

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ALBERTO N., ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	CIVIL ACTION NO. 6:99CV459
	§	
ALBERT HAWKINS, ET AL.,	§	
	§	
Defendants.	§	

**ORDER APPROVING, ADOPTING, AND INCORPORATING
SECOND PARTIAL SETTLEMENT AGREEMENT**

This action comes before the Court on the Parties’ Joint Motion for Court Order Approving, Adopting, and Incorporating the Second Partial Settlement Agreement. After consideration of the matter and being otherwise fully advised, it is hereby ORDERED and ADJUDGED that the Second Partial Settlement Agreement, attached hereto, is approved, adopted, and fully incorporated as this Court’s order.

It is further ORDERED that this Court shall retain exclusive jurisdiction over all matters relating to the enforcement of the Agreement and attorney’s fees. In the event that any Party fails to comply with any portion of the Agreement, the Party alleging noncompliance may seek enforcement of the Agreement in the United States District Court for the Eastern District of Texas until July 1, 2009.

As set forth in the Agreement, all claims have been settled, except for those claims related to the following:

Whether Title XIX of the Social Security Act requires the Agency or its Contractor to eliminate all prior authorization criteria or any other criteria that require a Beneficiary’s Parent/Guardian to provide part of the Beneficiary’s nursing services; and

Whether Title XIX of the Social Security Act prohibits the Agency or its Contractor from denying or reducing the amount of requested nursing services because the Beneficiary's Parent/Guardian is trained and capable of performing nursing services tasks, but chooses not to do so.

It is therefore ORDERED that either Party may seek a judicial ruling by motion for summary judgment as to the above unsettled claims no sooner than September 15, 2005, but no later than December 31, 2005. If no judicial ruling is sought before January 1, 2006, the Court will dismiss all remaining claims with prejudice.

It is further ORDERED that, within forty-five (45) days of the filing of this Order approving, adopting, and incorporating this Agreement, the Parties will file with the Court a Joint Stipulation of Voluntary Dismissal, in accordance with Rule 41(a) of the Federal Rules of Civil Procedure. The Stipulation will dismiss with prejudice all claims against James R. Hine, Commissioner of the Texas Department of Aging and Disability Services. The Stipulation will dismiss with prejudice all claims against Albert Hawkins, Executive Commissioner of the Texas Health and Human Services Commission, except for those unsettled claims identified above and in paragraph 17.1 of the Agreement.

It is further ORDERED that, after the effective date of the Agreement, Plaintiffs will timely file their motion for attorneys' fees, costs, and expenses with the Court. Concurrently with the filing of Plaintiffs' motion for attorneys' fees, the Parties will move the Court to abate a ruling on Plaintiffs' motion for ninety (90) days, to give the Parties time to negotiate a settlement of attorneys' fees. The Parties will advise the Court as to the outcome of those negotiations. If a settlement on fees cannot be reached, the Court, after the timely filing of any response or reply brief, will consider and rule on Plaintiffs' motion for attorneys' fees, costs, and expenses.

The Agreement is effective upon the signing of this Order approving, adopting, and incorporating same.

So ORDERED and SIGNED this 23rd day of June, 2005.

A handwritten signature in black ink, appearing to read "Leonard Davis". The signature is written in a cursive style with a large, prominent loop at the beginning.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**