility with respect to the present issue.

III. CONCLUSION

Wherefore, Plaintiffs respectfully request that the Court order Defendants to restore the conditions to those observed by the court appointed expert in this matter, show cause as to why they should not be found in contempt for violation of this Court's order to maintain the status quo and this Court's Injunction, for sanctions in the form of attorneys' fees, and for such other remedies deemed appropriate by this Court.

Date: May 2, 2017

Respectfully submitted,

/s/ Mercedes Montagnes

Mercedes Montagnes, La. Bar No. 33287 (Lead Counsel)
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Email: steve@sswethicslaw.com

Nilay U. Vora, Ca. Bar No. 268339, *admitted pro hac vice*
Jeffer Mangels Butler & Mitchell LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067
Tel. (310) 203-8080
Fax (310) 203-0567
Email: NVora@jmbm.com

CERTIFICATE OF SERVICE

I do hereby certify that on May 2, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

s/ Mercedes Montagnes
MERCEDES MONTAGNES, LSBA #33287
636 Baronne Street
New Orleans, LA 70113
(504) 529-5955

From: [Mercedes Montagnes](#)
To: [Samantha Bosalavage](#)
Subject: FW: Ball v. LeBlanc - Death Row Vent Issues
Date: Tuesday, May 2, 2017 11:49:02 AM

From: Mercedes Montagnes
Sent: Wednesday, April 5, 2017 3:54 PM
To: 'Mary Roper' <maryr@SCWLLP.COM>; Renatti Dupont <rsdupont@ohllc.com>
Cc: Colin Clark <clarkc@ag.state.la.us>; Nilay Vora <NVora@jmbm.com>; Steven Scheckman <steve@SSWETHICSLAW.COM>; Winston White <WhiteW@ag.louisiana.gov>; Wade Shows <wade@scwllp.com>; Jeffrey Cody <jeffreyc@scwllp.com>; Carlton Trey Jones <cjones@roedelparsons.com>; Paul Hebert <pjhebert@ohllc.com>
Subject: Ball v. LeBlanc - Death Row Vent Issues

Counsel and Special Master,

Last week our clients reported to us that the vents in their cells were not working. We wanted to make sure that the problem was not temporary or could not be handled internally without involving counsel.

Today, they confirmed that the vents appear to be blocked, turned off, or malfunctioning in some way. As a result the cool air is not circulating in their tier as it has in the past. Can you please let us know as soon as possible what is going on and how it can be rectified?

Best,

Mercedes Montagnes
The Promise of Justice Initiative
636 Baronne St.
New Orleans, LA 70113
(504) 529-5955
Mercedesm@thejusticecenter.org

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Mara Abramson

From: Samantha Bosalavage
Sent: Tuesday, May 02, 2017 5:16 PM
To: Mara Abramson
Subject: Fwd: Ball v. LeBlanc - Death Row Vent Issues

Sent from my iPhone

Begin forwarded message:

From: Mercedes Montagnes <MMontagnes@thejusticecenter.org>
Date: May 2, 2017 at 11:49:05 AM CDT
To: Samantha Bosalavage <SBosalavage@thejusticecenter.org>
Subject: FW: Ball v. LeBlanc - Death Row Vent Issues

From: Mercedes Montagnes
Sent: Friday, April 7, 2017 4:33 PM
To: 'White, Winston' <WhiteW@ag.louisiana.gov>; Mary Roper <maryr@SCWLLP.COM>; Renatti Dupont <rsdupont@ohllc.com>
Cc: Clark, Colin <ClarkC@ag.louisiana.gov>; Nilay Vora <NVora@jmbm.com>; Steven Scheckman <steve@SSWETHICSLAW.COM>; Wade Shows <wade@scwllp.com>; Jeffrey Cody <jeffreyc@scwllp.com>; Carlton Trey Jones <cjones@roedelparsons.com>; Paul Hebert <pjhebert@ohllc.com>
Subject: RE: Ball v. LeBlanc - Death Row Vent Issues

Counsel,

I want to inquire about the status of your investigation regarding the vents in our clients cells. Please let us know what if anything you have been able to ascertain from your client.

Best,

Mercedes Montagnes
The Promise of Justice Initiative
636 Baronne St.
New Orleans, LA 70113
(504) 529-5955
Mercedesm@thejusticecenter.org<<mailto:Mercedesm@thejusticecenter.org>>

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From: White, Winston [<mailto:WhiteW@ag.louisiana.gov>]
Sent: Wednesday, April 5, 2017 4:02 PM
To: Mercedes Montagnes <MMontagnes@thejusticecenter.org>; Mary Roper <maryr@SCWLLP.COM>; Renatti Dupont <rsdupont@ohllc.com>
Cc: Clark, Colin <ClarkC@ag.louisiana.gov>; Nilay Vora <NVora@jmbm.com>; Steven Scheckman <steve@SSWETHICSLAW.COM>; Wade Shows <wade@scwllp.com>; Jeffrey Cody <jeffreyc@scwllp.com>; Carlton Trey Jones <cjones@roedelparsons.com>; Paul Hebert <pjhebert@ohllc.com>
Subject: RE: Ball v. LeBlanc - Death Row Vent Issues

Special Master Hebert,

I have asked the Wardens to look into these allegations.

Thank you,



Winston White
Assistant Attorney General
Office of Attorney General Jeff Landry
Phone: (225) 329-6279 Fax: (225) 329-6279
www.AttyGen.la.gov

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From: Mercedes Montagnes [<mailto:MMontagnes@thejusticecenter.org>]
Sent: Wednesday, April 05, 2017 3:54 PM
To: Mary Roper; Renatti Dupont
Cc: Clark, Colin; Nilay Vora; Steven Scheckman; White, Winston; Wade Shows; Jeffrey Cody; Carlton Trey Jones; Paul Hebert
Subject: Ball v. LeBlanc - Death Row Vent Issues

Counsel and Special Master,

Last week our clients reported to us that the vents in their cells were not working. We wanted to make sure that the problem was not temporary or could not be handled internally without involving counsel.

Today, they confirmed that the vents appear to be blocked, turned off, or malfunctioning in some way. As a result the cool air is not circulating in their tier as it has in the past. Can you please let us know as soon as possible what is going on and how it can be rectified?

Best,

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From: [Mercedes Montagnes](#)
To: [Samantha Bosalavage](#)
Subject: FW: Ball v. Leblanc
Date: Tuesday, May 2, 2017 11:50:47 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

From: Mercedes Montagnes
Sent: Tuesday, April 11, 2017 2:26 PM
To: 'White, Winston' <WhiteW@ag.louisiana.gov>; pjhebert@ohllc.com; rsdupont@ohllc.com; Clark, Colin <ClarkC@ag.louisiana.gov>; steve@SSWETHICSLAW.COM; 'nvora@jmbm.com' <nvora@jmbm.com>; Mary Roper <maryr@SCWLLP.COM>; Jeffrey Cody <jeffreyc@scwllp.com>
Subject: RE: Ball v. Leblanc

Thank you counsel. I understand from my clients that the vents began functioning again last week. They are concerned that they appear to be operating at a slower rate than they have in the past.

We want to be sure to be aware of any changes to our clients conditions – so please keep us informed or let us know if you object to doing so.

Best,

From: White, Winston [<mailto:WhiteW@ag.louisiana.gov>]
Sent: Tuesday, April 11, 2017 10:30 AM
To: pjhebert@ohllc.com; rsdupont@ohllc.com; Clark, Colin <ClarkC@ag.louisiana.gov>; White, Winston <WhiteW@ag.louisiana.gov>; Mercedes Montagnes <MMontagnes@thejusticecenter.org>; steve@SSWETHICSLAW.COM; 'nvora@jmbm.com' <nvora@jmbm.com>; Mary Roper <maryr@SCWLLP.COM>; Jeffrey Cody <jeffreyc@scwllp.com>
Subject: Ball v. Leblanc

All,

I have spoken with the Wardens regarding the plaintiffs' allegations of changes to the vents. The Wardens have confirmed there have been no changes to the vents.



Winston White
Assistant Attorney General
Office of Attorney General Jeff Landry
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From: [Mercedes Montagnes](#)
To: [Samantha Bosalavage](#)
Subject: FW: Ball v. Leblanc
Date: Tuesday, May 2, 2017 11:53:13 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
Importance: High

From: Mercedes Montagnes
Sent: Friday, April 28, 2017 10:55 AM
To: 'White, Winston' <WhiteW@ag.louisiana.gov>; 'pjhebert@ohllc.com' <pjhebert@ohllc.com>; 'rsdupont@ohllc.com' <rsdupont@ohllc.com>; 'Clark, Colin' <ClarkC@ag.louisiana.gov>; 'steve@SSWETHICSLAW.COM' <steve@SSWETHICSLAW.COM>; 'nvora@jmbm.com' <nvora@jmbm.com>; 'Mary Roper' <maryr@SCWLLP.COM>; 'Jeffrey Cody' <jeffreyc@scwllp.com>
Subject: RE: Ball v. Leblanc
Importance: High

Counsel,

We had reports from our clients on Tuesday that the vents in the cells had been turned off. We planned to address with you but wanted to give it a couple of days to see if it resolved.

Our clients report that the inmate in charge of maintenance confirmed the vents had been turned off and told them to discuss the vents with the Warden if they wanted to them back on. When the Warden came around later that day he told our clients he would not turn on the ventilation system because it was sucking the air from the main control area. This is in direct violation of the Judge's existing orders- including an order to maintain the status quo. In addition, as we have heard from several experts this ventilation is required for the health and safety of our clients to ensure that air circulates. Our clients use the toilet and shower on this tier.

This is especially concerning considering the email exchange of April 11, 2017 and the history of this case.

Please advise us immediately of the actions you have taken to rectify this situation.

Sincerely,

Mercedes Montagnes
The Promise of Justice Initiative
636 Baronne St.
New Orleans, LA 70113
(504) 529-5955

Mercedesm@thejusticecenter.org<<mailto:Mercedesm@thejusticecenter.org>>

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From: Mercedes Montagnes

Sent: Tuesday, April 11, 2017 2:26 PM

To: 'White, Winston' <WhiteW@ag.louisiana.gov>; pjhebert@ohllc.com; rsdupont@ohllc.com; Clark, Colin <ClarkC@ag.louisiana.gov>; steve@SSWETHICSLAW.COM; 'nvora@jmbm.com' <nvora@jmbm.com>; Mary Roper <maryr@SCWLLP.COM>; Jeffrey Cody <jeffreyc@scwllp.com>

Subject: RE: Ball v. Leblanc

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Best,

From: White, Winston [<mailto:WhiteW@ag.louisiana.gov>]

Sent: Tuesday, April 11, 2017 10:30 AM

To: pjhebert@ohllc.com; rsdupont@ohllc.com; Clark, Colin <ClarkC@ag.louisiana.gov>; White, Winston <WhiteW@ag.louisiana.gov>; Mercedes Montagnes <MMontagnes@thejusticecenter.org>; steve@SSWETHICSLAW.COM; 'nvora@jmbm.com' <nvora@jmbm.com>; Mary Roper <maryr@SCWLLP.COM>; Jeffrey Cody <jeffreyc@scwllp.com>

Subject: Ball v. Leblanc

All,

I have spoken with the Wardens regarding the plaintiffs' allegations of changes to the vents. The Wardens have confirmed there have been no changes to the vents.



Winston White

Assistant Attorney General

Office of Attorney General Jeff Landry

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From: [Mercedes Montagnes](mailto:Mercedes.Montagnes@thejusticecenter.org)
To: [Samantha Bosalavage](mailto:Samantha.Bosalavage@ohllc.com)
Subject: FW: Ball v. Leblanc
Date: Tuesday, May 2, 2017 2:51:27 PM

-----Original Message-----

From: Steven Scheckman [<mailto:steve@SSWETHICSLAW.COM>]
Sent: Monday, May 1, 2017 2:10 PM
To: White, Winston <WhiteW@ag.louisiana.gov>; Mercedes Montagnes <MMontagnes@thejusticecenter.org>; pjhebert@ohllc.com; rsdupont@ohllc.com; Clark, Colin <ClarkC@ag.louisiana.gov>; 'nvora@jmbm.com' <nvora@jmbm.com>; Mary Roper <maryr@SCWLLP.COM>; Jeffrey Cody <jeffreyc@scwllp.com>
Subject: RE: Ball v. Leblanc

Special Master Hebert and Counsel,

As a follow-up to my email of April 28, 2017 advising that David Garon will be accompanying me for the site visit on May 18, 2017, and further advising that I would inform you of the instruments he intended to bring with him on the site visit, please be advised that David Garon will bring with him for the site visit the following instruments for taking airflow, pressure, temperature and humidity measurements:

1. Shortridge 8400 Series Flow Hood Kit
2. ADM-870C Air Data Multi Meter
3. Extech RH350 Temperature and Humidity Meter

Please advise me if there will be any problem with Mr. Garon bringing the above referenced instruments with him for the site visit.

Finally, we are still very concerned about the reports we related to you on Friday and are awaiting a response. Given the seriousness of the reports we request a response from counsel by the close of business today.

Thank you.

Steve Scheckman
Schiff, Scheckman & White LLP
650 Poydras Street, Suite 2760
New Orleans, Louisiana 70130
Phone: 504.309.7888
Fax: 504.518.4831
Email: steve@sswethicslaw.com
www.sswethicslaw.com

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-----Original Message-----

From: White, Winston [<mailto:WhiteW@ag.louisiana.gov>]
Sent: Friday, April 28, 2017 4:25 PM
To: Steven Scheckman <steve@SSWETHICSLAW.COM>; Mercedes Montagnes <MMontagnes@thejusticecenter.org>; pjhebert@ohllc.com; rsdupont@ohllc.com; Clark, Colin <ClarkC@ag.louisiana.gov>; 'nvora@jmbm.com' <nvora@jmbm.com>; Mary Roper <maryr@SCWLLP.COM>;

Jeffrey Cody <jeffreyc@scwillp.com>
Subject: RE: Ball v. Leblanc

Counsel,

We have received your email and have conveyed your concerns to the Wardens. We are currently working with them to get to the bottom of this issue. We will get back with you on Monday to discuss further.

Thank you,

Winston White
Assistant Attorney General
Louisiana Department of Justice
Criminal Division
P.O Box 94005
Baton Rouge, Louisiana 70804
(225) 326-6269 (Telephone)
(225) 326-6297 (Fax)

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From: Steven Scheckman <steve@SSWETHICSLAW.COM>
Sent: Friday, April 28, 2017 11:51 AM
To: Mercedes Montagnes; White, Winston; pjhebert@ohllc.com; rsdupont@ohllc.com; Clark, Colin; 'nvora@jmbm.com'; Mary Roper; Jeffrey Cody
Subject: RE: Ball v. Leblanc

Special Master Hebert,

Please be advised that David Garon will also accompany me on May 18, 2017, for the site visit and we will send the information about instruments he may bring with him soon. Thank you.

Steve Scheckman
Schiff, Scheckman & White LLP
650 Poydras Street, Suite 2760
New Orleans, Louisiana 70130
Phone: 504.309.7888
Fax: 504.518.4831
Email: steve@sswethicslaw.com <<mailto:steve@sswethicslaw.com>>
www.sswethicslaw.com <<http://www.sswethicslaw.com/>>

[Email SSW Logo with Name - flat]

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From: Mercedes Montagnes [<mailto:MMontagnes@thejusticecenter.org>]
Sent: Friday, April 28, 2017 10:55 AM

To: White, Winston <WhiteW@ag.louisiana.gov>; pjhebert@ohllc.com; rsdupont@ohllc.com; Clark, Colin <ClarkC@ag.louisiana.gov>; Steven Scheckman <steve@SSWETHICSLAW.COM>; 'nvora@jmbm.com' <nvora@jmbm.com>; Mary Roper <maryr@SCWLLP.COM>; Jeffrey Cody <jeffreyc@scwllp.com>
Subject: RE: Ball v. Leblanc
Importance: High

Counsel,

We had reports from our clients on Tuesday that the vents in the cells had been turned off. We planned to address with you but wanted to give it a couple of days to see if it resolved.

Our clients report that the inmate in charge of maintenance confirmed the vents had been turned off and told them to discuss the vents with the Warden if they wanted to them back on. When the Warden came around later that day he told our clients he would not turn on the ventilation system because it was sucking the air from the main control area. This is in direct violation of the Judge's existing orders- including an order to maintain the status quo. In addition, as we have heard from several experts this ventilation is required for the health and safety of our clients to ensure that air circulates. Our clients use the toilet and shower on this tier.

This is especially concerning considering the email exchange of April 11, 2017 and the history of this case.

Please advise us immediately of the actions you have taken to rectify this situation.

Sincerely,

Mercedes Montagnes
The Promise of Justice Initiative
636 Baronne St.
New Orleans, LA 70113
(504) 529-5955
Mercedesm@thejusticecenter.org<<mailto:Mercedesm@thejusticecenter.org>>>

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From: Mercedes Montagnes
Sent: Tuesday, April 11, 2017 2:26 PM
To: 'White, Winston' <WhiteW@ag.louisiana.gov<<mailto:WhiteW@ag.louisiana.gov>>>;
pjhebert@ohllc.com<<mailto:pjhebert@ohllc.com>>; rsdupont@ohllc.com<<mailto:rsdupont@ohllc.com>>; Clark,
Colin <ClarkC@ag.louisiana.gov<<mailto:ClarkC@ag.louisiana.gov>>>;
steve@SSWETHICSLAW.COM<<mailto:steve@SSWETHICSLAW.COM>>; 'nvora@jmbm.com'
<nvora@jmbm.com<<mailto:nvora@jmbm.com>>>; Mary Roper
<maryr@SCWLLP.COM<<mailto:maryr@SCWLLP.COM>>>; Jeffrey Cody
<jeffreyc@scwllp.com<<mailto:jeffreyc@scwllp.com>>>
Subject: RE: Ball v. Leblanc

Thank you counsel. I understand from my clients that the vents began functioning again last week. They are concerned that they appear to be operating at a slower rate than they have in the past.

We want to be sure to be aware of any changes to our clients conditions - so please keep us informed or let us know if you object to doing so.

Best,

From: White, Winston [<mailto:WhiteW@ag.louisiana.gov>]
Sent: Tuesday, April 11, 2017 10:30 AM
To: pjhebert@ohllc.com<<mailto:pjhebert@ohllc.com>>; rsdupont@ohllc.com<<mailto:rsdupont@ohllc.com>>; Clark, Colin <ClarkC@ag.louisiana.gov<<mailto:ClarkC@ag.louisiana.gov>>>; White, Winston <WhiteW@ag.louisiana.gov<<mailto:WhiteW@ag.louisiana.gov>>>; Mercedes Montagnes <MMontagnes@thejusticecenter.org<<mailto:MMontagnes@thejusticecenter.org>>>; steve@SSWETHICSLAW.COM<<mailto:steve@SSWETHICSLAW.COM>>; 'nvora@jmbm.com' <nvora@jmbm.com<<mailto:nvora@jmbm.com>>>; Mary Roper <maryr@SCWLLP.COM<<mailto:maryr@SCWLLP.COM>>>; Jeffrey Cody <jeffreyc@scwllp.com<<mailto:jeffreyc@scwllp.com>>>
Subject: Ball v. Leblanc

All,

I have spoken with the Wardens regarding the plaintiffs' allegations of changes to the vents. The Wardens have confirmed there have been no changes to the vents.

[Winston White]<<http://ladoj.ag.state.la.us/index.aspx>>

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From: [Mercedes Montagnes](#)
To: [Samantha Bosalavage](#)
Subject: FW: Ball v. Leblanc
Date: Tuesday, May 2, 2017 2:59:48 PM

-----Original Message-----

From: Steven Scheckman [<mailto:steve@SSWETHICSLAW.COM>]
Sent: Tuesday, May 2, 2017 12:49 PM
To: Mary Roper <maryr@SCWLLP.COM>
Cc: Mercedes Montagnes <MMontagnes@thejusticecenter.org>; Paul Hebert <pjhebert@ohllc.com>; Renatti Dupont <rsdupont@ohllc.com>; White, Winston <WhiteW@ag.louisiana.gov>; Clark, Colin <ClarkC@ag.louisiana.gov>; nvora@jmbm.com; Jeffrey Cody <jeffreyc@scwllp.com>
Subject: RE: Ball v. Leblanc

Mary,

We believe that (1) the defendants have violated the status quo, (2) we are requesting the defendants return the conditions to status quo with air ventilation which every expert found reduced the temperature on the tier, and (3) given that we believe your clients have violated the status quo, we believe we have an obligation to report it to the Court.

Further, this email is the first time that you are willing to open the vents without the approval of the Special Master or the Court or before Thursday so it is not accurate to say that you have been willing to open the vents.

Steve

Steve Scheckman
Schiff, Scheckman & White LLP
650 Poydras Street, Suite 2760
New Orleans, Louisiana 70130
Phone: 504.309.7888
Fax: 504.518.4831
Email: steve@sswethicslaw.com
www.sswethicslaw.com

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-----Original Message-----

From: Mary Roper [<mailto:maryr@SCWLLP.COM>]
Sent: Tuesday, May 02, 2017 12:17 PM
To: Steven Scheckman <steve@SSWETHICSLAW.COM>
Cc: Mercedes Montagnes <MMontagnes@thejusticecenter.org>; Paul Hebert <pjhebert@ohllc.com>; Renatti Dupont <rsdupont@ohllc.com>; White, Winston <WhiteW@ag.louisiana.gov>; Clark, Colin <ClarkC@ag.louisiana.gov>; nvora@jmbm.com; Jeffrey Cody <jeffreyc@scwllp.com>
Subject: Re: Ball v. Leblanc

Steven,

We have offered to open the vents. You are well aware of that. If we can be assured that opening the vents will not

be a violation of the status quo from last Summer, we will open them immediately. We have made our offer to do so repeatedly.

Are you willing to agree that our opening of the vents is not a violation of the status quo?

Mary

Sent from my iPhone

> On May 2, 2017, at 12:06 PM, Steven Scheckman <steve@SSWETHICSLAW.COM> wrote:

>

> Due respect, you have not offered to open the vents or they would be open now. You are requesting the special master make a factual determination without access to the facility. Given your clients incomprehensible position, we are now very concerned that your clients will do something to further alter our clients position and cause them harm. For this reason, we must file before the Court to preserve the record and our clients rights.

>

>

> Steve Scheckman
> Schiff, Scheckman & White LLP
> 650 Poydras Street, Suite 2760
> New Orleans, Louisiana 70130
> Phone: 504.309.7888
> Fax: 504.518.4831
> Email: steve@sswethicslaw.com
> www.sswethicslaw.com

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> -----Original Message-----

> From: Mary Roper [<mailto:maryr@SCWLLP.COM>]
> Sent: Tuesday, May 02, 2017 11:52 AM
> To: Mercedes Montagnes <MMontagnes@thejusticecenter.org>; Paul Hebert <pjhebert@ohllc.com>
> Cc: Renatti Dupont <rsdupont@ohllc.com>; White, Winston <WhiteW@ag.louisiana.gov>; Clark, Colin <ClarkC@ag.louisiana.gov>; 'nvora@jmbm.com' <nvora@jmbm.com>; Jeffrey Cody <jeffreyc@scwllp.com>; Steven Scheckman <steve@SSWETHICSLAW.COM>
> Subject: RE: Ball v. Leblanc

>

> Mercedes,

>

> We have been working diligently to understand the situation and have attempted to resolve the issue. We have offered to open the vents if that is what you want.

>

> We are not conceding anything about the condition of the vents being open or closed last Summer. That is what we have been trying to ascertain. We have consulted with our clients and have reported our clients' understanding.

>

> We are trying to work with you to resolve this issue.

>

> Mary E. Roper
> Attorney at Law
> Shows, Cali & Walsh, L.L.P.
> 628 St. Louis Street (70802)

> P.O. Drawer 4425

> Baton Rouge, LA 70821

> Telephone: 225.346.1461

> Fax: 225.346.1467

>

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>

>

>

> -----Original Message-----

> From: Mercedes Montagnes [<mailto:MMontagnes@thejusticecenter.org>]

> Sent: Tuesday, May 02, 2017 11:45 AM

> To: Paul Hebert; Mary Roper

> Cc: Renatti Dupont; White, Winston; Clark, Colin; 'nvora@jmbm.com';

> Jeffrey Cody; Steven Scheckman

> Subject: RE: Ball v. Leblanc

>

> Counsel,

>

> I am responding because Steve is out of pocket right now.

>

> Are you now conceding that the vents were in an open position last summer?

>

> We are concerned about the additional time this matter will take to resolve and feel that the late request to the Special Master puts him in a bad position and delays possible relief to our clients. This matter has been ongoing for four days and your clients have complete control over the situation.

>

> In consultation with our expert, we understand this to be a major health and safety issue. As you also know, we also have a response to your appeal due next week and I am weeks away from giving birth. Given these concerns, and our explicit knowledge that the vents were fully operational at the time that Mr. Hernandez visited the tier, we feel that we must make the Court aware of the situation.

>

> There is no alteration being requested. We are asking for the condition which was observed by the all parties to be restored.

>

> We are moving ahead with our plan to put this before the Court.

>

> Sincerely,

>

>

> Mercedes Montagnes

> The Promise of Justice Initiative

> 636 Baronne St.

> New Orleans, LA 70113

> (504) 529-5955

> Mercedesm@thejusticecenter.org<<mailto:Mercedesm@thejusticecenter.org>>

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> -----Original Message-----

> From: Paul Hebert [<mailto:pjhebert@ohllc.com>]

> Sent: Tuesday, May 2, 2017 11:36 AM

> To: Mary Roper <maryr@SCWLLP.COM>

> Cc: Renatti Dupont <rsdupont@ohllc.com>; White, Winston

> <WhiteW@ag.louisiana.gov>; Mercedes Montagnes

> <MMontagnes@thejusticecenter.org>; Clark, Colin

> <ClarkC@ag.louisiana.gov>; 'nvora@jmbm.com' <nvora@jmbm.com>; Jeffrey

> Cody <jeffreyc@scwllp.com>; Steven Scheckman <steve@SSWETHICSLAW.COM>

> Subject: Re: Ball v. Leblanc

> Importance: High

>

> Counsel: No, I do not need the picture with your explanation below. My
> stumbling is simply I want to make sure the vent system is the same as what was presented to the expert and all of
us at the site visit last year and is the same in every way as what the expert was testifying about at
> the trial or hearing. there should not be any changes unless a motion is
> filed with clear explanation as to why this has changed and then request a hearing on the need for a change.

>

>

> Paul J. Hebert

> Ottinger Hebert, L.L.C.

> 13 13 W. Pinhook Road (70503)

> P.O. Drawer 52606

> Lafayette, Louisiana 70505-2606

> Telephone: (337) 232-2606

> Telecopier: (337) 232-9867

> Email: pjhebert@ohllc.com

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>

>

>

>

>> On 5/2/17, 11:19 AM, "Mary Roper" <maryr@SCWLLP.COM> wrote:

>>

>> Special Master,

>>

>> The louvers that we are talking about are not visible from the

>> pictures that I have. They are inside of the walls behind the

>> exhaust vents is my understanding. In order to access them, you have

>> to go into the pipe area behind the tier. Do you want someone at LSP
>> to go in there and take a picture of them?

>>

>> Mary E. Roper
>> Attorney at Law
>> Shows, Cali & Walsh, L.L.P.
>> 628 St. Louis Street (70802)
>> P.O. Drawer 4425
>> Baton Rouge, LA 70821
>> Telephone: 225.346.1461
>> Fax: 225.346.1467

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>>

>> -----Original Message-----

>> From: Paul Hebert [<mailto:pjhebert@ohllc.com>]
>> Sent: Tuesday, May 02, 2017 11:02 AM
>> To: Mary Roper; Steven Scheckman
>> Cc: Renatti Dupont; White, Winston; Mercedes Montagnes; Clark, Colin;
>> 'nvora@jmbm.com'; Jeffrey Cody
>> Subject: Re: Ball v. Leblanc

>>

>> I want to understand the issue before I make any decision. Can
>> someone send me a picture?

>>

>>

>> Paul J. Hebert
>> Ottinger Hebert, L.L.C.
>> 13 13 W. Pinhook Road (70503)
>> P.O. Drawer 52606
>> Lafayette, Louisiana 70505-2606
>> Telephone: (337) 232-2606
>> Telecopier: (337) 232-9867
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>>
>>
>>
>>
>>

>>> On 5/2/17, 10:42 AM, "Mary Roper" <maryr@SCWLLP.COM> wrote:

>>>

>>> Steven,

>>>

>>> We are not fighting you on this. If the Special Master will
>>> authorize us to open the louvers within the vents, we will do so.
>>>

>>> Mary E. Roper
>>> Attorney at Law
>>> Shows, Cali & Walsh, L.L.P.
>>> 628 St. Louis Street (70802)
>>> P.O. Drawer 4425
>>> Baton Rouge, LA 70821
>>> Telephone: 225.346.1461
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>>> -----Original Message-----

>>> From: Steven Scheckman [<mailto:steve@SSWETHICSLAW.COM>]
>>> Sent: Tuesday, May 02, 2017 9:20 AM
>>> To: Mary Roper
>>> Cc: Renatti Dupont; Paul Hebert; White, Winston; Mercedes Montagnes;
>>> Clark, Colin; 'nvora@jmbm.com'; Jeffrey Cody
>>> Subject: RE: Ball v. Leblanc

>>>
>>> Counsel,

>>>
>>> With all due respect, this is simply not accurate and misstates the
>>> record. If your clients have altered the ventilation system at all,
>>> they would have had to seek leave from us to alter the status quo
>>> and the Court. They never did so.

>>>
>>> As part of the investigation of defendants proposed remedy, the
>>> parties went through every change to the tier in detail and
>>> defendants provided extensive documentation of those changes.
>>> Closing of the exhaust ventilation was not mentioned. We invite you
>>> to revisit the Joint Stipulation of the parties which is attached
>>> for your convenience. Had it been mentioned, it is something that
>>> neither plaintiffs nor plaintiffs' expert would have agreed to (as
>>> it is a violation of health and safety code and causes significant issues for our clients).

>>>
>>> Further, I invite you to review the attached transcript from the
>>> hearing on this matter and particularly the testimony of Shane
>>> Hernandez- the court appointed expert in this matter. He makes clear
>>> that the exhaust ventilation system played a key role in sucking the
>>> air through the hole in the door. Moreover, the judge's operative
>>> injunction explicitly states that the relief works by sucking the
>>> cool air into the tier because of the exhaust fans and that the cool
>>> air eventually exits the tier by being sucked out through the exhaust fans.
>>> Give the obviously critical importance of the mechanism for having
>>> relief afforded to our clients for an ongoing eighth amendment
>>> violation, it appears plain that your clients have chosen to alter
>>> the exhaust fan operation from what the judge's understanding of the
>>> situation was.

>>>
>>> Our clients have felt a big difference and have been told by
>>> wardens, staff, and others that the vents have been turned off to
>>> prevent the cooling effect from the hole in the door.

>>>
>>> This violates the order to maintain the status quo, and the
>>> injunctive order. For this reason, unless we can sort this out very
>>> soon, we plan to file with the Court to have it involved to address these concerns.
>>> Unfortunately, addressing this requires your clients to admit what
>>> is very obvious and return the vents to their previous positions
>>> (from two weeks ago for example when our clients report the vents
>>> were working
>>> fine) immediately. Otherwise, we will need to bring this to the
>>> Court attention. Please let us know your position by noon today.

>>>
>>>
>>> Steve Scheckman
>>> Schiff, Scheckman & White LLP
>>> 650 Poydras Street, Suite 2760
>>> New Orleans, Louisiana 70130
>>> Phone: 504.309.7888

>>> Fax: 504.518.4831
>>> Email: steve@sswethicslaw.com
>>> [https://urldefense.proofpoint.com/v2/url?u=http-3A__www.sswethicslaw](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.sswethicslaw.c)
>>> .c
>>> o
>>> m&d=DQIFAw&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpnVfiiMM&r=_nf7esEp_
>>> qS
>>> 4
>>> pFzJEOAEizUIVSbRIAj18vRUG44d2AE&m=8haduCfMVQtTJ1CC8NQcoC9ai2x4c-U8R4
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>>>

>>> -----Original Message-----

>>> From: Mary Roper [<mailto:maryr@SCWLLP.COM>]
>>> Sent: Monday, May 01, 2017 8:13 PM
>>> To: Steven Scheckman <steve@SSWETHICSLAW.COM>
>>> Cc: Renatti Dupont <rsdupont@ohllc.com>; Paul Hebert
>>> <pjhebert@ohllc.com>; White, Winston <WhiteW@ag.louisiana.gov>;
>>> Mercedes Montagnes <MMontagnes@thejusticecenter.org>; Clark, Colin
>>> <ClarkC@ag.louisiana.gov>; 'nvora@jmbm.com' <nvora@jmbm.com>;
>>> Jeffrey Cody <jeffreyc@scwllp.com>
>>> Subject: RE: Ball v. Leblanc
>>> Importance: High

>>>

>>> Steven,

>>>

>>> We were not proposing an earlier site visit, although we are not
>>> against it. We were just letting you know that we are already
>>> scheduled to be out there on Thursday and would be amenable to
>>> meeting with you on site to deal with the vent issue, if you would
>>> like. We were also open to having your expert attend, if that would
>>> be of benefit to you.

>>>

>>> For clarification, the louvers that I referenced are not the louvers
>>> over the windows, but the louvers within the exhaust vents. These
>>> louvers are not visible from the inside of the tier. The louvers
>>> within the exhaust vents have to be closed in order to prevent the
>>> air from being sucked out of the exhaust vents. In speaking with
>>> our clients, it is their position that the louvers within the
>>> exhaust system were closed as a part of the experimental measure
>>> with the Icy Breeze units. They are adamant about this. Thus, in
>>> order to maintain the status quo that existed when the experimental
>>> measures were implemented, they maintain that the louvers within the
>>> exhaust vents had to be kept closed. They assert that the vents
>>> were in the closed position during the previous Summer.

>>>

>>> Nevertheless, our clients will open the louvers within the exhaust

>>> system if that is what you want them to do. They are just concerned
>>> that you will not like the results, as the temperature in the cells
>>> is almost certain to rise. Accordingly, we are offering for you to
>>> come and inspect the vents and see what happens when the vents are opened.

>>>
>>> However, since there is disagreement as to the position that the
>>> louvers were in last Summer, there is concern about adjusting the
>>> louvers without authorization from the Court. My clients strongly
>>> believe that opening the louvers within the exhaust vents will cause
>>> a change in the status quo and they do not want to alter anything
>>> without the Court's permission.

>>>
>>> As I stated, we are open to suggestion on how to resolve this issue.
>>> Please advise.

>>>
>>> Regards,

>>>
>>> Mary E. Roper
>>> Attorney at Law
>>> Shows, Cali & Walsh, L.L.P.
>>> 628 St. Louis Street (70802)
>>> P.O. Drawer 4425
>>> Baton Rouge, LA 70821
>>> Telephone: 225.346.1461
>>> Fax: 225.346.1467

>>>
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>>>
>>>
>>>
>>> -----Original Message-----

>>> From: Steven Scheckman [<mailto:steve@SSWETHICSLAW.COM>]
>>> Sent: Monday, May 01, 2017 6:36 PM
>>> To: Mary Roper; Paul Hebert; White, Winston; Mercedes Montagnes;
>>> Clark, Colin; 'nvora@jmbm.com'; Jeffrey Cody
>>> Cc: Renatti Dupont

>>> Subject: RE: Ball v. Leblanc

>>>

>>> Counsel,

>>>

>>> We are not sure what you are referring to for Thursday. Are you proposing an additional site visit other than May 18?

>>>

>>> The Louvers (i.e. the windows on the tiers) are not at issue here.

>>>

>>> We have never agreed to have the exhaust turned off for our clients.

>>> It was never included in any materials and never mentioned in the

>>> extensive negotiations or hearings on this matter. This is the very

>>> first time this is being mentioned at all.

>>>

>>> As the expert testimony provided by this Court makes clear, the

>>> exhaust system plays an integral role in the relief.

>>>

>>> We obviously do not agree with your clients position and feel that

>>> this matter needs to be brought to the Court's attention as soon as possible.

>>> We will plan to do so unless the status quo from last summer is restored.

>>>

>>>

>>> Steve Scheckman

>>> Schiff, Scheckman & White LLP

>>> 650 Poydras Street, Suite 2760

>>> New Orleans, Louisiana 70130

>>> Phone: 504.309.7888

>>> Fax: 504.518.4831

>>> Email: steve@sswethicslaw.com

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>>>

>>> -----Original Message-----

>>> From: Mary Roper [<mailto:maryr@SCWLLP.COM>]

>>> Sent: Monday, May 01, 2017 5:00 PM

>>> To: Paul Hebert <pjhebert@ohllc.com>; Steven Scheckman

>>> <steve@SSWETHICSLAW.COM>; White, Winston <WhiteW@ag.louisiana.gov>;

>>> Mercedes Montagnes <MMontagnes@thejusticecenter.org>; Clark, Colin

>>> <ClarkC@ag.louisiana.gov>; 'nvora@jmbm.com' <nvora@jmbm.com>;

>>> Jeffrey Cody <jeffreyc@scwllp.com>

>>> Cc: Renatti Dupont <rsdupont@ohllc.com>

>>> Subject: RE: Ball v. Leblanc

>>>

>>> All,

>>>

>>> We have been conferring with our clients regarding this issue in
>>> order to make sure that we have a correct understanding of the
>>> mechanics of what has occurred. Our clients assure us that the
>>> status quo for the experiment was that the louvers within the vents
>>> in the exhaust system for Tier C were in the closed position. We
>>> are happy to open the louvers if that is what Plaintiffs desire,
>>> however we believe that this will negate the cooling effect of the
>>> experiment. Moreover, as this will be a change in the status quo,
>>> we will need permission from the court in order to do so. We will
>>> be at Angola on Thursday in the event that Plaintiffs'
>>> counsel would like to witness the opening of the vents, along with
>>> their expert. We are open to suggestion on how this should occur.

>>>

>>> Regards,

>>>

>>> Mary E. Roper

>>> Attorney at Law

>>> Shows, Cali & Walsh, L.L.P.

>>> 628 St. Louis Street (70802)

>>> P.O. Drawer 4425

>>> Baton Rouge, LA 70821

>>> Telephone: 225.346.1461

>>> Fax: 225.346.1467

>>>

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>>>

>>>

>>> -----Original Message-----

>>> From: Paul Hebert [<mailto:pjhebert@ohllc.com>]

>>> Sent: Monday, May 01, 2017 3:34 PM

>>> To: Steven Scheckman; White, Winston; Mercedes Montagnes; Clark,

>>> Colin; 'nvora@jmbm.com'; Mary Roper; Jeffrey Cody

>>> Cc: Renatti Dupont

>>> Subject: Re: Ball v. Leblanc

>>>

>>> Understood. Monday has not ended and I see from the Defendants

>>> email that they would discuss the situation with you all today.

>>> Keep me informed.

>>>

>>>

>>> Paul J. Hebert

>>> Ottinger Hebert, L.L.C.

>>> 13 13 W. Pinhook Road (70503)

>>> P.O. Drawer 52606

>>> Lafayette, Louisiana 70505-2606

>>> Telephone: (337) 232-2606

>>> Telecopier: (337) 232-9867

>>> Email: pjhebert@ohllc.com

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>>>

>>>

>>>

>>>

>>>

>>>> On 5/1/17, 3:03 PM, "Steven Scheckman" <steve@SSWETHICSLAW.COM> wrote:

>>>>

>>>> Special Master,

>>>>

>>>> We are available then but we also feel that there is some urgency

>>>> regarding this issue as it is a violation of health and safety codes.

>>>> We also feel that this might be retaliatory in nature. For that

>>>> reason, Plaintiffs might file with the Court prior to Thursday if

>>>> the conditions are not rectified to our satisfaction.

>>>>

>>>> Steve Scheckman

>>>> Schiff, Scheckman & White LLP

>>>> 650 Poydras Street, Suite 2760

>>>> New Orleans, Louisiana 70130

>>>> Phone: 504.309.7888

>>>> Fax: 504.518.4831

>>>> Email: steve@sswethicslaw.com

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>>>>

>>>> -----Original Message-----

>>>> From: Paul Hebert [<mailto:pjhebert@ohllc.com>]

>>>> Sent: Monday, May 01, 2017 2:16 PM

>>>> To: Steven Scheckman <steve@SSWETHICSLAW.COM>; White, Winston

>>>> <WhiteW@ag.louisiana.gov>; Mercedes Montagnes

>>>> <MMontagnes@thejusticecenter.org>; Clark, Colin

>>>> <ClarkC@ag.louisiana.gov>; 'nvora@jmbm.com' <nvora@jmbm.com>; Mary

>>>> Roper <maryr@SCWLLP.COM>; Jeffrey Cody <jeffreyc@scwllp.com>

>>>> Cc: Renatti Dupont <rsdupont@ohllc.com>

>>>> Subject: Re: Ball v. Leblanc

>>>> Importance: High

>>>>

>>>> Steven: I acknowledge receipt of your email. I have no problem
>>>> with the request regarding Mr. Garon and equipment to be used at
>>>> our site visit in May. However, I recognize the need for the State
>>>> to review and acknowledge if this is acceptable so we will wait on their reply.

>>>>

>>>> In addition, I feel it is appropriate for us to have a joint phone conf.
>>>> later this week or early next week to discuss the recent
>>>> developments and the site visit.

>>>>

>>>> Please let me know if all parties can attend a joint phone conf. on
>>>> Thursday at 1:30 of this week.

>>>>

>>>>

>>>> Paul J. Hebert

>>>> Ottinger Hebert, L.L.C.

>>>> 13 13 W. Pinhook Road (70503)

>>>> P.O. Drawer 52606

>>>> Lafayette, Louisiana 70505-2606

>>>> Telephone: (337) 232-2606

>>>> Telecopier: (337) 232-9867

>>>> Email: pjhebert@ohllc.com

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>>>>
>>>>
>>>>
>>>>
>>>>

>>>>> On 5/1/17, 2:09 PM, "Steven Scheckman" <steve@SSWETHICSLAW.COM> wrote:

>>>>>

>>>>> Special Master Hebert and Counsel,

>>>>>

>>>>> As a follow-up to my email of April 28, 2017 advising that David
>>>>> Garon will be accompanying me for the site visit on May 18, 2017,
>>>>> and further advising that I would inform you of the instruments he
>>>>> intended to bring with him on the site visit, please be advised
>>>>> that David Garon will bring with him for the site visit the
>>>>> following instruments for taking airflow, pressure, temperature
>>>>> and humidity
>>>>> measurements:

>>>>>

- >>>>> 1. Shortridge 8400 Series Flow Hood Kit
- >>>>> 2. ADM-870C Air Data Multi Meter
- >>>>> 3. Extech RH350 Temperature and Humidity Meter

>>>>>

>>>>> Please advise me if there will be any problem with Mr. Garon
>>>>> bringing the above referenced instruments with him for the site visit.

>>>>>

>>>>> Finally, we are still very concerned about the reports we related
>>>>> to you on Friday and are awaiting a response. Given the
>>>>> seriousness of the reports we request a response from counsel by
>>>>> the close of business today.

>>>>>

>>>>> Thank you.

>>>>>

>>>>> Steve Scheckman
>>>>> Schiff, Scheckman & White LLP
>>>>> 650 Poydras Street, Suite 2760
>>>>> New Orleans, Louisiana 70130
>>>>> Phone: 504.309.7888
>>>>> Fax: 504.518.4831
>>>>> Email: steve@sswethicslaw.com
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>>>>> -----Original Message-----

>>>>> From: White, Winston [<mailto:WhiteW@ag.louisiana.gov>]

>>>>> Sent: Friday, April 28, 2017 4:25 PM

>>>>> To: Steven Scheckman <steve@SSWETHICSLAW.COM>; Mercedes Montagnes

>>>>> <MMontagnes@thejusticecenter.org>; pjhebert@ohllc.com;

>>>>> rsdupont@ohllc.com; Clark, Colin <ClarkC@ag.louisiana.gov>;

>>>>> 'nvora@jmbm.com' <nvora@jmbm.com>; Mary Roper <maryr@SCWLLP.COM>;

>>>>> Jeffrey Cody <jeffreyc@scwllp.com>

>>>>> Subject: RE: Ball v. Leblanc

>>>>>

>>>>> Counsel,

>>>>>

>>>>>

>>>>> We have received your email and have conveyed your concerns to the

>>>>> Wardens. We are currently working with them to get to the bottom

>>>>> of this issue. We will get back with you on Monday to discuss further.

>>>>>

>>>>>

>>>>> Thank you,

>>>>>

>>>>>

>>>>> Winston White

>>>>> Assistant Attorney General

>>>>> Louisiana Department of Justice

>>>>> Criminal Division

>>>>> P.O Box 94005

>>>>> Baton Rouge, Louisiana 70804

>>>>> (225) 326-6269 (Telephone)

>>>>> (225) 326-6297 (Fax)

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>>>>>

>>>>> From: Steven Scheckman <steve@SSWETHICSLAW.COM>

>>>>> Sent: Friday, April 28, 2017 11:51 AM

>>>>> To: Mercedes Montagnes; White, Winston; pjhebert@ohllc.com;

>>>>> rsdupont@ohllc.com; Clark, Colin; 'nvora@jmbm.com'; Mary Roper;

>>>>> Jeffrey Cody

>>>>> Subject: RE: Ball v. Leblanc

>>>>>

>>>>> Special Master Hebert,

>>>>>

>>>>> Please be advised that David Garon will also accompany me on May

>>>>> 18, 2017, for the site visit and we will send the information

>>>>> about instruments he may bring with him soon. Thank you.

>>>>>
>>>>> Steve Scheckman
>>>>> Schiff, Scheckman & White LLP
>>>>> 650 Poydras Street, Suite 2760
>>>>> New Orleans, Louisiana 70130
>>>>> Phone: 504.309.7888
>>>>> Fax: 504.518.4831
>>>>> Email: steve@sswethicslaw.com<<mailto:steve@sswethicslaw.com>>
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>>>>> From: Mercedes Montagnes [<mailto:MMontagnes@thejusticecenter.org>]
>>>>> Sent: Friday, April 28, 2017 10:55 AM
>>>>> To: White, Winston <WhiteW@ag.louisiana.gov>; pjhebert@ohllc.com;
>>>>> rsdupont@ohllc.com; Clark, Colin <ClarkC@ag.louisiana.gov>; Steven
>>>>> Scheckman <steve@SSWETHICSLAW.COM>; 'nvora@jmbm.com'
>>>>> <nvora@jmbm.com>; Mary Roper <maryr@SCWLLP.COM>; Jeffrey Cody
>>>>> <jeffreyc@scwllp.com>
>>>>> Subject: RE: Ball v. Leblanc
>>>>> Importance: High
>>>>>
>>>>> Counsel,
>>>>>
>>>>> We had reports from our clients on Tuesday that the vents in the
>>>>> cells had been turned off. We planned to address with you but
>>>>> wanted to give it a couple of days to see if it resolved.
>>>>>
>>>>> Our clients report that the inmate in charge of maintenance
>>>>> confirmed the vents had been turned off and told them to discuss
>>>>> the vents with the Warden if they wanted to them back on. When the

>>>>> Warden came around later that day he told our clients he would not
>>>>> turn on the ventilation system because it was sucking the air from
>>>>> the main control area. This is in direct violation of the Judge's
>>>>> existing
>>>>> orders- including an order to maintain the status quo. In
>>>>> addition, as we have heard from several experts this ventilation
>>>>> is required for the health and safety of our clients to ensure that air circulates.
>>>>> Our clients use the toilet and shower on this tier.

>>>>> This is especially concerning considering the email exchange of
>>>>> April 11,
>>>>> 2017 and the history of this case.

>>>>> Please advise us immediately of the actions you have taken to
>>>>> rectify this situation.

>>>>> Sincerely,

>>>>> Mercedes Montagnes
>>>>> The Promise of Justice Initiative
>>>>> 636 Baronne St.
>>>>> New Orleans, LA 70113
>>>>> (504) 529-5955
>>>>> Mercedesm@thejusticecenter.org<mailto:Mercedesm@thejusticecenter.o

>>>>> rg
>>>>> <
>>>>> m
>>>>> a
>>>>> ilt
>>>>> o:Mercedesm@thejusticecenter.org%3cmailto:Mercedesm@thejusticecenter.
>>>>> o
>>>>> r
>>>>> g>>

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>>>>> Thank you.

>>>>> From: Mercedes Montagnes
>>>>> Sent: Tuesday, April 11, 2017 2:26 PM
>>>>> To: 'White, Winston'
>>>>> <WhiteW@ag.louisiana.gov<mailto:WhiteW@ag.louisiana.gov>>;
>>>>> pjhebert@ohllc.com<mailto:pjhebert@ohllc.com>;
>>>>> rsdupont@ohllc.com<mailto:rsdupont@ohllc.com>; Clark, Colin
>>>>> <ClarkC@ag.louisiana.gov<mailto:ClarkC@ag.louisiana.gov>>;
>>>>> steve@SSWETHICSLAW.COM<mailto:steve@SSWETHICSLAW.COM>; 'nvora@jmbm.com'
>>>>> <nvora@jmbm.com<mailto:nvora@jmbm.com>>; Mary Roper
>>>>> <maryr@SCWLLP.COM<mailto:maryr@SCWLLP.COM>>; Jeffrey Cody

>>>>> <jeffreyc@scwllp.com<<mailto:jeffreyc@scwllp.com>>>
>>>>> Subject: RE: Ball v. Leblanc
>>>>>
>>>>> Thank you counsel. I understand from my clients that the vents
>>>>> began functioning again last week. They are concerned that they
>>>>> appear to be operating at a slower rate than they have in the past.
>>>>>
>>>>> We want to be sure to be aware of any changes to our clients
>>>>> conditions
>>>>> - so please keep us informed or let us know if you object to doing so.
>>>>>
>>>>> Best,
>>>>>
>>>>>
>>>>> From: White, Winston [<mailto:WhiteW@ag.louisiana.gov>]
>>>>> Sent: Tuesday, April 11, 2017 10:30 AM
>>>>> To: pjhebert@ohllc.com<<mailto:pjhebert@ohllc.com>>;
>>>>> rsdupont@ohllc.com<<mailto:rsdupont@ohllc.com>>; Clark, Colin
>>>>> <ClarkC@ag.louisiana.gov<<mailto:ClarkC@ag.louisiana.gov>>>; White,
>>>>> Winston <WhiteW@ag.louisiana.gov<<mailto:WhiteW@ag.louisiana.gov>>>;
>>>>> Mercedes Montagnes
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>>>>> o
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>>>>>>> ; steve@SSWETHICSLAW.COM<<mailto:steve@SSWETHICSLAW.COM>>;
>>>>>>> 'nvora@jmbm.com'
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>>>>>>> <maryr@SCWLLP.COM<<mailto:maryr@SCWLLP.COM>>>; Jeffrey Cody
>>>>>>> <jeffreyc@scwllp.com<<mailto:jeffreyc@scwllp.com>>>
>>>>>>> Subject: Ball v. Leblanc
>>>>>>>
>>>>>>> All,
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>>>>>>> I have spoken with the Wardens regarding the plaintiffs'
>>>>>>> allegations of changes to the vents. The Wardens have confirmed
>>>>>>> there have been no changes to the vents.
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1 APPEARANCES (Continued):

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Special Master

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INDEX

By the Court Cross

WITNESSES FOR THE COURT:

Shane M. Hernandez 7 23

1 P R O C E E D I N G S

2 (Call to Order of the Court)

3 THE COURT: Good afternoon, everyone. Be seated.

4 Okay. Let's call the case.

5 THE COURTROOM DEPUTY: Civil Action 13-368-BAJ, Elzie
6 Ball, et al., versus James LeBlanc, et al.

7 THE COURT: Okay. And let me ask counsel for the
8 plaintiffs to enter their appearances from the floor podium, of
9 course.

10 MS. MONTAGNES: Good afternoon, Your Honor. Mercedes
11 Montagnes on behalf of the plaintiffs. And I'm joined by my
12 co-counsel, Steven Scheckman, who remains injured.

13 So if the Court could make the same accommodation for
14 him as it did last time, we would appreciate it.

15 THE COURT: Mr. Scheckman, you're not taking advantage
16 of this situation, I hope?

17 MR. SCHECKMAN: I'm scheduling surgery, Your Honor.

18 THE COURT: Oh, okay.

19 MS. MONTAGNES: And indeed, there's a (indiscernible)
20 back there.

21 THE COURT: I, I see evidence of that, Mr. Scheckman.
22 Well, I hope you -- good luck with the surgery. Hopefully,
23 you'll be 100 percent soon.

24 MR. SCHECKMAN: I'll be dancing next week.

25 THE COURT: Great. Hopefully, after this hearing,

1 we'll all be dancing.

2 MR. SCHECKMAN: That's right.

3 THE COURT: But we'll see.

4 MR. SCHECKMAN: That's right.

5 MS. ROPER: Good afternoon, Your Honor. Mary Roper on
6 behalf of the defendants, along with James Hilburn, Grant
7 Guillot, and Winston White.

8 THE COURT: Very good. Thank you, Ms. Roper.

9 Okay. This is a continuation, of course, of our last
10 hearing at which time the Court received in evidence
11 information indicating that the plaintiffs have been removed to
12 a different area of the facility. Specifically, the plaintiffs
13 have been moved to Cell C-1, C-2, and C-3 in Tier C.

14 There was also a proffer offered by the defendants
15 that despite the cooling mechanism currently in place there is
16 the possibility of mold and other problems with that area.

17 Is that correct, Ms. Roper?

18 MS. ROPER: Yes, Your Honor. Yes, Your Honor.

19 THE COURT: All right. What we will do, then, I
20 understand that you have a witness who you would like to
21 testify at this time, is, is that correct?

22 MS. ROPER: Your Honor, we may not need to have him
23 testify in light of the report that was rendered by the Court's
24 expert, which is consistent with our expert. And so for the
25 economy of the Court --

1 THE COURT: Okay.

2 And Ms., Ms. Roper, would you just confirm on the
3 record that you have received a copy of the expert's report?

4 MS. ROPER: Yes, we have, Your Honor.

5 THE COURT: And that report is dated August 19th and I
6 believe you all were served with that this past weekend,
7 correct?

8 MS. ROPER: Yes, Your Honor. We, we received it
9 yesterday afternoon.

10 THE COURT: Okay.

11 Ms. Montagnes, let me ask you about that, ma'am. Now
12 again, I will state for the record and will at this time enter
13 into the record the report of the expert witness retained by
14 the Court, Mr. Shane M. Hernandez, who is a professional
15 engineer with the M&E Consulting Group in Lafayette, Louisiana.

16 Have you received a copy of the expert, expert's
17 report dated August 19th?

18 MS. MONTAGNES: We did yesterday afternoon.

19 THE COURT: And did you have an opportunity to review
20 the report, ma'am?

21 MS. MONTAGNES: I have, Your Honor.

22 THE COURT: Do you have any objections to the report
23 being entered into evidence at this time? I will call the
24 expert and adduce testimony from him, but again, I want to just
25 hear any preliminary comments or objections you may have.

HERNANDEZ - BY THE COURT

1 MS. MONTAGNES: No, Your Honor. We have no
2 objections.

3 THE COURT: Okay. All right.

4 Okay. Okay. At this time let's, let's go on and, and
5 call Mr. Hernandez to testify about the contents of his report.

6 Mr. Hernandez, would you please come forward and at
7 this time he -- you -- the expert will be placed under oath.

8 THE COURTROOM DEPUTY: Raise your right hand.

9 SHANE M. HERNANDEZ, COURT'S WITNESS, SWORN

10 THE COURTROOM DEPUTY: State and spell your name for
11 the record.

12 THE WITNESS: Shane M. Hernandez. S-H-A-N-E; middle
13 name is Miguel, M-I-G-U-E-L; and then Hernandez, H-E-R-N-A-N-D-
14 E-Z.

15 EXAMINATION

16 BY THE COURT:

17 Q Now, Mr. Hernandez, would you please so state for the
18 record how was it that you were contacted in connection with
19 this matter and by whom?

20 A Originally contacted by Special Master, Paul Hebert, to
21 view the facility.

22 Q Okay. And did you, in fact, visit the facility at the
23 Louisiana State Prison?

24 A Yes, Your Honor.

25 Q All right. And specifically, did you, did you visit the

HERNANDEZ - BY THE COURT

1 death row facility there?

2 A Yes, Your Honor.

3 Q Did you have occasion to visit and inspect Tier C of that
4 building?

5 A Yes. We walked through, took measurements, made
6 observations --

7 Q Okay.

8 A And, and you can just very briefly describe the methodology
9 that was used in your inspection of the facility, please.

10 A My methodology?

11 Q Yes.

12 And if it would assist you, you're certainly welcome to
13 have your report with you, if that will assist you in your
14 testimony. But if you think that you can recall
15 sufficiently --

16 MR. HEBERT: We have it right here.

17 THE COURT: Oh, do you have it?

18 THE WITNESS: Okay. I don't need it.

19 Most of the method was just visual observation of the
20 heat remediation plans that the State was currently employing
21 in the Tier C. Basically, I actually used the, Frank
22 Thompson's measurement device where he had like an anemometer
23 and a temperature and humidity gauge. Went through, took
24 temperature readings. With the -- I didn't write down any
25 humidity readings based on just my experience of just going

HERNANDEZ - BY THE COURT

1 through many different, I guess, environments whether or not
2 low humidity-high humidity. I can pretty much tell that on my
3 own 'cause I didn't -- with the gauges a lot of times the
4 accuracy isn't that great and then a lot of times you have to
5 put it down, step away from the device to get a true humidity
6 reading, stuff like that. But temperature is something that's
7 pretty, you know, you can do with that type of, the accuracy
8 level of that device.

9 Just looked in and around just the system that was
10 being deployed and most of it was just visual.

11 BY THE COURT:

12 Q And now your report indicates that you took temperature
13 readings during your visit, is that correct?

14 A Yes, Your Honor.

15 Q And why don't you describe the manner in which you took the
16 temperature readings and the results of those, those readings.

17 A Sure.

18 Took temperature readings first in the isolated area where
19 the housed plaintiffs were being housed in the Tier C, C-1, 2,
20 3, and 4. Just a space temperature, approximately four feet
21 off the ground with a handheld device. Wanted to kind of see
22 the difference between where the plaintiffs were being housed
23 and the opposite side of the air-strip curtain that they had.
24 So it would be the rear part of Tier C.

25 Q So let me --

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10

1 A So --

2 Q -- let me understand. So you were interested in inspecting
3 the area in which they are currently housed, correct?

4 A Right.

5 Q Also visited the area in which the other prisoners are
6 housed?

7 A Well, the Tier C is empty besides those plaintiffs right
8 now. So basically, there were no other inmates on the other
9 side of the curtain. So you're looking at C block or C, the
10 cell C-5 through, I don't know if it's like 15 or so, cells in
11 that cell =block.

12 The -- it was around, probably, around 78 degrees where the
13 plaintiffs are being housed. About 79.5 degrees on the other
14 side of the curtain.

15 Went also to Tier H, which is on the opposite side of the
16 control pod, and took readings there. Noticed that the
17 readings there were very similar to the readings in Tier C,
18 maybe one or two degrees higher, about 81 degrees. Took a
19 couple of readings down the hall. Not much of a difference,
20 which means what was close to the, the center as opposed to the
21 rear of Tier H.

22 Did notice that even though the temperatures were the same,
23 the humidity levels were very drastic. Tier C was much more
24 comfortable. You could tell that the relative humidity was
25 probably somewhere in the 60 percent range; whereas, the Tier H

HERNANDEZ - BY THE COURT

11

1 was very elevated humidity levels.

2 So it was probably, if I had to, to guess, 70, 80, 90
3 percent, something like that, and it kind of almost matched
4 outside, which was a hot and humid day.

5 Q All right.

6 So other than the temperature readings, what other -- and
7 the temperature readings and your visual observations, did you
8 take any other, make any other examinations of any kind?

9 A Took some airflow readings. It does do air flow on that
10 device, but I felt like -- that's kind of a little bit tricky
11 because even -- if you're doing airflow readings, you need to
12 kind of do a statistical kind of analysis across each point.
13 I'm not really a test-and-balance contractor, which kind of
14 goes into that realm of work. They're much better at doing
15 measurements. But you can kind of get a general idea and I
16 think some of the, that information was captured in Frank
17 Thompson's report.

18 So I was able to use some of that. So I kind of knew about
19 some of that flow data from the opening that was in the
20 cellblock door at Tier C.

21 Q Okay.

22 Now let's talk about some of the specifications that, that
23 you noticed. You indicated that you examined the environment
24 in which the plaintiffs are currently housed versus the other
25 tiers at that facility, correct?

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12

1 A Yes, Your Honor.

2 Q And generally, what were your observations with respect to
3 the differences of the two regarding the temperatures and the
4 humidity, which you've already testified about? But is there
5 anything else that you want to add to that?

6 A It was just -- if -- by the -- I guess a layman would
7 probably figure that it would be much hotter in Tier C because
8 the -- I mean, in Tier H. Sorry -- Tier H because the humidity
9 level was so high.

10 So the perceived level of the heat index, if you will, of
11 Tier H was much more elevated than Tier C.

12 Q Now did you inspect the, the devices that were used in the
13 area in which the plaintiffs are now housed?

14 A I look them --- the IcyBreeze units you're talking about?

15 Q Yes.

16 A Yes. I -- basically, I lifted up the, the lids, saw the
17 ice inside. I looked around the unit. There was a little bit
18 of condensation where the, the air was coming out, but not
19 much. There was no condensation or any kind of moisture at the
20 bottom base of the unit on the ground. There was no
21 condensation in any of the steel, the bars for the cellblock.
22 It was pointed maybe about 12 inches away from the bars that
23 goes into the cellblock. I looked for condensation on the
24 books, paperwork that they had. The inmates themselves had a
25 lot of, you know, papers and stuff like that. Looked at the,

HERNANDEZ - BY THE COURT

13

1 the sheets, their clothing. Nothing was wetted. There was no
2 moisture that I saw coming from those units.

3 And I did do -- I tried to do a little bit of research
4 online to look at the specifications from the manufacturer's
5 website. I didn't see that much that they kind of promulgate
6 and give out to the public, but they did have some indication
7 that the IcyBreeze unit is a sealed heat exchanger. So the
8 liquid from the ice melting doesn't come in contact, or it
9 doesn't, able to capture that liquid when it blows in the
10 blower.

11 So it's like the lid itself is an isolation between the air
12 blower and the lid inside it. I checked that in the field and
13 when I went to the visit and it seemed to be the case. Because
14 you wouldn't want that fan to blow melted ice, you know, water
15 into the cell to be a condensation issue. So that seemed to
16 check out.

17 Q To that extent, at least with, with respect to that
18 feature, would you consider that to be a viable way of cooling
19 this? I mean, just with respect to the water vapor or the
20 problems with water vapor. You didn't detect any, correct?

21 A Correct.

22 Q All right.

23 Now let's talk about the issue of mold. It has been
24 suggested that there is at least the potential for mold growth
25 with the current configuration. Is that your understanding?

HERNANDEZ - BY THE COURT

14

1 A Yes, Your Honor.

2 Q All right. And now you made, you also attempted to make
3 some assessment of whether there would be a possibility of, of
4 mold growth, correct?

5 A Yes.

6 Q Now as I understand it, the tier is built with what's, I
7 guess, considered the non-organic materials such as steel,
8 concrete, and that sort of thing, correct?

9 A Correct.

10 Q Any problem with mold growth on any of those features of
11 the tier?

12 A It should not be. It would be very, very difficult because
13 it doesn't act as food. It's only organic materials that mold
14 would want to decompose or eat, basically, and grow on, so.

15 Q As I understand from your report, you did detect a possible
16 problem of mold growth under certain circumstances, correct?

17 A Yes, Your Honor.

18 Q Why don't you explain that.

19 A The building is kind of built into two kind of space
20 types, I would call. The central pod area where the guards
21 primarily kind of walk around and the central control center
22 and visitation and the entry is all built as an air
23 conditioned, you know, area. And then you have the tiers, the
24 cellblocks where the inmates are. That area, if you can kind
25 of consider, the, the habitation area is almost like a

HERNANDEZ - BY THE COURT

15

1 restroom. It's, it's an exhausted space because they have
2 toilets in their living quarters.

3 So every area in that whole tier block is an exhausted
4 area, which makes it very difficult to provide air conditioning
5 for. So that area was, basically, it was exhausted and had
6 ventilation, which had exhaust fans on the roof. And a lot of
7 this is I'm getting from the drawings as well, which matched
8 kind of the things I saw in the field.

9 And then they had operable louvers that they can open to
10 bring the make-up air through the cellblock and then they also
11 had ceiling diffusers or ductwork that went to a central
12 heating unit.

13 So the cellblocks areas had, basically, heating with a
14 central system, which was only heat. There was no cooling.
15 There was no air conditioning with that and then they had roof-
16 mounted exhaust fans. And then they had circulator fans,
17 circulator fans that were just wall mounted that blow air
18 within the space, but they basically, there's no pressure
19 balance issues because it's just circulating the air, that is,
20 blowing out, it's coming back.

21 Whereas, the exhaust system was sucking out a tremendous
22 amount of air, probably by design. I think most cases, it was
23 over 6,000 cfm of air, which in a lot of cases in Louisiana
24 depends on your humidity and your ambient conditions. You can
25 say that about a 120 cfm is about a ton, if you were to

HERNANDEZ - BY THE COURT

16

1 condition that down to neutral levels to introduce into your
2 space. It's just a lot of air conditioning in our environment,
3 in our climate, which it seems like that was not done. That's
4 probably -- reason why they didn't do the air conditioning in
5 the cellblock, because it was just a highly exhausted,
6 ventilated area.

7 Q Now is that attributable to an opening there in the
8 cellblock?

9 A The heat remediation actions that the State took was they
10 had the air curtain, they had the IcyBreeze units, and they had
11 the hole that was in the cellblock door between the control and
12 the, I guess, a corridor that, of the tier. And that opening,
13 since you had a highly negative space in the cellblock, you had
14 air that was being sucked out of the building. So you needed
15 to replace that air.

16 So when you made -- when they made a hole in the door, it's
17 basically sucking all the air conditioned space from the pod
18 area -- the middle -- the center area through the hole in Tier
19 C door and out the exhaust.

20 Q Now your report indicates that if there was a way to close
21 that door, perhaps it would reduce or, perhaps, even eliminate
22 the potential for mold growth, is that right?

23 A Right. And it's important to note that the mold growth, in
24 my opinion, it's not in the cellblock area. It would be in the
25 air conditioned area because that sucking action would cause

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17

1 humid air to go through the exterior walls of the air
2 conditioned area and it'd be kind of behind walls within walls
3 and stuff like that until, really, your mold issues there would
4 be concealed and it's questionable whether or not they would
5 happen or occur. It's just likely that they would occur. I
6 mean, and -- but as far as where the inmates are in Cellblock
7 C, I don't think, in my opinion, that there would be any mold
8 issues there.

9 Q So there'd be no mold issues in Cell C-1, C-2, or C-3 if
10 that, that opening was closed, correct?

11 A Correct. Because then you're going back to the original
12 condition.

13 Q But if you did that, what -- what -- what would be the --
14 would the IcyBreeze unit still operate properly?

15 A The IcyBreeze units would operate. It's just -- the only
16 thing you would lose was that, you know, you're still getting
17 some of that air conditioned air through that hole, which kind
18 of made that space a little bit cooler, which it probably would
19 elevate the space temperature in the isolated area of Tier C.

20 Q Do you have any sense of how high it would elevate the
21 area, the temperatures?

22 A I can't determine that. I mean, it's going to be hard,
23 but, I mean, it would -- we can either -- I don't know. Too
24 hard to quantify, I think.

25 Q And, of course, you, you, you've not run any tests to

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18

1 determine with any degree of certainty what the temperatures
2 would be if that opening were closed, correct?

3 A Correct, Your Honor.

4 We could do a basic calculation. There's more work that
5 probably can be done to model that space and to quantify the
6 heat that's just in that area and try to maybe have enough
7 IcyBreeze units that could kind of address that, you know, that
8 cooling load that's needed, so.

9 Q So -- and that was my next question to you.

10 If there were additional IcyBreeze units there, even with
11 the closure, would that essentially solve the problem?

12 A It, it would. I mean, you would still -- those -- you're
13 still going to have the make-up air for those exhaust fans and
14 maybe one recommendation would be to open up an operable louver
15 that's as far away from the isolated area all the way down the
16 hall to at least let some of that makeup happen to where you're
17 not, kind of, you know, affecting the isolated area, but --

18 Q Of course, the louvers are already installed. It'd simply
19 be a matter of opening --

20 A Yeah.

21 Q -- a window, right?

22 A Right. And it's -- most of the make-up air, or some of it
23 is probably going through those operable windows, anyway.
24 'Cause they're probably not a hundred percent sealed-type
25 louvers, so.

1 Q In, in your opinion can the current temperatures be
2 maintained without the threat of mold if (a) the, the holes or
3 the door opening were closed and (b) additional IcyBreeze units
4 be installed and (3) the, the windows opened on the other end?

5 A Yes, I think so. It's a highly potential -- I mean, it's
6 kind of -- you would, I think, kind of do an experiment to kind
7 of see, I think. But -- and it's a question about how many
8 IcyBreeze units are still kind of, you know, still out there.

9 But I think it's a, it's a viable kind of solution that has
10 a high potential of success.

11 Q You believe that, that would be, again, a high potential
12 for success, in your words, correct?

13 A Yes, Your Honor.

14 Q All right.

15 Anything else that you think that should be considered,
16 along with the additional IcyBreeze units, that is, if the
17 State were to keep these plaintiffs in an area that would be
18 affected by the IcyBreeze units? I guess -- let me rephrase
19 that.

20 Other than the possible addition of additional IcyBreeze
21 units, along with the closure of the door there, can you think
22 of anything that would have to be done to maintain the current
23 temperatures?

24 A Could you refrain, rephrase that?

25 Q Yes. Simply, anything else --

HERNANDEZ - BY THE COURT

20

1 A I mean, there are -- I think that there are other
2 alternatives out there that don't have to do with the IcyBreeze
3 units, if that's what you're asking.

4 Q But, but let me just ask. First, with respect to the
5 IcyBreeze units, is that, in your opinion, the most cost
6 effective manner of maintaining the current temperatures and
7 heat and the humidity levels?

8 A I think that when you would seal the door, you would lose
9 some of that -- you, you couldn't maintain the temperature
10 without, you know, really having IcyBreeze units in there and
11 the -- the only thing that's important about the IcyBreeze unit
12 is that you have to keep filling it up with ice. Because the,
13 you know, you, you have a certain amount of, a source of,
14 basically, a heat sync that once it melts you lose that ability
15 to cool that space.

16 So the frequency of the ice changes would really come into
17 play about trying to maintain a temperature. So, I mean, it's,
18 it's doable, but, I mean, there's other alternatives that, you
19 know, you can add air conditioning equipment. You can add, you
20 know, equipment that's just kind of -- I think Frank Thompson
21 had mentioned that there was like 1200 cfm of air possibly that
22 would make the space neutral. Like you could leave the, the
23 hole on the door and add conditioned --

24 Q Mechanical?

25 A -- treated air, mechanical air that's, you know, outside

1 air that's coming in. You would treat it down to a neutral
2 temperature like, say, 70, 72. It's not necessarily like an
3 air conditioning system, but you're just, you're basically
4 providing conditioned make-up air that would kind of balance
5 the system, solve the mold issue in the pod air, and then, you
6 know, you can basically kind of keep the same kind of system
7 where you have the air curtain. And maybe it's just a smaller
8 unit that just kind of does the isolated area.

9 Q Well, let's talk about that, but before we move on to that
10 area let me just make sure I understand that -- that -- is it
11 your opinion that the most, the least costly option would be to
12 continue to use the IcyBreeze units but, perhaps, to add
13 another couple of units if you close that door?

14 A Yes, Your Honor. I think that's a good alternative
15 because, basically, the IcyBreeze unit also -- I, I did a
16 temperature of that discharge, too, and it was around, I think,
17 like 56 degrees coming off. So you can almost make a plume of
18 cool air around the person, even though you're not cooling the
19 isolated unit.

20 So that's one thing that's probably a great benefit to the,
21 the inmates.

22 Q Okay. Short of that, you believe that the installation of
23 some mechanical air units would also be effective?

24 A Yes, effective, but more costly.

25 Q Okay. And how, how costly in your estimation would --

HERNANDEZ - BY THE COURT

22

1 would -- 'cause we're not talking about mechanical air for the
2 whole tier, correct?

3 A Well, if, if you wanted to make a range where it was the
4 whole tier, I would guess, or estimate that, you know, because
5 there's, there's 6,000 cfm of air that's just exhausting and,
6 you know, you're looking at maybe like around 50 tons of air,
7 of condition equipment, you know, and you might be looking at
8 \$250,000 to do the whole tier. Depending on electrical service
9 upgrades, you might be looking at an additional \$50,000 to make
10 sure you have the power for that.

11 Q And is it possible to only, if, if the State were to elect
12 or if ordered to provide mechanical air, is it possible that
13 only a portion of the tier -- and specifically, the tier for
14 these three plaintiffs -- so do you agree that only a portion
15 of the tier -- is it, is it possible, put another way, is it
16 possible to only provide mechanical air for a portion of the
17 tier?

18 A Yes, Your Honor. I've kind of explained. It's just --
19 basically, the, the isolate area, you can, instead of doing the
20 full amount of cfm that's exhausted, just do the 1200 cfm, make
21 sure there's no, make sure it's balanced between the pod and
22 the tier and then that way, you're delivering neutral air,
23 about 1200 cfm of air, and you're looking at a price tag
24 probably around 75,000 to a hundred thousand, depending on
25 electrical service.

HERNANDEZ - BY THE COURT/CROSS

23

1 But it's something that's, you know, a little bit, kind of
2 in the middle between the IcyBreeze units and the full tier.

3 Q I understand.

4 Thank you.

5 THE COURT: Mr. Hebert, may I see you, please?

6 (Bench conference off the record between the Court and

7 Mr. Hebert)

8 (End of bench conference)

9 (Open Court)

10 BY THE COURT:

11 Q Okay, Mr., Mr. Hernandez. Let me -- let me --

12 THE COURT: Does -- any, any questions, Ms. Montagnes,
13 for Mr. Hernandez?

14 MS. MONTAGNES: Yes, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. MONTAGNES:

17 Q Mr. Hernandez, just a few questions.

18 Did you read Mr. Thompson's report dated August 4th?

19 A Yes, I did.

20 Q And do you recall that he made a suggestion in that report
21 that's, that making the hole in the door smaller might also fix
22 the problem with the mold?

23 A Yes, I read that.

24 Q And what do you think of that opinion?

25 A I think making the hole smaller at first will just increase

HERNANDEZ - CROSS

24

1 the velocity of the air coming through and you're basically not
2 really, like it's going to be almost the same condition. You
3 really don't know how much decreased air that's going to be
4 coming from and the issue is that as -- you're kind of
5 decreasing some of the air 'cause the resistance builds up in,
6 through that opening and the decreased air would have
7 decreased, probably, air conditioning coming through right now.

8 But I just don't think that it's a, actually, a fix for
9 what we're trying to do, I mean, because you're still going to
10 get the negative effect. You're still going to be sucking the
11 air conditioning through. You're still going to have the mold
12 effect that's in the pod.

13 So that's, you know, there's two mold kind of concerns.
14 One that's in the cellblock and one that's in the air
15 conditioned pod area, which I think it doesn't have any effect
16 on guaranteeing that you're going to be eliminating that mold
17 that's in the pod.

18 Q So because I'm not an --

19 A Or the, the potential, potential for mold that's in the
20 pod.

21 Q Okay. And because I'm not an engineer and I just want to
22 make sure that I'm understanding.

23 So if you -- my understanding is that pulling the air from
24 the pod is pulling, is what's going to, essentially, pull the
25 mold into the pod from the outdoors, right? Because there's

HERNANDEZ - CROSS

1 extra pressure in the, on the pod?

2 A It's going to have air filtration through the building
3 envelope of the pod area.

4 Q Okay. So I understand that part.

5 So if you decrease the hole, at least according to Frank
6 Thompson, that would, that would decrease the pull on the
7 central pod, no?

8 A It would some. I mean, at first, it's kind of a balancing
9 act. At first, you're just going to increase the velocity of
10 the air that's coming through and then, once you start to build
11 up enough pressure difference, then the air is going to start
12 to decrease, so.

13 BY THE COURT:

14 Q So what's the effect of increasing the velocity?

15 A No. That's, that's it. I mean, I think you're just making
16 the air move faster through the hole instead of stopping the
17 air.

18 So, I mean, you're still going to have some that's going to
19 pull through. I mean, it may be less. It's just -- it's
20 really hard to tell, to quantify.

21 BY MS. MONTAGNES:

22 Q Okay.

23 So it's potential that decreasing the size of the hole
24 would decrease the risk of mold in the central pod area?

25 A Yes.

HERNANDEZ - CROSS

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1 Q My next question is did you take any outdoor temperatures
2 when you were at the prison?

3 A No.

4 Q Okay.

5 Did you perceive any mold in the pod area at all?

6 A No, I did not.

7 Q Did you perceive any mold in any part of the facility?

8 A No, I did not.

9 Just so that, let you know, I mean, let me explain my
10 answer, is that in the pod the probably potential for mold
11 growth would probably be in concealed spaces behind the wall.

12 So it'd be very difficult to see. And it's important to
13 note that mold is everywhere. So you always have mold. It's
14 more mold growth or excessive levels of mold. So that was not
15 -- I did not observe any kind of mold growth, mold, you know,
16 excessive levels or anything at all in, in the facility.

17 Q Okay.

18 And then I wanted to talk a bit about the IcyBreeze units.
19 So I've seen these units. They're, they're sort of an, like,
20 what I would say is like a regular-size cooler, is that
21 correct?

22 A It looks like an ice chest.

23 Q Yeah. Okay.

24 And it blows out a -- a -- some air through a PVC pipe?

25 A Yes.

HERNANDEZ - CROSS

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1 Q And so the suggestion is that by adding more of those we
2 could get the ambient heat index below 88 in the three-cell
3 area that you saw, is that right?

4 A Yes.

5 Q So, so, you know, you said more and, and the Judge said a
6 couple more. Is it your understanding that two more IcyBreeze
7 units in that small area would -- would -- would be sufficient?

8 A I have no idea. Without calculations and without doing
9 further analysis, it would be hard to kind of just come up with
10 a number.

11 Q Sure. But -- so just because I, I felt it, too. It's,
12 it's not that much air that comes out of these units, right? I
13 mean, you can feel it, but it's not a blow.

14 A Right. The -- I'm sure that the inmates could feel it
15 because they were, basically, you know, they were, you could
16 tell that they were in line with the units. And so the air
17 would kind of blow across their body with air, so.

18 So if you're like in close proximity, you can feel it. If
19 you're like more than, say, five feet away, I couldn't feel any
20 effect.

21 Q Okay. And the IcyBreeze units are outside the cell, is
22 that right?

23 A Correct. They're in the tier corridor outside the cell.

24 Q And the cells are, are fairly deep, is that --

25 A Yes.

HERNANDEZ - CROSS

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1 Q And the beds are against the back wall, right?

2 A No. They're on, I think, the side wall.

3 Q Yeah. And then they're, they're flush to the back wall of
4 the cell?

5 A I --

6 Q It's, it's okay. It's in the record.

7 A Right.

8 Q Then, then I don't know if this is your area of expertise,
9 but, but do you have any concerns about the cleanliness of the
10 IcyBreeze units and having water in there and sort of sitting
11 and them not being regularly cleaned?

12 A I tried to find data, like I said previously, on the
13 website. If what they say is true in the marketing, that it's
14 a separate heat exchanger where the ice and the water, I think
15 they circulate through the lid, that the airstreams don't
16 touch, basically.

17 So you can have almost in a sense a -- a more of, a more
18 contaminated side, you know. It's kind of like a contaminated
19 side and a clean side and I think the clean side is where the
20 air blows. And so that's the marketing, kind of what they like
21 to believe, that it was a safe product. Because you didn't
22 have the air that blew across the water that was, you know,
23 from the ice side. So they were separated.

24 Now if that's the case, then if they keep bringing in fresh
25 ice, I don't, you know, if it's -- as long as the ice is in

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1 decent shape, I wouldn't have an issue with it.

2 Q And in the marketing are these imagined to be 24-hour-a-day
3 cooling sources for people?

4 A They didn't really say, I mean, but most of the pictures
5 were areas where it's more like recreation use.

6 So if you were by a pool, you would put one of these things
7 in. I'm sure people don't live 24/7 at a pool. So all the
8 pictures didn't have it to where it was in a place, an
9 application that it was a, you know, a person living there
10 24/7.

11 Q And then my last question is, these would be designed to
12 bring the temperature down, but they wouldn't have an effect on
13 the humidity, correct?

14 A That is correct.

15 Q Okay.

16 THE COURT: Ms. Roper?

17 CROSS-EXAMINATION

18 BY MS. ROPER:

19 Q Hi, Mr. Hernandez. We met the other day.

20 Just to be clear, in your report you mentioned a heat
21 remediation plan that was put in place by the defendants.

22 You're not talking about the heat remediation plan that was
23 submitted in the fall, correct?

24 A I have no idea what the one was in the fall. So I'm
25 just --

HERNANDEZ - CROSS

1 Q Did someone give you a written report to review that was
2 entitled Heat Remediation Plan?

3 A (No audible response.)

4 Q No? You need to answer verbally. Okay.

5 A No.

6 Q Just -- and I'm not trying to --

7 A The one in the fall? No.

8 Q Correct. Okay.

9 When you're talking about the heat remediation, you're
10 talking about the hole in the door and IcyBreeze coolers, is
11 that correct?

12 A And the -- yes, and also the air-strip door.

13 Q Right.

14 A That kind of makes an, isolated between Cell 4 and 5.

15 Q Right. You're talking about the current conditions of
16 those --

17 A Yes, ma'am.

18 Q -- three things? Okay. All right.

19 And what is your understanding of Cajun Coolers? Are they
20 -- they're not intended for humid climates, are they?

21 A IcyBreeze units?

22 Q Right.

23 A I believe that they're meant to cool. They -- I think you
24 could use them probably anywhere. I'm not sure what you're
25 actually, the question. Could you rephrase it or --

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1 Q Okay. In your review of the literature on these particular
2 types of units, isn't it true that they're not recommended for
3 humid climates?

4 THE COURT: If you know.

5 BY MS. ROPER:

6 Q If you know.

7 A No. I didn't read any kind of recommendation on the
8 website that said not for use for humidity climates. I would
9 believe that it doesn't control humidity, just temperature,
10 which it can do that in almost any climate.

11 Q And you mentioned that it's very difficult to provide A/C
12 to the, the cells due to their design as an exhausted space?

13 A Yes, I did.

14 Q Okay. And would you --

15 THE COURT: Wait just a moment.

16 MS. MONTAGNES: Your Honor, I'm going to, I'm going to
17 just object as this being beyond the scope. If we're going to
18 now get into the sort of first heat remediation plan and
19 whether or not --

20 THE COURT: Well, he's already testified, Ms. Roper.
21 And he doesn't know anything about the State's heat remediation
22 plan. He's not --

23 MS. ROPER: No, I'm not asking about that, Your Honor.

24 THE COURT: Okay.

25 MS. ROPER: I'm asking about what he testified to

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1 earlier where he talked about this being a highly ventilated
2 and highly exhausted area and that for that reason it would be
3 difficult to provide air conditioning to those spaces.

4 THE COURT: I don't think that's what he testified
5 about. I think that grossly mischaracterizes his testimony.
6 To the contrary. He's testified, in fact, that you can provide
7 mechanical air. What did I miss?

8 MS. ROPER: Maybe I misunderstood.

9 THE COURT: Well, I think you did.

10 MS. ROPER: I was writing down --

11 THE COURT: Is there, is there an objection?

12 MS. MONTAGNES: I mean, to the extent we're going to
13 get into whether or not it's viable to air condition this
14 space, we would strenuously object. We've had a trial on the
15 merits on this issue. We've had extensive evidentiary
16 hearings. I, I just don't think that we need to be revisiting
17 whether or not mechanical cooling is viable because the State
18 has offered a plan that they thought was viable and we accepted
19 it and the wisdom of the Fifth Circuit being what it was. I
20 just don't want to now try to create a record that somehow air
21 conditioning isn't viable. That's just not -- beyond the
22 scope.

23 THE COURT: And, and I will admit that, I mean, I, I
24 allowed him to testify about that merely because he suggested
25 that there were other means and I wanted to get on the record

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1 what he believed the other means were, which were clearly
2 mechanical air.

3 I will allow a little bit of latitude on this, but
4 we're not going to -- I'm not going to allow a lot of questions
5 on the use of mechanical air. He's testified about what he
6 believes the cost would be to provide limited mechanical air,
7 at least to that portion of the tier. This gentleman was
8 retained only a few days ago, certainly didn't have the kind of
9 opportunity to, I'm sure, do the kind of studies that would
10 otherwise be --

11 BY THE COURT:

12 Q You're not a AC/VAC. I mean, you're, you're a professional
13 engineer. I understand that, correct?

14 A Yes, Your Honor.

15 Q And, and you are familiar with mechanical HVAC systems,
16 right?

17 A Oh, very much so, Your Honor. That's what I do everyday.

18 Q But you were -- at no time were you requested to inspect
19 that area to determine the feasibility of an HVAC system so,
20 you know, all that would be involved in that, correct?

21 A I was not asked to do new alternatives or anything like
22 that, just to look at what was out there, basically.

23 Q Okay.

24 MS. MONTAGNES: Yes, Your Honor. And to the extent we
25 have, you know, "spitball," to quote, I just want to again

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1 emphasize that we've -- this has been the subject of extensive
2 litigation regarding the cost and we would object to any of
3 that being taken beyond just a spitball --

4 THE COURT: I understand. Yes.

5 MS. MONTAGNES: -- that was provided.

6 THE COURT: Right. I understand.

7 MS. MONTAGNES: Thank, thank you, Your Honor.

8 BY MS. ROPER:

9 Q And my question was certainly not meant to go into the heat
10 remediation plan and -- and -- and what you believe that I was
11 trying to get into.

12 I'm just certainly trying to get into the areas that you
13 were talking about and you were asked about alternatives and so
14 forth, which is beyond the scope of the report that we were
15 provided, correct?

16 THE COURT: Well, I can tell you that I won't consider
17 any alternatives that was, that is not here in this report. I
18 can, I can tell you that.

19 MS. ROPER: Okay. Well, that was just a bit
20 concerning to me, Your Honor. So I was trying to make sure
21 that we were not discussing that.

22 BY MS. ROPER:

23 Q And you mentioned something -- you were asked whether
24 additional IcyBreeze coolers could, perhaps, maintain the, the
25 space -- I'm not sure if you were asked -- was it below a

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1 certain temperature? What is your opinion on that?

2 A Are you talking about the temperature that we're trying to
3 maintain?

4 Q The heat -- I'm sorry. The heat index.

5 A I was informed by the Special Master that 88 degrees was
6 basically the heat index. Anything below that, we're trying to
7 maintain that 88-degree benchmark.

8 Q And how many IcyBreeze coolers -- do you have any idea how
9 many that would take per inmate to do that?

10 A I have no idea. I would have to do calculations to
11 calculate the cooling load of the building, kind of take into
12 some other considerations. I mean, there would be, further
13 investigation would be needed --

14 Q Okay.

15 A -- and analysis.

16 Q And in your report you indicated that you had reviewed the
17 report of Mr. Thompson and that you had no issues with it,
18 correct?

19 A Yes, ma'am.

20 Q But today you testified somewhat differently to that as far
21 as the opening in the door, that a smaller opening in the door
22 would not prove to have the same effect that Mr. Thompson
23 indicated it might have?

24 A I don't know if Mr. Thompson had made a statement that it
25 would solve any mold case or mold issues in the -- so I'm, I'm

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1 not sure if, if I did disagree with him. Because I don't think
2 he made any statement that I disagreed with. Basically, he was
3 just trying to minimize the negative pull in the space, but he
4 didn't really say if that would like totally do away with the
5 mold issue.

6 Q Okay. So overall, you, you still maintain that you don't
7 disagree with the report submitted by Mr. Thompson or the
8 information within the report that you reviewed by
9 Mr. Thompson?

10 A Right. I mean, maybe not a hundred percent that I agree
11 with. I just, you know --

12 Q Anything else that you disagree with in the report?

13 A Not that I recall, I mean.

14 Q Did you do any calculations to determine what portion of
15 the, the cooling effect that you observed in Tier C is
16 attributable to the air coming through the door as opposed to
17 the air being emitted by the Icy coolers?

18 A No, I did not.

19 Q When you indicated that, perhaps, the heat index could be
20 brought below the 88-degree level with adding additional
21 IcyBreeze coolers, would that be all that would be required?

22 A If you had enough IcyBreeze units, yes. They're cooling
23 units. So if you matched the cooling units, the cooling need
24 with the cooling capacity of the, of the units, I mean, you can
25 achieve that.

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1 Q Would there need to be any alterations to the ventilation
2 or exhaust?

3 A No, other than, possibly, trying to open up an operable
4 louver kind of at the farthest end, maybe, you know, to kind of
5 make some of the make-up air come from the outside instead of
6 the condition pod.

7 Q So the current ventilation and exhaust wouldn't pull too
8 much air from the cells?

9 A You would just have to overcome the amount of heat
10 that's -- that -- that phenomenon, the pulling of the air, is
11 doing.

12 THE COURT: And -- and --

13 BY MS. ROPER:

14 Q And that would be overcome by the additional IcyBreeze
15 coolers, correct?

16 A Yes.

17 Q Or is there -- or are you alluding that something else
18 would need to be done other than the, the louvered windows,
19 opening of that?

20 A If you add additional IcyBreeze units, I think you can
21 overcome the cooling from the ventilation.

22 I mean, there is a physical constraint about adding. You
23 can't add that many more coolers than the amount of volume
24 that's in the corridor, most likely, you know. I mean, there's
25 got to be some limitation. If that limitation is met, I mean,

HERNANDEZ - CROSS

1 then maybe it's not a viable alternative, but I don't
2 personally think it's going to take that many, you know.

3 And there is still the fact that you have to replace the
4 ice, I mean, because that's the, that is the heat sync, you
5 know, source there.

6 So you can't just replace, you know, once in the morning
7 and then expect it to do the job throughout the day, just one
8 time, so.

9 Q And, and in your visual observation of Tier C did you take
10 note of the fact that one of the fairs, one of the fans, in
11 fact, was not on at the time?

12 A No, I did -- no, I did not note, note that, so.

13 Q Did you note anything regarding the fans, the operation of
14 the fans?

15 A You talking about the circulator fans that's on the wall or
16 the exhaust fans that's at the roof?

17 Q The circulating fans. Did you make any notations about
18 that in your observation?

19 A I believe I said that I saw those. That was part of the
20 original building design. So I kind of talked about them a
21 little bit in my report.

22 Q Okay.

23 A So I noted it. But not the one that was, I think, off.

24 Q And a little bit was touched upon about the mold and
25 potential for mold growth in the, the pod area and whether or

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1 not you had observed any mold and you said you did not observe
2 any mold at the time, correct?

3 A That is correct.

4 Q And typically, mold would develop behind the scenes, isn't
5 that correct?

6 A Mold's going to develop where there's a water source. So
7 if you have a roof leak, it's going to develop where any kind
8 of material's wetted.

9 So if it's caused by condensation forming within the wall,
10 like, basically, from vapor drives coming through your building
11 exterior, typically, in that case, that's kind of usually in
12 concealed spaces. If it continues to grow and colonize and
13 spore, then you might see it on surfaces.

14 So there's many different levels of mold growth. I'm just
15 -- I was asked by the Court to say if it's, the heat
16 remediation plans were a sustainable kind of action plan. It's
17 -- I can't guarantee that it's a sustain -- I can't guarantee
18 that there'll be mold growth or not mold growth. I mean, it's
19 kind of -- it's a -- there's so many openings, probably, in the
20 building it's hard to quantify where the vapor drive is coming
21 from. It's just an experience that that's a potential for mold
22 growth, is the vapor drive.

23 BY THE COURT:

24 Q But during your visit you didn't see any evidence of mold?

25 A I did not see any evidence whatsoever of mold.

HERNANDEZ - CROSS

1 BY MS. ROPER:

2 Q And, and would the fact there is a, there's a negative
3 pressure in a facility, would that not tend to lead toward a
4 potential for mold in the, the air vents, the ducts?

5 A Not necessarily. I mean, it's, it's really dependent upon
6 each building, the amount of cfm. I mean, it's a pretty
7 specific case to each building.

8 So in one area, you may have no problems. Another area,
9 you may have problems. One building, problem. So it's -- you
10 can't really quantify that or, or guess on that.

11 Q What types of conditions would lead to the growth of mold
12 if a, if an A/C unit is not functioning properly?

13 A If an --

14 THE COURT: We're not talking about an A/C unit here,
15 though.

16 MS. ROPER: In, in the pod area, Your Honor, the, the
17 effect that this particular experiment is having on the, the
18 draw upon the, the unit in the pod area.

19 BY THE COURT:

20 Q Did you have an opportunity to ascertain whether there,
21 there would be an effect in that pod area?

22 A On the air conditioning system?

23 Q Yes.

24 A I mean, the air conditioning system in that case would
25 probably just act as a -- it wouldn't be a problem with the

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1 mold, a direct cause of the mold. It would probably -- if
2 there's a cause, it'd be because you had a vapor drive. Like
3 you have a negative space that's sucking air and it's
4 infiltrating the hot humid air outside through the building of
5 the air conditioned space. And that air conditioned space has
6 more organic material that's food for the mold.

7 The cellblocks were kind of designed more nonorganic or
8 cement blocks and steel bars and stuff like that to where they
9 didn't have as much case, much chance to have mold growth. The
10 mold, probably, might spread because of the HVAC system, the
11 ductwork, if there's like spores. It might spread it out
12 throughout the mold, pod if there's mold that develops, but it
13 wouldn't be the direct cause of the mold.

14 Q And, and speaking of mold spores, mold spores do travel,
15 correct?

16 A Yes.

17 Q So if they were in the pod area and the door is open, is it
18 possible that they could travel into the, the cells?

19 A Yes.

20 Q Okay.

21 Did you look for mold when you were there? I'm not sure
22 what you testified to.

23 A I didn't have any kind of mold meter or anything like that.
24 I'm just looking for visual mold, you know, any kind of like
25 buildup, black. I didn't see any kind of like black spots, any

HERNANDEZ - CROSS

1 kind of mold.

2 Q And, and it was your recommendation, is, is it not, that
3 the opening in the, the door to the, the C Tier be closed in
4 order to keep the air conditioned portion of the building
5 prevented from exhibiting any damage from mold?

6 A Yes.

7 Q Can you tell me, when did you provide your report to the
8 Special Master?

9 A I think August 19th, the Friday.

10 Q That Friday?

11 A Uh-huh. (Indicating an affirmative response)

12 Q Thank you.

13 MS. ROPER: That's all.

14 THE COURT: Okay.

15 Anything further, Ms. Montagnes?

16 MS. MONTAGNES: No, Your Honor.

17 THE COURT: Okay.

18 MS. MONTAGNES: No, Your Honor.

19 THE COURT: All right.

20 BY THE COURT:

21 Q So to the extent Mr. Thompson's report raised some concerns
22 about mold, you believe that that can be rectified with the
23 addition, again, of the additional IcyBreeze units, the opening
24 of the door, and the, I guess, the closing of the hole. Is
25 that, is that your testimony?

HERNANDEZ - BY THE COURT

1 A Yes, Your Honor.

2 Q Okay. Thank you very much, Mr. Hernandez. You're --

3 A Thank you.

4 Q You are excused.

5 THE COURT: All right. Any, any arguments by the
6 plaintiff?

7 Let me give both sides an opportunity to be heard.

8 MS. MONTAGNES: Yes, Your Honor.

9 Back in October of this year, we held a hearing and at
10 that hearing --

11 THE COURT: Back in when?

12 MS. MONTAGNES: October of 2015. I'm apologize.

13 THE COURT: All right.

14 MS. MONTAGNES: We held a hearing and at that hearing
15 we discussed the possibility of opening up the tier doors,
16 which was one of the suggestions that had been offered by the
17 Fifth Circuit. And at that hearing we were presented by the
18 opinion of, of Mr. Thompson that he believed that that might
19 cause mold growth and that potential was dismissed and, and we
20 moved on to the other set of options that the Fifth Circuit had
21 presented us with.

22 And with that knowledge, with the letter in the record
23 -- this is Record Document 251-1 -- the defendants went ahead
24 and created a situation where the plaintiffs are now not being
25 subjected to a constitutional violation three years after

1 filing a lawsuit asking for that and it's plaintiffs' position
2 that closing up that hole will absolutely -- and I -- and I,
3 you know, I know that Mr. Hernandez is an engineer and he is
4 much more adept at this than I am, but having seen what the
5 IcyBreeze units produce it is, there's no doubt in my mind that
6 the hole in that door is what is causing the reasonable
7 conditions for my clients right now and that if you shut that
8 hole, they will again be subjected three years later to
9 unconstitutional conditions and to the extent that that's
10 what's on the table right now, plaintiffs would just
11 strenuously object. The defendants had this information
12 available to them when they cut that hole in the door and to
13 then allow them to reseal that door and to subject my clients
14 to those conditions again, to me, just goes against every
15 principle of what we've been trying to do here.

16 THE COURT: So what alternative would you offer?

17 MS. MONTAGNES: Your Honor, all I've heard today is
18 that there's a potential. That's all I've heard. And I don't
19 -- the potential that mold may develop in the pod doesn't seem
20 to me to justify putting my clients in unconstitutional
21 conditions again. I simply -- I can't -- I understand that we
22 have to weigh these, these two, we have to weigh interests and
23 that's what we're here to do. And I understand that, you know,
24 it's going to cost a little money or it's going to cause a
25 little discomfort, but currently, my clients for the first time

1 in three years are in a reasonable condition and I don't think
2 the potential for mold should mean that they are now subjected
3 to conditions which are documented and were reinforced in June
4 with unrefuted testimony that their health is at extreme risk.

5 And so the idea that because mold might develop we're
6 going to put them back in those conditions, to me, I just
7 can't, I just don't think that that's reasonable.

8 THE COURT: Okay.

9 Mr. Hernandez, please come forward. Let me, let me
10 just make sure I understand.

11 Is it, is it your testimony -- I believe your
12 testimony was that the current temperatures and humidity levels
13 could be maintained if the hole was closed, but if there are
14 additional IcyBreeze units brought in and, and utilized in that
15 area, is that correct?

16 MR. HERNANDEZ: Yes. I think the, the temperature
17 would come down. We're talking about the heat index of 88?

18 THE COURT: Correct.

19 MR. HERNANDEZ: So the temperature would come down.
20 The humidity would rise, you know, but you're kind of, kind of
21 in a balancing act between them, I mean. And so you would, you
22 would be attacking or addressing the temperatures to try to get
23 the temperature down to where, you know, your, your perceived
24 temperature wouldn't be as hot.

25 THE COURT: Right.

1 MR. HERNANDEZ: So, I mean, you wouldn't do any,
2 really, humidity control. You would just try to do --

3 THE COURT: Just temperature, right.

4 MR. HERNANDEZ: Yeah.

5 THE COURT: Very well. Thank you, sir.

6 Well, Ms. Montagnes?

7 MS. MONTAGNES: So, so if that's the case, Your Honor,
8 if the defendants can -- I think before the hole is permanently
9 sealed, if the defendants can temporarily seal it and provide
10 enough IcyBreeze units that, truly, the heat index is brought
11 down, then, then that would be satisfactory for us.

12 THE COURT: Okay.

13 MS. MONTAGNES: But until that happens, I am just
14 extremely hesitant to go backwards where my clients are, once
15 again, going to be subjected to a substantial risk of serious
16 harm.

17 THE COURT: I understand. Thank you.

18 MS. MONTAGNES: Thank you.

19 THE COURT: All right. Ms. Roper?

20 MS. ROPER: Yes, Your Honor.

21 We respectfully stand by our position that the Gates
22 (phonetic) measures that we implemented are sufficient and in
23 engaging in these discussions which we have prefaced every
24 introduction of any information into the record with our
25 objection that they are not to be introduced into the record

1 under 408, Federal Rule of Civil Procedure 408.

2 THE COURT: We're well beyond that, Ms. Roper.

3 Anything with respect to the testimony of this witness
4 that you'd like me to keep in mind?

5 MS. ROPER: Yes, Your Honor. I'm just trying to
6 address opposing counsel's comments about moving forward and
7 ordering us to do something that was done pursuant to these --

8 THE COURT: Okay, all right.

9 MS. ROPER: -- agreements --

10 THE COURT: All right.

11 MS. ROPER: -- and the agreement between counsel that
12 none of this -- all of this was just temporary and
13 experimental.

14 So I think it's highly inappropriate for opposing
15 counsel to recommend that we be ordered to do something that
16 has been agreed that would not be a part of any remedial
17 measures ever, any evidence to be --

18 THE COURT: Okay.

19 MS. ROPER: -- introduced into the record in this
20 case.

21 THE COURT: Well, does the State intend to implement
22 any other experimental measures?

23 MS. ROPER: At this point, Your Honor, we were waiting
24 on Your Honor's guidance as we didn't want to do anything
25 further --

1 THE COURT: Okay.

2 MS. ROPER: -- until we heard further from you, Your
3 Honor.

4 THE COURT: All right, very well. Thank you, ma'am.
5 Now, Mr. Guillot, let me ask you, sir, since you're
6 the one that I've, I've taken this issue up with.

7 Do I have the assurances of the State that they will
8 not relocate the plaintiffs until such time as the Court issues
9 an order, or until the summer months, at least the -- the --
10 we're, we're out of the heat and humidity of the summer months?

11 MR. GUILLOT: Yes, Your Honor.

12 THE COURT: All right.

13 MR. GUILLOT: And it's been -- and I've -- we've
14 informed them several times and they've assured us several
15 times.

16 THE COURT: Okay.

17 MR. GUILLOT: So, yes, Your Honor.

18 THE COURT: Okay.

19 THE COURT: All right, very well. Thank you.

20 MR. GUILLOT: Thank you.

21 THE COURT: Can I see you, Mr. Hebert?

22 (Bench conference off the record between the Court and
23 Mr. Hebert)

24 (End of bench conference)

25 (Open Court)

1 THE COURT: All right. Let me thank counsel for both
2 sides. This has certainly been very helpful. I will issue an
3 order forthwith that will set forth conditions. And again, I
4 intend to get that out in pretty short order, okay?

5 Thank you all very much.

6 Court is adjourned.

7 COURT SECURITY OFFICER: All rise. Court is
8 adjourned.

9 (Proceedings concluded at 4:12 p.m.)

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CERTIFICATE

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/s/ Janice Russell

August 30, 2016

19

Janice Russell, Transcriber

Date

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