

**STEVEN ROSEN, AMERICAN DIABETES ASSOCIATION, et al., Plaintiffs, v.
CITY OF PHILADELPHIA, Defendant.**

CIVIL ACTION NO. 00-764

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

2001 U.S. Dist. LEXIS 5371

**March 5, 2001, Decided
March 6, 2001, Filed; March 6, 2001, Entered**

DISPOSITION: [*1] Plaintiffs' Motion for Class Certification GRANTED.

CASE SUMMARY:

PROCEDURAL POSTURE: A motion for class certification was filed in this case alleging violations of the Fourteenth Amendment, U.S. Const. amend. XIV, 42 U.S.C.S. § 1983, and the Americans with Disabilities Act.

OVERVIEW: A case was brought against defendant city. Class certification was requested. The court found defendant admitted to a number of issues during discovery and did not contest that plaintiffs met the prerequisites of class certification under *Fed. R. Civ. P. 23(a)(1)-(4)* for both proposed classes. Moreover, defendant did not object to the fact that plaintiffs met the specific requirements of *Fed. R. Civ. P. 23(b)(2)* for the purposes of certifying an injunctive class. Defendant provided extensive opposition to the proposed damage class, alleging that variations in the individual plaintiffs' conditions illustrated the predominance of individual issues. The court found class actions were the appropriate method to address patterns and practices of inadequate medical care. In fact, insulin-dependent diabetics were certified as a class elsewhere in the circuit. Defendant's alleged practice of denying proper medical care to insulin-dependent individuals in its custody, in deliberate indifference to the irreversible life-threatening nature of the condition, was so central to the claims against defendant that it was predominant, despite variations in medical conditions.

OUTCOME: The court certified an injunctive class consisting of all person with diabetes who are or will be in police custody and the court certified a damage class consisting of all persons with diabetes who have been denied proper medical care and diet while in police custody

since February 11, 1998. The court found all the prerequisites for class certification existed.

LexisNexis(R) Headnotes

Civil Procedure > Class Actions > Prerequisites

[HN1] Under *Fed. R. Civ. P. 23*, class certification is appropriate if the moving party meets all of the requirements of *Fed. R. Civ. P. 23(a)* in addition to one of the requirements of *Fed. R. Civ. P. 23(b)*. The factors for consideration under *Fed. R. Civ. P. 23(a)* are: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. *Fed. R. Civ. P. 23(a)(1)-(4)*.

Civil Procedure > Class Actions > Prerequisites

[HN2] *Fed. R. Civ. P. 23(b)(2)* requires proof that the defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief. *Fed. R. Civ. P. 23(b)(3)* necessitates that common questions of law or fact raised by the litigation in which class certification is being sought predominate over individual questions and that a class action is superior to other methods available for adjudication of the controversy. In making this determination, courts should consider: (1) the interest of members of the class in individually controlling prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. *Fed. R. Civ. P.*

23(b)(3)(A)-(D).

Civil Procedure > Class Actions > Prerequisites

[HN3] *Fed. R. Civ. P. 23(b)(2)* was designed specifically for civil rights cases seeking declaratory or injunctive relief for a numerous and often unascertainable or amorphous class of persons and the prerequisite is almost automatically satisfied in actions primarily seeking injunctive relief.

Civil Procedure > Class Actions > Prerequisites

[HN4] Class actions are the appropriate method to address patterns and practices of inadequate medical care.

Civil Procedure > Class Actions > Prerequisites

[HN5] Common issues need only predominate, not outnumber, individual issues. There may be cases in which class resolution of one issue or a small group of them will so advance the litigation that they may fairly be said to predominate. Resolution of common issues need not guarantee a conclusive finding on liability, nor is it a disqualification that damages must be assessed on an individual basis.

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For CITY OF PHILADELPHIA, DEFENDANT: DENISE S. WOLF, ASSISTANT CITY SOLICITOR, CITY OF PHILADELPHIA LAW DEPARTMENT, PHILADELPHIA, PA USA.

JUDGES: Hon. Petrese B. Tucker, U.S.D.J.

OPINION BY: Petrese B. Tucker

OPINION:

MEMORANDUM AND ORDER

TUCKER, J.

Presently before this Court is a Motion for Class Certification (Document No. 14) filed by ("Defendants") on July 27, 2000 for violations of the Fourteenth Amendment, 42 U.S.C. § 1983, and the Americans with Disabilities Act ("ADA"). For the reasons set forth below,

upon consideration of the motion, Defendant's response (Document No. 19), and Plaintiffs' reply (Doc. 21), this Court will certify an injunctive class consisting of all person with diabetes who are or will be in police custody pursuant to Rule 23(a) and (b)(2), and a damage class consisting of [*2] all persons with diabetes who have been denied proper medical care and diet while in police custody since February 11, 1998 pursuant to Rule 23(a) and (b)(3).

LEGAL STANDARD

[HN1] Under *Federal Rule of Civil Procedure 23*, class certification is appropriate if the moving party meets all of the requirements of Rule 23(a) in addition to one of the requirements of Rule 23(b). *Baby Neal v. Casey*, 43 F.3d 48 (3d Cir. 1994). The factors for consideration under Rule 23(a) are as follows:

- 1) the class is so numerous that joinder of all members is impracticable;
- 2) there are questions of law or fact common to the class;
- 3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- 4) the representative parties will fairly and adequately protect the interests of the class.

Fed.R.Civ.P. 23(a)(1)-(4). [HN2] Rule 23(b)(2) requires proof that the City has "acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief." Rule 23(b)(3) necessitates that 1) common questions of law or fact raised by the litigation in which class certification is being sought [*3] predominate over individual questions and that 2) a class action is superior to other methods available for adjudication of the controversy. In making this determination, courts should consider: 1) the interest of members of the class in individually controlling prosecution or defense of separate actions; 2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; 3) the desirability of concentrating the litigation of the claims in the particular forum; and 4) the difficulties likely to be encountered in the management of a class action. Rule 23(b)(3)(A)-(D).

DISCUSSION

The City admitted to a number of issues during discovery and does not contest that Plaintiffs meet the prerequisites of class certification under *F.R.Civ.P. 23(a)(1)-(4)* for both proposed classes, and the specific requirements of *F.R.Civ.P. 23(b)(2)* for the purposes of certifying the injunctive class. The Third Circuit has noted

that the [HN3] Rule 23(b)(2) provision was "was designed specifically for civil rights cases seeking declaratory or injunctive relief for a numerous and often unascertainable or amorphous class of persons" and that the prerequisite [*4] is "almost automatically satisfied in actions primarily seeking injunctive relief." *Baby Neal v. Casey*, 43 F.3d 48, 58-59 (1994) (quoting 1 NEWBERG & CONTE § 4.11, at 4-39 (1992)). This Court finds certification of the injunctive class similarly appropriate under the facts presented in this case without additional discussion.

The City does, however, provide extensive opposition to the proposed damage class on Rule 23(b)(3) grounds, alleging that variations in the individual plaintiffs' conditions, e.g. type of diabetes, frequency of self-testing, diet, manner of insulin administration, etc. illustrates the predominance of individual issues in this case, and that by definition, class action is not a superior method for adjudication. The City is in error. This Court and the Third Circuit have traditionally found that [HN4] class actions are the appropriate method to address patterns and practices of inadequate medical care. In fact, insulin-dependent diabetics have been certified elsewhere in this Circuit. See *Rouse v. Plantier*, 182 F.3d 192, 194 (3rd Cir. (D.NJ) 1999) ("...For the purposes of classwide damages, the District Court also certified a class [*5] consisting of all former and present insulin-dependent diabetics incarcerated at the [facility], pursuant to *Federal Rule of Civil Procedure* 23(a) and 23(b)(3).") The factual distinctions that the City chooses to dwell on does not erase the underlying issue that is at the heart of this lawsuit: the City's alleged practice of denying proper medical care to insulin-dependent individuals that were in its custody in deliberate indifference to the serious nature of this irreversible life-threatening condition. This issue is so central to the nature of the claims against the City that it can be fairly viewed as being predominant, in spite of variations in medical conditions. The City's apparent plan to require this Court to provide separate trials for literally thousands of individuals in the damage class is clearly inferior to certification. Furthermore, assuming *arguendo*, that individualized inquiry of damages were necessary, this is still not a bar to class certification. As this Court recently noted in another case involving class certification:

[HN5]

Common issues need only predominate, not outnumber, individual issues. The Third Circuit has instructed:

there may be cases [*6] in which class resolution of one issue or a small group of them will so advance the litigation that they may

fairly be said to predominate. Resolution of common issues need not guarantee a conclusive finding on liability, ... nor is it a disqualification that damages must be assessed on an individual basis.

In re School Asbestos Litig., 789 F.2d 996, 1010 (3rd Cir. 1986) (citations omitted).

In re Diet Drugs, 2000 U.S. Dist. LEXIS 12275, *125-26 (E.D.Pa. August 28, 2000). The City's reliance on Eleventh Circuit law in the form of Rutstein does not change this Court's reading of settled Third Circuit law. As such, this Court finds that certification of the damage class under Rule 23(b)(3) is in order.

CONCLUSION

In conclusion, the Court grants Plaintiffs' Motion for Class Certification. An appropriate Order follows.

ORDER

AND NOW, 5th day of March, 2001, upon consideration of Plaintiffs' Motion for Class Certification (Doc. 14), and the opposition thereto (Doc. 19), it is hereby **ORDERED** and **DECREED** that Plaintiffs' Motion is **GRANTED** and the following two classes are certified:

1) [*7] An injunctive class is certified pursuant to *F.R.Civ.P.* 23(b)(2) consisting of all persons with diabetes who are or will be in police custody.

2) A damage class is certified pursuant to *F.R.Civ.P.* 23(b)(3) consisting of all persons with diabetes who have been denied timely and appropriate medical care and diet while in the custody of the Philadelphia Police Department since February 11, 1998, as a result of defendant's customs and policies denying timely and appropriate medical care and diet to persons with diabetes in police custody.

BY THE COURT:

Hon. Petrese B. Tucker, U.S.D.J.

