

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

MICHAEL MAXWELL, JERRY
HENDERSON, & JOHN CALHOUN,

Plaintiffs,

vs.

Case No. 2002-647 CB-S

MICHAEL HALEY, Commissioner of
the Alabama Department of
Corrections; and
GRANTT CULLIVER, Warden of
Holman Correctional Facility,

Defendants.

**PLAINTIFFS' MOTION TO STAY LITIGATION PENDING COMPLETION
OF PLANNED RENOVATIONS TO THE VENTILATION SYSTEM**

Because Defendants are planning significant renovations to the ventilation system at Holman Correctional Facility, Plaintiffs respectfully request that the Court stay the case until June 30, 2003, to provide sufficient time for completion of these proposed changes and an analysis of their effect during the summer heat. As grounds, Plaintiffs state as follows:

1. Defendants have informed Plaintiffs' counsel and the Court on numerous occasions of their intent to make significant changes to the ventilation system at Holman Correctional Facility. Exh. 1, Brownstein Affidavit at ¶¶ 2-3; Defendants' Motion to Dismiss Request for a Preliminary Injunction at ¶ 8 (noting that "Commissioner Haley has retained consulting engineers to redesign

the cooling and ventilation systems"); Haley Affidavit, attached to Defendants' Motion for Dismissal or Alternatively, for Summary Judgment, at 1-2 (same).

2. On October 31, 2002, Greg Loveless, Deputy Commissioner at the Alabama Department of Corrections ("DOC"), informed Plaintiffs' counsel that Energy Solutions, a division of Southern Company, is soliciting bids for the work. Exh. 1, Brownstein Affidavit at ¶ 4. Defendants expect that it will take 2-3 weeks before a company will be chosen to do the work and a contract signed. *Id.* Proposed changes included overhauling the entire system, replacing exhaust fans, and installing supply fans so that an adequate amount of air (5000 cubic units per minute) is forced through inmates' cells. *Id.* at ¶¶ 5-6.

3. Part of the renovations also includes removing the screens currently covering the front of inmates' cells and replacing them with screens with larger holes, in an effort to allow greater circulation of air into inmates' cells. *Id.* at ¶ 9.

4. Defendants agreed to submit to Plaintiffs detailed engineering plans, as well as a signed contract, so that Plaintiffs may begin to assess the adequacy of the anticipated renovations. *Id.* at ¶ 8.

5. The true test of any proposed renovations, however, will be their effect on the conditions at Holman during the summer. Until that time, neither party will be able to sufficiently assess the success of any renovations in alleviating Plaintiffs' substantial risk of serious harm.

6. Forcefully supporting a court's discretion to grant a stay of proceedings, the Supreme Court in *Landis v. North American Co.*, 299 U.S. 248 (1936), determined that:

the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interest and maintain an even balance.

Id. at 254; *see also Nelson v. Grooms*, 307 F.2d 76, 78 (5th Cir. 1962) (stay upheld, quoting *Landis*); *Southern Offshore Fishing Ass. v. Daley*, 55 F. Supp. 2d 1336, 1342 (M.D. Fla. 1999) (stay of special master proceedings granted pending settlement negotiations); *Hadden v. Standard Supply and Hardware Co.*, 1997 WL 403239, at *1 (E.D. La. July 17, 1997) (stay granted pending settlement negotiations).

7. The balance here weighs heavily in favor of granting Plaintiffs' motion. Proceeding at this point in the litigation may squander limited judicial and party resources. Because the temperature has now dropped, the lawsuit does not require the court's immediate attention. Inmates will not face a risk of harm due to excessively high temperatures until next summer. Defendants' proposed renovations may eliminate that risk altogether.

8. At this juncture, the parties would be forced to litigate (and the Court forced to decide) a case based on circumstances that may dramatically change within a few months. Presently, inmate witnesses can testify regarding only their experience under the conditions as they existed last summer. Similarly, testimony from Jail personnel and experts will be more reliable if

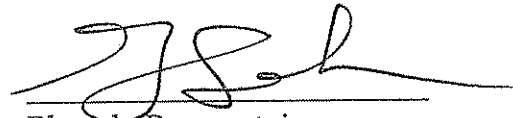
individuals can assess the actual effect of any proposed changes under summer conditions.

9. Engaging in prolonged discovery and trial at this point in time creates the possibility of another lawsuit after renovations are complete. Judicial and party resources would be better preserved by dealing with all relevant issues at once.

10. There is no harm to Defendants in staying the case. Defendants are already pursuing renovations without a court order. Should Defendants fail to go forward with proposed renovations, either party can request that the case proceed at that point.

Based on the foregoing, Plaintiffs respectfully request that the Court temporarily stay all activity in the case until June 30, 2003.

Respectfully submitted,



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RHONDA BROWNSTEIN AFFIDAVIT

1. I am an attorney with the Southern Poverty Law Center and represent Plaintiffs in the above-styled action.
2. Since the filing of this lawsuit, I have had numerous conversations with various officials at the Alabama Department of Corrections ("DOC"), including Commissioner Michael Haley, Deputy Commissioner Greg Loveless, and General Counsel Andy Redd.
3. All of these officials told me that renovations to the ventilation system are planned for Holman Correctional Facility.
4. The most recent conversation occurred on October 31, 2002, with Deputy Commissioner Greg Loveless. Mr. Loveless stated that Energy Solutions, a division of Southern Company, is soliciting bids for the overhaul of the ventilation system. Further, Mr. Loveless estimated that it would take 2-3 weeks

before a company would be chosen to do the work and a contract would be signed.

5. Mr. Loveless outlined some of the proposed preliminary solutions, which included replacing exhaust fans and installing supply fans.

6. Accordingly to Mr. Loveless, the new system would move 5000 cubic units of air per minute through inmates' cells.


7. The cost of this renovation to the DOC would be \$75,000-80,000.

8. Mr. Loveless agreed to provide engineering plans, as well as a signed contract, for Plaintiffs' review.

9. Conversations with Plaintiffs and other inmates, as well as with officials at DOC, also indicated that the DOC is in the process of removing the screens that cover the front of inmates' cells. These screens are being replaced with screens with larger holes, in an effort to provide greater circulation of air into inmates' cells.

I declare under penalty of perjury that the foregoing is true and correct.

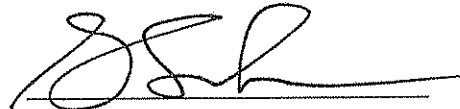
Executed this 20 day of November, 2002.


Rhonda Brownstein

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing by first-class mail, postage prepaid, on the 7th of November, 2002, on the persons whose addresses are listed below:

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Andrew Redd, Esq.
Edward Hardison, Esq.
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