

# NEW MEXICO INJURY ATTORNEY BLOG

PUBLISHED BY  
**COLLINS & COLLINS, P.C.**  
ATTORNEYS AT LAW

March 29, 2010

## Ongoing Illegal Strip Searches Lead to Class Action Settlement

It was reported this week in the New York Times that New York City has agreed to a class action settlement in the amount of \$33 million for individuals subjected to illegal strip searches following misdemeanor arrests. The strip searches led to a Section 1983 suit for the plain violation of the 4th Amendment prohibitions against unlawful search and seizure.

Interestingly, it was reported that this is the 3rd such settlement in the last 10 years that the City has settled cases for illegal strip searches. The first such settlement came in 2001 for \$40 million. The second came in 2005 for several million. Now once again, the City has settled for \$33 million for essentially the same pattern of conduct.

In the first wave of cases, the illegal searches were conducted prior to intake at the department of corrections. The practice was found to be unconstitutional under the 4th Amendment in *Shain v. Ellison* and formed the basis of the original settlements. In response, the City's department of corrections apparently determined that the unlawful searches would become lawful in the event that they were conducted following intake and admission into the correctional facilities. Another 100,000 people were, even after the first two rounds of settlements, subjected to the same unlawful strip searches.

The \$33 million settlement seems like a very large settlement and it is in total. However, each individual subjected to the illegal searches will receive on average only \$2000.00 for having been subjected to the humiliation of strip searches which included cavity searches of both men and women, including menstruating women, despite the lack of any reasonable suspicion that the detainees carried unlawful weapons, drugs or other illegal contraband on their bodies. How much would you accept to be stripped nude and subjected to cavity searches for a minor infraction of the law?

In light of the financial and budgetary crises facing New York City, why might it have agreed to such a large settlement? Clearly, the compensatory damages alone for the 100,000 individuals subjected to the barbaric, inhumane and unconstitutional strip searches could have easily exceeded \$33 million at trial. In addition, the City was facing possible punitive damages for the clear lack of effect the prior lawsuits had on the City's behavior. Punitive damages are intended to both punish and deter. In fact, the most valuable role that punitive damages serve for

Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958

<http://www.newmexicoinjuryattorneyblog.com/>

society is to deter future illegal, dangerous or reckless practices of both the defendant and others. It is hard to imagine a better case for punitive damages than here where the City, despite two prior class action lawsuits and settlements, had failed to change its policies regarding strip searches.

The lawsuit and the settlement is likely to cause a flood of ranting from the tort reform movement. When you hear these, keep in mind that those subject to the illegal searches had been charged with a vast array of misdemeanors including child support violations, petty shoplifting, jumping a subway turnstile, petty marijuana possession, and trespassing to name a few. Of course, tort reformers will find a way to justify the illegal search and seizures, or in the alternative, try to argue that such suits serve no useful purpose other than enriching trial attorneys while depleting the public coffers of the good folks in the department of corrections who saw fit to engage in these practices.

Ask yourself in response to their arguments, which society you wish to live in, theirs or one that respects the United States Constitution, and the rights of individuals including those of your children, family and friends that in the tort reform world would most certainly fall prey to abusive practices of government, corporations, insurance companies, manufacturers or others who regularly fail to appreciate the rights, safety and welfare of the public they serve.

**Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958**

<http://www.newmexicoinjuryattorneyblog.com/>