

MARCUS BYNUM, et al

Plaintiffs

v.

GOVERNMENT OF THE DISTRICT
OF COLUMBIA,

Defendant

Civil Action No. 02-956 (RCL)

FINAL FEE ORDER

GOOD CAUSE APPEARING, the Court finds as follows on Class Counsel's Motion for Attorneys' Fees:

1. Class Counsel engaged in protracted efforts over a period of four years to obtain this settlement, which the Court considers to be an outstanding settlement both in its monetary and in its non-monetary terms. The court considers the results in this case to have been exceptional.
2. This was very complex litigation, involving novel issues, and the effort that went into the results reflects that fact. There is extensive documentation of the time spent by counsel to attest to the exceptional effort that went into this case, and the Court has reviewed the file, which also reflects the extensive work performed on both sides. Extraordinary effort went into the resolution of these cases, not only through litigation, but through many hours of mediation. These cases were hotly contested both on their merits and on whether a class would be certified. In addition, there are unique challenges in litigating against the District of Columbia, of which the Court is well aware.
3. The outcome of this case was unclear and subject to serious risk of lack of success at the time the cases were filed, and during the course of the litigation. The Court is aware that cases of this nature are extremely risky and burdensome for plaintiffs' counsel.

4. Class counsel did an outstanding job and obtained exceptional results for the class. The hourly rates defined in Exhibit A do not account for exceptional results, and are based on hourly rates for lawyers of the skill and expertise of Class Counsel independent of the results obtained and of any contingent risk. In determining the appropriate fee, the Court has considered the outstanding results as well as the risks involved in this litigation.
5. The Court considers that substantial benefits were conferred on the class beyond the monetary recovery for the class, in the form of the significant policy changes in the operation of the Department of Corrections that resulted from this litigation. This is a substantial factor in the Court's determination of the appropriate fee. The policy achievements obtained through this litigation set it apart from many class fund cases, which provide only monetary relief. Here, in addition to the monetary relief to the class directly, the District committed to an additional \$3 Million to spend on the jail, and will spend an additional \$2 million more. Further, the policy of strip searching court returnees subject to release has been stopped.
6. The attorneys involved in this litigation on behalf of the class are experienced and capable civil rights attorneys. The Court finds the hourly rates contained in the fee petition, based on the modified Laffey matrix, reasonable for attorneys of their skill, experience, reputation and expertise, before accounting for outstanding results or contingent risk. The Court also finds the hours expended (which are also set forth in the Fee Petition) reasonable for litigation of this complexity and duration.
7. The Court notes that there was a total of three opt outs and four objections, which the Court considers low and to reflect the

overwhelming satisfaction of the class with the settlement and the Class Counsel.

8. The Court awards the total expenses delineated by Class Counsel as a cost award in this case. Plaintiffs are awarded \$____ in costs.
9. In addition, the Court approves the fees to date of Rosenthal & Co. in the amount of \$____. This amount is to be paid immediately by the District. In addition, the Court approves \$____ in future expenses to be paid to Rosenthal & Co. on approval of Class Counsel and without further order of court. These fees will not be incurred until more than 30 days after the entry of this order and the Final Settlement Approval Order.
10. Both the costs awarded to Class Counsel and the costs awarded to Rosenthal & Co. are to be taken from the \$5 Million portion of the settlement allocated to Class members (as opposed to the portions allocated to District programs or attorney's fees).
11. The Court has considered the objections of four class members to the request for attorney's fees and finds that they are not well taken. The Court has discussed these in its Order Overruling Objections to Settlement and will not repeat that discussion here.
12. The Court has considered there to be a Total Fund of \$12,000,000, and has analyzed the fee as a percentage of that Total Fund. The Court has determined to award one third of the \$12,000,000 Class Fund as an attorneys' fee award in this case.
13. One third is within the range of what is customarily awarded Chief Judge Hogan of this District found that the presence of the following factors warranted the higher fee award of 34% in Vitamins Antitrust Litig., 2001 U.S. Dist. LEXIS 25067, 36 (D.D.C. 2001): exceptional benefits to a large class; the experience, skill and professionalism of counsel and the performance and quality of opposing counsel; the litigation was "far

ahead of public agencies . . . which long after the institution of this litigation awakened to the concerns that plaintiffs' counsel first identified;" extensive time and effort exerted by the attorneys and the existence of complex legal and factual issues. These factors are present in this case. In addition, the court notes that the percentage fee awarded in the very similar Williams v. County of Los Angeles case exceeded one third.

14. The Court believes that the foregoing cost and fee award is reasonable in light of all the factors involved, including the complexity of the case, the novelty of the legal issues, the exceptional efforts made by Class Counsel, the exceptional results obtained by Class Counsel, the outstanding monetary and non-monetary benefits visited upon the Class and the community at large through Class Counsel's efforts, the risky nature of the litigation for which Class Counsel received no compensation during the many years of litigation, and the market expectation in the legal market for an enhancement in contingent fee cases to compensate for litigation risk.

DATED: _____

ROYCE C. LAMBERTH
UNITED STATES DISTRICT JUDGE

Presented by:
