

Legal Notice
United States District Court for the Northern District of New York

NOTICE OF PROPOSED SETTLEMENT AND HEARING

If You Entered the Clinton County Correctional Facility from February 28, 2003 to July 1, 2007 And Were Strip Searched Upon Arrival, Then Your Rights Could Be Affected By A Proposed Class Action Settlement.

*The United States District Court for the Northern District of New York authorized this notice.
It is not from a lawyer. You are not being sued.*

- This is a proposed Settlement of a class action lawsuit alleging that corrections officers employed at the Clinton County Jail (“CCJ”) engaged in the practice of illegally strip searching all individuals charged with only misdemeanors, violations, violations of probation or parole, traffic infractions, civil commitments or other minor crimes upon their entry into the CCJ from February 28, 2003 until July 1, 2007. The proposed Settlement does not include individuals who were charged with felony offenses at the time of their admission to the CCJ.
- The benefit of the Settlement to Class Members is that each Class Member will be entitled to a share of \$1,150,000.00, after payment of administrative costs, incentive awards to the representative plaintiffs, and attorneys’ fees and expenses. The amount of each Class Member’s share will depend in part on when they were admitted into the CCJ, as explained below.
- Visit the Settlement website at www.bmbblaw.com/clintoncountystripsearch.php for additional details about the Settlement. You may also get additional information by calling 1-800-382-6291 or by writing to Clinton County Settlement, c/o The Garden City Group, Inc., PO Box 9360, Dublin, OH 43017-4260.
- Your legal rights are affected whether you act, or don’t act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Submit a Claim Form	You must submit a Claim Form to receive payment under the Settlement. You must submit a Claim Form by September 8, 2009 to get any money.
Exclude Yourself	If you exclude yourself from the Settlement, you will not be bound by the Settlement and final order and will not be entitled to payment under the Settlement. You will be free to pursue your claims against the Defendants. This is the only option that allows you ever to bring or be part of any other lawsuit having to do with strip searches against the Defendants in this case. You must exclude yourself from the Settlement by August 10, 2009.
Object	If you do not exclude yourself, you may write to the Court about why you do not like the Settlement or the request for legal fees and costs. You must object to the Settlement by August 10, 2009.
Go to a Hearing on September 30, 2009	You may ask to speak in Court about the fairness of the Settlement or the request for fees and costs.
Do Nothing	You get <u>no</u> payment. You give up your right to sue Defendants on these claims later.

- These rights and options - **and the deadlines to exercise them** - are explained in this notice.
- The Court in charge of this case still must decide whether to give final approval to the Settlement. Likewise, payments to Class Members will be distributed only if the Court grants final approval of the Settlement and after any appeals are resolved.

I. WHY DID I GET THIS NOTICE PACKAGE?

You or someone in your family may have entered the Clinton County Correctional Facility between February 28, 2003 and July 1, 2007 because of a misdemeanor, violation, violation of probation or parole, traffic infraction, civil commitment, or other minor crime and been strip searched upon arrival.

The Court sent you this notice because you have the right to know about a proposed Settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement. If the Court approves it and after objections and appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows. You will be informed of the progress of the Settlement.

This package explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them and how to get them.

The Court in charge of this case is the United States District Court for the Northern District of New York, United States Magistrate Judge David R. Homer presiding. The case is called *Mitchell v. County of Clinton*, Index No. 06-CV-0254(NAM)(DRH). The people who sued are called Plaintiffs, and the municipality they sued, the County of Clinton, is called the Defendant.

II. WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs claim in this lawsuit that the County of Clinton illegally strip searched individuals admitted to the Clinton County Correctional Facility who were charged with non-felony offenses, in violation of the unreasonable search provisions of the United States Constitution. Defendant denies that it did anything wrong.

III. WHY IS THIS A CLASS ACTION?

In a class action, one or more people, called Class Representatives (in this case Phyliss Mitchell and Paul Bachmann) sue on behalf of all people who have similar claims. All of these people are a Class or Class Members. One Court resolves the issues for all Class Members, except for those who exclude themselves from the Class. United States Magistrate Judge David R. Homer is in charge of this class action.

IV. WHY IS THERE A SETTLEMENT?

Both sides agreed to a Settlement. That way, they avoid the costs and risks of a trial, and the people affected will get compensation. The Class Representatives and their attorneys think the Settlement is best for everyone who it is alleged have been illegally strip searched.

V. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

The Court decided that everyone who fits one of the following two descriptions is a Class Member:

A. All persons who were placed into the custody of the CCJ after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions, civil commitments or other minor crimes and were strip searched upon their entry into the Jail pursuant to the policy, custom and practice of the Clinton County Sheriff's Department and the County of Clinton from February 28, 2003 until October 24, 2003. Specifically excluded from the Class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

This group of people is called "Subclass A."

B. All persons who were placed into the custody of the CCJ after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions, civil commitments or other minor crimes and were strip searched upon their entry into the Jail pursuant to the policy, custom and practice of the Clinton County Sheriff's Department and the County of Clinton from October 24, 2003 until July 1, 2007. Specifically excluded from the Class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

This group of people is called "Subclass B."

The Settlement does not cover individuals charged with felony offenses at the time of their entry into the Clinton County Correctional Facility.

VI. DO I NEED TO PROVE THAT I WAS STRIP SEARCHED, AND WHAT DOES THAT MEAN?

No, you do not need to prove that you were subjected to a strip search. In filling out the Claim Form, you will affirm, under penalty of perjury, that you were strip searched, and Defendants will accept this affirmation. If your name is included in the jail's booking records, your affirmation will entitle you to payment. If your name is not contained in the booking records, you may be asked to provide additional documentation before being allowed to participate in the Settlement.

A strip search occurred when you were first admitted to the CCJ, (but before being placed in a housing unit) you were ordered to take off some or all of your clothes by a Clinton County employee, with that employee watching you undress, forcing you to undress out in the open, or observing you while you showered. Some members of the Class may also have been forced to bend at the waist or manipulate body parts to allow for a visual inspection. If you were searched in this manner when you were booked into the facility, you are a member of the Class and entitled to make a claim. You will need to provide an affirmation on the Claim Form.

VII. I WAS STRIP SEARCHED AFTER RECEIVING A VISIT AND ALSO WHEN RETURNING FROM COURT WHEN I WAS IN THE CLINTON COUNTY JAIL. DOES THIS MEAN I CAN ALSO MAKE A CLAIM?

No. Searches of this type are permissible. You can only make a claim if you were subjected to a strip search when you first entered the facility; meaning when your picture and fingerprints were taken and you received the jail uniform.

VIII. HOW DO I KNOW WHETHER THE CRIME FOR WHICH I WAS CHARGED UPON ADMISSION TO THE CLINTON COUNTY JAIL QUALIFIES ME FOR INCLUSION IN THE CLASS?

New York law creates three distinct categories of offenses: Felonies, Misdemeanors and Violations. Felonies are the most serious crimes, and are usually punishable with incarceration in state prison. Felony offenses are usually handled by a County Court Judge, and require indictment by a grand jury. Murder, burglary and rape are examples of felony offenses. Anyone charged with a felony upon admission to the Clinton County Correctional Facility, even if they were also charged with misdemeanors or violations at the same time, is not a member of the Class unless they were, on another occasion, admitted to the Clinton County Correctional Facility solely on misdemeanor or violation charges.

Misdemeanors are minor crimes, and are, at most, subject to incarceration in a local jail. Misdemeanor offenses are handled by a City, Town or Village Court judge, and do not require indictment. Assault in the Third Degree, Petty Larceny and Unlawful Possession of Fireworks are examples of misdemeanor offenses. Anyone charged with a misdemeanor on their admission to the Clinton County Correctional Facility and strip searched is a member of the Class.

Violations are minor infractions, and are not considered criminal conduct. While violations can result in brief incarceration in a local jail, they are generally resolved with a fine. Violations are handled by a City, Town, or Village Court judge, and do not require indictment. Disorderly Conduct, Unlawful Possession of Marijuana, traffic violations and city code violations are examples of violations. Anyone charged with a violation on their admission to the Clinton County Correctional Facility and strip searched is a member of the Class.

The Class further allows for individuals to make claims if they were admitted to the Clinton County Correctional Facility for violating the terms of their probation or parole, or if they were subject to a civil commitment. Parole is only assessed if an individual has served time in state prison. If the individual was charged solely with violating parole or probation - for instance, not honoring their conditions of supervision or violating curfew, they are considered to be a member of the Class. If an individual is charged with violating probation or parole and is at the same time charged with a felony, they are not a member of the Class. A civil commitment is an order from a non-criminal court, usually the Family Court, committing that individual to the Clinton County Correctional Facility. Individuals admitted to the Clinton County Correctional Facility on a civil commitment, for example, a commitment for failure to pay child support, are members of the Class.

IX. I WAS ADMITTED TO THE CLINTON COUNTY JAIL BUT I CAN'T REMEMBER WHAT MY CRIMINAL CHARGES WERE. HOW CAN I FIND THIS OUT, AND HOW DO I KNOW IF THE CHARGE WAS A MISDEMEANOR OR VIOLATION?

There are several ways for potential Class Members to determine the nature of their criminal charges. First, you can review your charging documents, which should reflect both your actual charges and whether the charges were a misdemeanor or violation. For instance, the criminal complaint filed against you may state "Assault in the Third Degree," a "Class A Misdemeanor," or something similar for each separate charge. If you do not have your charging document and remember the local court where you were prosecuted, the court clerk will be able to help you find these documents.

If you need additional help determining whether you are a Class Member, or if you have other questions, you can contact the Settlement Administrator at 1-800-382-6291.

You can still make a claim if you do not remember your criminal charges if you believe you are a member of the Class, but you may be asked for additional information.

X. I PLED GUILTY TO A CRIME. HOW DOES THIS AFFECT MY RIGHT TO PARTICIPATE IN THE SETTLEMENT?

If you were admitted to the CCJ solely on misdemeanor or other minor charges, as defined above, you can participate in the Settlement regardless of how you resolved your criminal charges. Even if you pled guilty to a crime, as long as you were not charged with a felony, you may still recover just like any other Class Member.

XI. WHAT IF I WAS ADMITTED TO THE CLINTON COUNTY JAIL ON MORE THAN ONE OCCASION? CAN I STILL PARTICIPATE IN THE SETTLEMENT?

Yes. Individuals who were admitted to the CCJ on more than one occasion during the class period can be members of the Class and can recover money. They can only recover one payment, however, meaning that you will not be provided with extra payments if you were admitted to the CCJ more than one time.

XII. I AM STILL NOT SURE IF I AM INCLUDED.

If you are still not sure if you are included, you can ask for help. You can call 1-800-382-6291 and the Settlement Administrator or Class Counsel may help answer your questions. For more information, you can also visit the website www.bmbblaw.com/clintoncountystripsearch.php Or you can just fill out the Claim Form and return it to the Settlement Administrator to see if you qualify.

THE SETTLEMENT BENEFITS - WHAT YOU GET

XIII. WHAT DOES THE SETTLEMENT PROVIDE?

Defendants have agreed to pay \$1,150,000.00 to resolve this litigation. That money will be used to 1) compensate Class Members who have been illegally strip searched; 2) pay for notifying Class Members and administering the Settlement; 3) pay incentive awards to the named Plaintiffs and Class Representatives; and 4) pay attorneys' fees and expenses. A complete description of the Settlement is provided in the Settlement Agreement. You can get a copy of the Settlement Agreement by visiting www.bmbblaw.com/clintoncountystripsearch.php or by calling 1-800-382-6291.

XIV. WHAT CAN I GET FROM THE SETTLEMENT?

The Settlement provides that all Class Members who make claims will receive a share of \$1,150,000.00, minus the costs of notice and administration, an incentive award for the named Plaintiffs, attorneys' fees, and expenses. \$70,000.00 of the Settlement Fund is set aside to make an additional payment to the individuals in Subclass A. This means that people in Subclass A will get slightly more money than those in Subclass B. This is because Clinton County made an effort to impose a constitutional policy at the end of the time period covered by Subclass A.

If you have any liens in place from the Clinton County Department of Social Services, Clinton County has agreed not to assert any lien against Class Counsel. This does not extinguish the lien.

XV. WHAT IF I WAS STRIP SEARCHED UPON ADMISSION AFTER JULY 1, 2007?

If you were strip searched upon admission to the CCJ after July 1, 2007, you are not a member of this class action and are not entitled to a Settlement payment. You are not bound by this Settlement for those claims you may have and should consult with your own lawyer.

HOW YOU GET A PAYMENT - SUBMITTING A CLAIM FORM

XVI. HOW CAN I GET A PAYMENT?

To qualify for a payment, you **MUST** send in a Claim Form. A Claim Form accompanies this Notice. You can also get a Claim Form on the Internet at www.bmbblaw.com/clintoncountystripsearch.php. Read the instructions carefully, fill out the form, sign it, and mail it postmarked no later than **September 8, 2009**.

You may be asked for additional documents, and will be contacted in writing.

XVII. WHEN WOULD I GET MY PAYMENT?

The Court will hold a hearing on **September 30, 2009 at 10:00 a.m.** to decide whether to approve the Settlement. If Judge Homer approves the Settlement, there may be appeals. It is always uncertain whether those appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a Claim Form will be informed of the progress of the Settlement. Please be patient.

XVIII. WHAT AM I GIVING UP TO GET A PAYMENT OR STAY IN THE CLASS?

Unless you exclude yourself, you are staying in the Class, and that means you can't sue, continue to sue, or be part of any other lawsuit against Clinton County, its employees, or its elected officials about the legal issues in *this* case. It also means that all the Court's orders will apply to you and legally bind you. If you sign the Claim Form, you will agree to release all claims that you have relating to having been strip searched.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep the right to sue or continue to sue Clinton County, on your own, about the legal issues in this case, then you must take steps to opt out of the Settlement. This is called excluding yourself - or is sometimes referred to as "opting out" of the Settlement Class.

XIX. HOW DO I GET OUT OF THE SETTLEMENT?

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from *Mitchell v. County of Clinton*. Be sure to include your name, address, telephone number and your signature. You must mail your exclusion request postmarked no later than **August 10, 2009** to Clinton County Settlement, Exclusions, c/o The Garden City Group, Inc., PO Box 9360, Dublin, OH 43017-4260.

You can't exclude yourself on the phone or by email. If you ask to be excluded, you will not get any Settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit, and your right to have a lawsuit against Clinton County will not be affected.

XX. IF I DO NOT EXCLUDE MYSELF, CAN I SUE CLINTON COUNTY FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up the right to sue Clinton County, its employees, or its elected officials for the claims that this Settlement involves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* class to continue your own lawsuit. Remember, the exclusion deadline is **August 10, 2009**.

XXI. IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THE SETTLEMENT?

No. If you exclude yourself, do not send in a Claim Form to ask for money. But, you may sue, continue to sue, or be part of a different lawsuit against Clinton County.

THE LAWYERS REPRESENTING YOU

XXII. DO I HAVE A LAWYER IN THIS CASE?

The Court approved Elmer Robert Keach, III, Esq., Amsterdam, New York, and Beranbaum Menken Ben-Asher & Bierman LLP, New York, New York. Together, the lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

XXIII. HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court for attorneys' fees and expenses as a percentage of the \$1,150,000.00 Settlement, and payments of \$25,000.00 for Class Representative Phyllis Mitchell, who provided substantial assistance to Class Counsel in the prosecution of this action, was subject to public scrutiny as a result, and rejected a \$24,000.00 individual settlement offer for the benefit of the Class; \$10,000.00 for Class Representative Paul Bachmann, who provided substantial assistance to Class Counsel in the prosecution of this action and was subjected to questions of a highly personal nature; and \$1,500.00 for proposed intervenor Peter Deciccio, who also provided assistance to Class Counsel in the prosecution of this action and was questioned at a deposition. These amounts will be deducted from the Settlement Fund before payments are made to Class Members. Clinton County has agreed not to oppose these fees and expenses. The costs of administering the Settlement will also be deducted from the Settlement Fund.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

XXIV. HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?

If you are a Class Member, you can object to the Settlement if you don't like any part of it. You can give objections why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to *Mitchell v. Clinton County*. Be sure to include your name, address, telephone number, your signature, and the reasons you object to this Settlement. Mail the objection to these three different places postmarked no later than **August 10, 2009**.

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court U.S. District Court for the Northern District of New York James T. Foley U.S. Courthouse 445 Broadway Albany, NY 12207	Jason J. Rozger, Esq. Beranbaum Menken Ben-Asher & Bierman LLP 80 Pine Street, 32 nd Floor New York, NY 10005	Gregg T. Johnson, Esq. Lemire Johnson LLC 2534 Route 9 P.O. Box 2485 Malta, NY 12020

XXV. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING MYSELF?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be a part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to do so.

XXVI. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

On **Wednesday, September 30, 2009 at 10:00 a.m.** the United States District Court for the Northern District of New York will hold a fairness hearing in the James T. Foley United States Court House, 445 Broadway, Albany, New York in a courtroom to be designated by the Clerk of the Court, to determine whether the Class was properly certified and whether the proposed Settlement is fair, adequate, and reasonable. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. This hearing may be continued or rescheduled by the Court without further notice. We do not know how long it will take the Court to give its decision.

XXVII. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions Judge Homer may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

XXVIII. MAY I SPEAK AT THE HEARING?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Mitchell v. County of Clinton*." Be sure to include your name, address, telephone number and your signature. Your Notice of Intention to Appear must be postmarked no later than **August 10, 2009** and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the three addresses in question XXIV. You cannot speak at this hearing if you excluded yourself.

IF YOU DO NOTHING

XXIX. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing, you will get no money from the Settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Clinton County, its employees, or its elected officials, about the legal issues in this case, ever again.

GETTING MORE INFORMATION

XXX. ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

This Notice summarizes the proposed Settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement by writing to the Settlement Administrator at Clinton County Settlement, c/o The Garden City Group, Inc., PO Box 9360, Dublin, OH 43017-4260 or by visiting www.bmbblaw.com/clintoncountystripsearch.php.

XXXI. HOW DO I GET MORE INFORMATION?

You can call 1-800-382-6291, write to the Settlement Administrator at Clinton County Settlement, c/o The Garden City Group, Inc., PO Box 9360, Dublin, OH 43017-4260, or visit the website at www.bmbblaw.com/clintoncountystripsearch.php, where you will find answers to common questions about the Settlement, a Claim Form, plus other information to help you determine whether you are a Class Member and whether you are eligible for payment.