

Ruling Permits Attempt to Extend Jail Inmate Re-entry Settlement

By Daniel Wise

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Dividing 4-3, the New York Court of Appeals yesterday revived an effort to extend for another two years a 2003 class action settlement requiring New York City to assist some 6,000 mentally ill jail inmates a year with their re-entry to society.

The Court's ruling in *Brad H. v. City of New York*, No. 126, reversed [a decision of the Appellate Division, First Department](#), finding the class' lawyers had waited too long to seek the two-year extension.

Writing for the majority, Judge Victoria A. Graffeo rejected the First Department's interpretation of the settlement, finding instead that it was "clear and unambiguous" that the class' filing was timely when the agreement is read as an "integrated whole."

In dissent, Judge Eugene F. Pigott Jr. reached the opposite conclusion, also relying on the "unambiguous" language of the agreement.

The class is represented by Debevoise & Plimpton, which has handled the case since its inception pro bono, and the Urban Justice Center.

The Court's ruling also reinstates a preliminary injunction issued by the trial judge, which kept in place the terms of the 80-page settlement while litigation proceeded over the extension.

The First Department in a 3-2 ruling had overturned Justice Marilyn Shafer's decision holding that the extension request had been timely filed ([NYLJ, Aug. 11, 2010](#)).

Throughout the appeal process, the city agreed to abide by the settlement terms, and the class agreed to refrain from pressing forward with its claims at the trial level.

The ruling allows the class to proceed with its claims that the settlement, which was initially put in place for five years, must be extended because the city failed to substantially comply with its obligations during the final two years of the accord.

The settlement requires that the city assist mentally ill inmates in its jails to obtain continued treatment, needed medications, housing and welfare benefits.

The agreement also requires ongoing monitoring with the city and plaintiff each appointing a monitor.

Jennifer Parish, the lead lawyer from the Urban Justice Center, said that the monitors continue to find that the city "remains out of compliance with key obligations such as connecting [inmates] with mental health treatment, public benefits and housing."

Jeffrey S. Dantowitz, a senior counsel in the city's Law Department, said, "We believe we are in compliance with the settlement and to the extent the monitors have found otherwise, we disagree."

Starting Point in Dispute

The settlement contained a five-year sunset provision. The key question before the Court of Appeals and the lower courts was how to interpret the provision that the agreement would terminate two years after monitoring "begins."

The accord required the class to move for a two-year extension before its expiration.

The city contended that the five-year period started to run once the monitors began reviewing drafts of new procedures for discharging mentally ill inmates and attending training sessions for staff that would carry out those procedures. The two monitors were appointed on May 6, 2003.

The class countered that there was nothing to monitor until the city implemented the new procedures, which required the development of a discharge plan for each mentally ill inmate. The city had to begin providing discharge plans to inmates no later than June 3, 2003.

The class brought its motion to extend the agreement another two years on May 22, 2009. That would have been too late by the city's calculation and within the deadline according to the class.

Both sides agreed that there was good reason to extend the sunset period for an additional 356 days.

In accepting the class' interpretation, Judge Graffeo reasoned that a "fundamental" purpose the monitors were supposed to serve was to oversee the extent to which mentally ill inmates received an appropriate level of continuing mental health treatment and other services "immediately" upon their release from jail.

To read the settlement document as the city and dissent urge, she wrote, "would undermine [the settlement's] overarching purposes." Chief Judge Jonathan Lippman and Judges Carmen Beauchamp Ciparick and Theodore T. Jones joined the majority.

In dissent, Judge Pigott contended that the settlement "expressly contemplated" the monitoring of the "creation" of discharge plans. For that reason, he concluded, there "is no basis for the assertion that monitoring did not embrace the initial development of discharge planning guidelines before the actual implementation." Judges Susan Phillips Read and Robert S. Smith joined the dissent.

Christopher K. Tahbaz, a partner at Debevoise, argued the appeal for the class. Matthew S. Hackell and Julie M. Calderon Rizzo, Debevoise associates also worked on the appeal.

Drake A. Colley, a senior counsel at the Law Department, argued the appeal for the city at the Court of Appeals. Mr. Dantowitz argued for the city at the First Department.

According to the city's Department of Health, the cost of monitors was approximately \$25,000 per month, for a total of \$3.2 million since 2003.

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