

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

J.K., a minor by and)
through R.K., et al,)
Plaintiff,)
vs.) CIV-91-261-TUC-JMR
CATHERINE EDEN,)
LESLIE SCHWALBE ,)
PHYLLIS BIEDESS,)
Defendants.) Tucson, Arizona
June 26, 2001

TRANSCRIPT OF PROCEEDINGS

BEFORE HONORABLE JOHN M. ROLL

On Behalf of the Plaintiff: MR. IRA BURMIN
Attorney at Law
MS. ANNE C. RONAN
Attorney at Law
On Behalf of the Defendant: MR. ROBERT SOURCE
Attorney at Law
MR. LOGAN JOHNSTON
Attorney at Law
Court Reporter: MS. CHRIS CALLES
Official Court Reporter
U.S. District Court
405 W. Congress
Tucson, AZ 85701

P R O C E E D I N G S

THE CLERK: In civil matter 91-261, John Doe versus Symington, on for court hearing.

Counsel, please state your appearance for the court.

MR. BURMIN: Your Honor, I am Ira Burmin for the plaintiffs.

MS. RONAN: I am Anne Ronan with the Arizona Center for Disability Law for the plaintiffs.

MR. SOURCE: Robert Source, Assistant Attorney General, for the Arizona Department of Health Services.

MS. JOHNSTON: Logan Johnston for the defendant, Phyllis Biedess.

THE COURT: Good morning.

This is the date and time set for the fairness hearing in connection with this matter.

Are the parties ready to proceed?

MR. BURMIN: Yes, we are, Your Honor.

MR. SOURCE: Yes, Your Honor.

THE COURT: Counsel, perhaps the first thing that I should mention, the first order of business is to indicate efforts that were taken by the parties to publicize the proposed settlement in this case as well as the hearing in this matter.

In addition to publication notice, I believe in the

1 Arizona Republic and in the Arizona Daily Star, the
2 primary -- for the record, the primary Phoenix and Tucson
3 newspapers, but the Arizona Republic has a statewide
4 distribution -- in addition to that, there were forums that
5 were conducted publicizing this particular matter.

6 I understand that the Arizona Center for Disability
7 Law notified individuals, parents who had been involved in
8 these types of claims or seeking treatment in connection
9 with children, to advise them of this proposed settlement
10 and what was taking place, and also there were notices that
11 were sent to various agencies and various individuals
12 involved in this particular area, all to publicize notice of
13 the settlement.

14 There also has been some substantial publicity
15 connected with it.

16 In the materials that the plaintiffs submitted,
17 there were news articles in the Arizona Republic describing
18 this particular lawsuit and also discussions concerning the
19 settlement, and as far as amongst professionals the American
20 Psychiatric Association newsletter, which was also part of
21 the materials that were submitted by plaintiffs, in the
22 pleading that was styled plaintiff's pre-hearing memorandum,
23 urging approval of the parties' settlement agreement of
24 March 30th, 2001.

25 In that newsletter, the proposed settlement was

1 described, and as a result of that there have been a number
2 of individuals who have either offered comments at the
3 hearings that were conducted -- the public forum, actually,
4 that were conducted in connection with this, as well as
5 letters from various organization. And most recently --
6 either yesterday or this morning -- I received
7 correspondence from the American Academy of Child and
8 Adolescent Psychiatrist concerning the proposed settlement.
9 So there has been extensive publicity surrounding the
10 proposed settlement as well as feedback concerning that.

11 And really, in all candor, as far the feedback, the
12 only negative feedback that I have detected has been
13 concerns regarding funding and implementation. The idea of
14 the settlement and what the settlement seeks to accomplish
15 and the principals -- the twelve principals that will guide
16 Title 19 here in the district of Arizona -- all were greeted
17 with approval. Those were the individuals or groups that
18 expressed reservations focused on that, and also a possible
19 change in administration and, therefore, a different view
20 point at a later time. But, again, this is just a thumbnail
21 summary of what has been a very extensive and very complex
22 case.

23 Does any counsel wish to add anything concerning
24 what I have indicated regarding the notice procedure in this
25 case?

1 MR. BURMIN: No, Your Honor.

2 MR. SOURCE: No, Your Honor.

3 THE COURT: Let me invite counsel at this time to
4 be heard, and begin with plaintiff's counsel.

5 Counsel.

6 Now as I indicated, I have read the pre-hearing
7 memorandum that you submitted and reviewed the attachments
8 to that memorandum, so I have -- I have considered that and
9 that is part of the record in this fairness hearing.

10 MR. BURMIN: Thank you, Your Honor, and we intend
11 to rely on the memoranda.

12 Mostly what I want to do is make a few
13 introductions, and be available to the court, in case the
14 court has any questions.

15 Let me make those introductions first.

16 We have in the courtroom the mother of named
17 plaintiff, JK Regina Koch-Mart, who is also commented on the
18 settlement, and her comments are attached as a document.

19 THE COURT: And JK is now 25 I think I read in her
20 comments.

21 MR. BURMIN: That's correct, and we certainly
22 welcome her.

23 Dena Epstein, who is another lawyer in this case,
24 not at counsel table is here with us; Patrick Gardner, a
25 lawyer at the National Center for Youth Law in San

1 Francisco, who has been working on this case; and Leslie
2 Cohen from the Arizona Center for Disability Law, who I
3 think was the original counsel in this case many years ago
4 here in Tucson; and Joe McGarry, who is with Lewis and Roca,
5 and has joined the plaintiff team some years ago and has
6 been of great assistance to us.

7 We have set out in our memorandum to which several
8 exhibits are attached why we think this settlement is fair
9 and reasonable and why, in comparison with the alternative
10 force of going to trial and taking our chances, we think it
11 is a good idea and we have recommended to the class that the
12 settlement be offered to the court for final approval.

13 I really have no remarks to add to what I put in my
14 memorandum, and I would only ask the court if there are any
15 questions it would like to address the plaintiffs, and we
16 will try to respond.

17 THE COURT: I thought that the memorandum was very
18 thorough and outlined just point by point the various
19 matters that I would need to consider in deciding whether to
20 accept the settlement agreement in this case.

21 And I thought that the attachments to that
22 memorandum were very helpful, also, so I really -- having
23 reviewed those, I really didn't have any other questions.

24 MR. BURMIN: Thank you.

25 I will let defendant's counsel introduce their

1 clients, but I do want to say publically and here, once
2 again, how thankful we are to the defendants coming forward
3 and working with us to devise a solution in which I think we
4 all have confidence.

5 Thank you.

6 THE COURT: Thank you.

7 Counsel.

8 MR. SOURCE: Good morning, Your Honor, Robert
9 Source for the Arizona Department of Health Services.

10 I would like to introduce some people here today
11 from ADHS.

12 Director Cathy Eden is here in the courtroom. She
13 is one of the named defendants, and directly to her right is
14 Leslie Schwalbe, who is the deputy director of the Division
15 of Behavioral Health Services.

16 Leslie was very involved in the negotiations and
17 contributed a great deal to making this settlement come to
18 fruition.

19 Also here is Michael Franczak who participated in
20 the settlement negotiations. Mike is a health policy
21 adviser for Director Eden. And in the back of the courtroom
22 is Robin Trussell. She is the director of the Bureau of
23 Children Services, of the divisions of Behavioral Health
24 Services.

25 Like plaintiff's counsel, I don't have a whole lot

1 to say, other than we believe that the agreement is fair, we
2 are in the process now of beginning implementation.

3 Many of the points raised in the agreement are well
4 underway. In fact, some of them have even been completed.
5 So we are prepared to go forward. The department has put
6 its full force and energy behind this agreement, and we
7 would ask that the court approve it so that we can move
8 forward and improve the Arizona health system in Arizona.

9 I did want to raise one minor issue, Your Honor.
10 It had to do with plaintiff's pre-hearing memorandum. There
11 is a statement on page 10, line 17 that says that Governor
12 Hull personally approved the agreement. And I did speak
13 with the Governor's counsel, and they wanted me to make a
14 statement on the record that the Governor is not a party to
15 this action and she did not legally approve the agreement;
16 she does support it, however, and is a hundred percent
17 committed to implementing it.

18 THE COURT: I assume that the plaintiff's statement
19 was based upon the news release from the Governor's office
20 that was part of the file in the case, as well as other
21 matters.

22 MR. BURMIN: That is correct, and we have no
23 disagreement with the statement that has been made.

24 MR. SOURCE: So we would ask that the court approve
25 the agreement and we are prepared to move forward with

1 implementing its terms.

2 Thank you.

3 THE COURT: And you did submit a joint statement in
4 which you urge -- on behalf of the defendants in which you
5 urge acceptance of the settlement agreement.

6 We discussed this at the previous hearing that
7 addressed this, that requested preliminary approval, and at
8 that time the defendants inquired what I would expect of
9 them, and I indicated unless they had something specific
10 there really wasn't any need to submit anything in detail,
11 and at that time I believe that the defendants indicated
12 that they were going to review what was submitted by
13 plaintiff's counsel, and if they thought anything else
14 needed to be added that they would do that, and I assume
15 that is the reason why counsel did exactly what I suggested.

16 They didn't have anything else to add, so it was a
17 request for approval.

18 MR. BURMIN: That is correct, Your Honor.

19 THE COURT: Thank you.
20 Counsel.

21 MR. BURMIN: There is one small procedural matter I
22 wanted to raise with the court.

23 THE COURT: Certainly.

24 MR. BURMIN: I wanted to bring the court's
25 attention to one provision of the settlement agreement,

1 which is paragraph 78, that addresses attorneys fees, and
2 just alert the court to the fact that the parties have
3 agreed between themselves to extend the time for filing the
4 application for attorneys' fees from the -- I believe the 14
5 days provided in the local rule 2.02, up to 150 days. And
6 that extension of time would require court approval, and our
7 understanding is that by approving -- if this court were to
8 approve the settlement agreement would also be approving
9 that agreement that plaintiffs would have additional time,
10 up to 150 days, to file a fee application.

11 THE COURT: And I understand that the defense has
12 no objection to that extension?

13 MR. SOURCE: No objection, Your Honor.

14 THE COURT: In the typical case, obviously I would
15 have reservations about that. This is not the typical case.
16 I was appointed in 1991, and this case was filed in 1991; it
17 has ten years of history, and assuming I accept the
18 agreement, it will have another seven years while the matter
19 is assigned to me. And, obviously, it has had different
20 stages where it has been more active than at other times,
21 but I don't think under the circumstances 150 days is
22 unreasonable, so I would grant that request.

23 MR. BURMIN: One reason for the request is that the
24 parties do intend to discuss this matter, so we hope we can
25 resolve it by agreement and the additional time gives us

1 some opportunity to do that.

2 Thank you.

3 THE COURT: Thank you.

4 Let me ask if either side wish to present testimony
5 in connection with this fairness hearing?

6 MR. BURMIN: No, we don't, Your Honor.

7 We offered exhibits in support of our arguments and
8 we assume that those will be made part of the record.

9 We have no live testimony to offer at this time.

10 MR. SOURCE: We do not have any testimony as well.

11 THE COURT: Then am I correct in assuming there are
12 no witnesses here in the courtroom who wish to testify at
13 this time concerning the fairness of the agreement?

14 MR. BURMIN: I think that that is correct, the
15 people said what they had to say in their statements as the
16 court suggested.

17 MR. SOURCE: That is correct.

18 THE COURT: And seeing no indication to the
19 contrary from anyone else, the record will so indicate.

20 In assessing the settlement proposal in this case,
21 I am required to weigh several factors, and this is not an
22 exclusive list, but the list includes the strength of the
23 plaintiff's case, the risk expense, complexity and likely
24 duration of further litigation, the risk of maintaining
25 class action status throughout the trial, the amount offered

1 in settlement, the extent of discovery completed and the
2 stage of the proceedings, the experience and the views of
3 counsel, the presence of the governmental participant and
4 the reaction of the class members to the proposed
5 settlement.

6 In looking at these various factors, I think that
7 the plaintiff's case is strong and I think that it is
8 certainly a factor, a significant factor in how this
9 settlement was ultimately proposed to the court.

10 I think it reflects the very real needs that are
11 here in the district of Arizona as far as the type of care
12 that law provides should be available and needs that are not
13 currently being met, and I think that the plaintiffs have
14 demonstrated that.

15 As far as the risk expense and complexity, and the
16 likely duration of further litigation, if this matter were
17 to actually proceed forward without a settlement at this
18 time, it would be very costly, it would be very extensive,
19 and I think that that is an important factor, because it
20 would result in diversion of substantial money that could
21 otherwise be used in connection with implementing this
22 settlement agreement that would be diverted toward
23 litigation expenses.

24 And, for that reason, I think that that is a factor
25 favoring the settlement in the case.

1 I don't think that there is really a risk of
2 maintaining a class. That is not a factor in connection
3 with this matter.

4 And, frankly, these matters are addressed at length
5 in the plaintiff's memorandum, pre-hearing memorandum that
6 was submitted, and that is one reason why I am not going
7 into them at length at this time.

8 The amount offered in settlement involves much more
9 than just an amount being offer, but actually a full
10 procedure and, in fact, I think it is twelve guiding
11 principles as far as the administration of Title 19 in the
12 district of Arizona.

13 Although certainly there is an amount that is
14 involved as far as implementing the particular program, as
15 well as a pilot program involving 300 youths here in the
16 district of Arizona, and I think that that also tends to
17 favor settlement in this case.

18 The extent of discovery completed in the stage of
19 the proceedings -- as the parties have pointed out there
20 have been extensive studies regarding how the program has
21 been here in the state of Arizona, as well as shortcomings
22 of the program and needs that are required, and that is just
23 one aspect of it -- I think it is Dr. Groves who has been
24 cited repeatedly regarding findings that he has made at at
25 least two different intervals and, unfortunately, he hasn't

1 indicated more recently significant improvement, and
2 plaintiffs have suggested deterioration, in fact, as far as
3 the providing of services, but this is not -- this
4 settlement agreement is not occurring prematurely in light
5 of the development of the case and what has taken place as
6 far as studying the case.

7 The experience and views of counsel, I think that
8 both sides have been very well served, their clients have
9 been well served by the counsel in this case who are very
10 experienced, very familiar with the various contours of this
11 type of litigation and realistically appraising what is
12 required by law and what could be done to bring Arizona in
13 compliance with the demands for these types of services.

14 So I certainly give great weight to the experience
15 and the views of counsel, and counsel are unanimous in
16 urging the court to accept this settlement.

17 I am not aware of any significant disagreement
18 regarding the terms of the settlement agreement where one
19 party has suggested that there is something unfair about the
20 agreement. There is unanimity as far as the very
21 experienced counsel is concerned.

22 The presence of governmental participant is
23 obvious, and I touched upon the reaction of the class
24 members already, which again has not -- at least as I see
25 the materials, in having considered the reactions of the

1 class members, I do not see opposition to acceptance of the
2 agreement; I see hope that the agreement will accomplish
3 what it purports to seek to accomplish and the goals that
4 are set out in the twelve guiding principles as far as the
5 settlement and maybe I won't say cynicism, but some
6 scepticism regarding whether those goals will be
7 accomplished and whether the group of 300 will ultimately be
8 extended state wide so that the entire group -- which I
9 think was estimated at as high as 20,000 children here in
10 the district of Arizona -- would receive the type of care
11 that they need.

12 But I didn't see objections from the class members
13 indicating that they think this is a bad idea or that the
14 settlement agreement is fatally flawed for one reason or
15 another.

16 Let me invite counsel to address those particular
17 matters, anything that I touched on up to this point that
18 they feel needs further elaboration.

19 MR. BURMIN: We have no disagreement with anything
20 you said.

21 MR. SOURCE: No, Your Honor, I think you covered
22 it.

23 THE COURT: The linchpin really -- as I see it --
24 in the settlement agreement and at least as reflected by
25 what the parties have indicated include the guiding

1 principles for the settlement agreement and those are, of
2 course, set out in the agreement and described at length in
3 the plaintiff's pre-hearing memorandum. They focus upon
4 various guiding principals, including collaboration with the
5 child and family; focusing on functional outcomes;
6 collaboration with others, including collaborating and
7 orchestrating multiple systems in agencies where needed in
8 connection with the attention that is required; and, also,
9 monitoring implementation of the plan, making services
10 accessible and providing the best practices possible;
11 seeking the most appropriate setting; focusing on
12 timeliness, and providing services promptly to children;
13 tailoring the services to the particular child and family;
14 providing stability as far as -- for example, avoiding or
15 minimizing multiple placements and also anticipating crisis;
16 according respect for the child and the family's unique
17 cultural heritage in providing these particular services;
18 recognizing a need for independence insofar as the providing
19 of the services, including support and training for parents
20 and meeting the needs of their children in connections to
21 natural supports.

22 All of these principals -- it has been suggested,
23 obviously, these are principals intended to govern the way
24 that the Title 19 would be implemented and administered.
25 They are not specific in the sense of providing hard-core

1 nuts and bolts remedies for each of these, but I don't know
2 that that is possible when you are considering the number of
3 children, the number of different situations that can arise
4 and the medical needs -- the mental health needs of the
5 children and the unique features that can arise, and the
6 different geographical locations, and the different
7 community needs.

8 And for all of these reasons, I think that the
9 principals which have been hailed by experts as being
10 guiding principals as far as providing mental health care --
11 I think that the principals are appropriate and certainly
12 have received the blessing of individuals in the field.

13 There are specific provisions, and I have touched
14 on these a little bit, concerning specific actions that
15 would be taken under the settlement agreement, including
16 developing statewide training program and designating some
17 over a three-year period for the program to train staff and
18 supervisors, to provide the services consistent with the
19 settlement agreement.

20 Adding respite care to the list of services covered
21 by Title 19 within just a 30-day period of entry of the
22 settlement agreement, implementing within a specific period
23 of time, a means of allowing independent Masters level
24 behavioral health professionals to provide services, and to
25 bill in a way that will make certain that the individual

1 services that can be provided by those individuals will be
2 provided, evaluating with the aid of an expert whether
3 additional services are needed, designating a sum of money
4 for use as flex funds to provide the services that are not
5 reimbursable under Title 19, developing practice guidelines
6 for monitoring and addressing the effects of medications,
7 and then there is the 300 kids project that I referred to
8 previously, and developing a plan for expansion of substance
9 abuse treatment services, providing plaintiffs with an
10 annual action plan so that progress can be charted or
11 ascertained, and changing and improving overall the quality
12 of the management system.

13 These are all, I think, more specific things than
14 the principals themselves that are part of the settlement
15 agreement, and I take those into consideration in deciding
16 whether to accept the agreement.

17 Does any counsel want to be heard in connection
18 with those?

19 MR. BURMIN: No, Your Honor.

20 MR. SOURCE: No, Your Honor.

21 THE COURT: Counsel, I have touched upon the
22 reactions, comments and the like to the proposed settlement
23 agreement.

24 Does any counsel feel that needs to be explored at
25 greater length?

1 As I said, I think that the plaintiffs pre-hearing
2 memorandum attachments focus upon those and really
3 articulate those, and they are also summarized in the
4 memorandum itself.

5 Does any counsel think it is necessary for me to
6 address those further at this point?

7 MR. BURMIN: No, Your Honor, we don't.

8 MR. SOURCE: No, Your Honor.

9 THE COURT: I suppose a common denominator for all
10 settlement agreements -- it doesn't give both sides
11 everything that they might desire, but I am impressed at
12 this hearing with the cooperation of counsel to try to
13 accomplish a common good as far as the administering the
14 program, and I think both sides have compromised, not to the
15 detriment of their clients or seriously undermining their
16 respective positions in order to submit the settlement
17 agreement in this case.

18 Does any counsel feel, aside from the last matter
19 which we are about to turn to, which is continued
20 jurisdiction of the court -- other than that, does any
21 counsel feel there is anything else that the court has
22 failed to address that needs to be addressed at this
23 fairness hearing?

24 MR. BURMIN: No, Your Honor, we don't.

25 MR. SOURCE: No, Your Honor.

1 THE COURT: The parties propose that the court
2 retain jurisdiction and keep this matter open until, I think
3 it is alternatively 2007 or 2008. Obviously, this matter
4 has -- first of all, this matter has been active for a
5 decade now.

6 On the other hand, I recognize that the settlement
7 agreement has many facets to it, there are many directions
8 that implementation of the settlement agreement could
9 ultimately take.

10 We are all optimistic that it will take a favorable
11 and desirable course, but there could be some bumps in the
12 road as far as the implementation and enforcement of the
13 agreement.

14 For that reason -- first of all, as far as
15 retaining jurisdiction, I think it is appropriate -- and I
16 also get the impression of the parties that they see that as
17 being a critical feature of the settlement agreement.

18 For that reason, it is not something that is
19 peripheral and that I would feel comfortable indicating that
20 I accept the settlement agreement in all other respects
21 except for that.

22 I think that the parties have stated a case that is
23 compelling as far as retention of jurisdiction.

24 That having been decided, there are two approaches
25 to accomplish that, one is to just keep the case open,

1 consistent with the settlement agreement; the other is to
2 conclude the case, but to retain jurisdiction, and there is
3 some authority for this court retaining jurisdiction, even
4 after the case has been concluded.

5 Now, the cleanest way to make certain that there
6 cannot be an assertion at a later time -- and I am not
7 thinking of the individuals here in the courtroom at this
8 time -- but over the period of time that the court has lost
9 jurisdiction because of dismissal of the case, that is
10 always a risk if dismissal takes place, but the court
11 attempts to retain jurisdiction.

12 If the court case is kept open, that concern is not
13 present.

14 I will hear counsel regarding your comments
15 regarding the court's retention of jurisdiction and what you
16 suggest.

17 I think I have an idea what you are going to
18 suggest, but I will certainly hear you at this time.

19 MR. BURMIN: Fortunately, Your Honor, I think that
20 you have described in a nutshell what our concern is.

21 There is a risk in our view, if the case is closed
22 in the sense that there is a dismissal on the record.

23 As the court knows, both parties have agreed to
24 this particular aspect of the settlement, and both the
25 retention of jurisdiction and the case remaining open as a

1 continuing case, and I think both parties -- I won't speak
2 for the defendants, but it is my understanding that both
3 parties consider this a substantive part of the agreement.

4 With respect to the dismissal, the plaintiffs do
5 think that there is some risk. I have been doing this for
6 somewhat over 20 years, these kinds of complex cases, and
7 looking at the law and how it is developing, I am concerned
8 that the defendants could make an argument of the sort that
9 this court just described, that despite the fact that there
10 is an attempt to retain jurisdiction; dismissal deprives the
11 court of anything over which to exercise jurisdiction.

12 And the law of sovereign immunity and the Eleventh
13 Amendment has been undergoing rapid change.

14 The Supreme Court, in our view, has begun to
15 express really increasing impatience with what they consider
16 to be legal fictions, Ex parte Young actions is one example,
17 but we all kind of understand what is happening. But when
18 you look at the plain language, it seems somehow off, which
19 is how I kind of experience a dismissal retention of
20 jurisdiction.

21 And perhaps the matter that is of most concern to
22 us is the court has also shown some willingness, at least in
23 recent years to -- perhaps not inappropriately, but to upset
24 settled understandings when they are based on dicta as
25 opposed to explicit statements in a Supreme Court case.

1 And we just recently with the Buckhannon case,
2 which involved the attorneys' fees had an instance where the
3 courts dicta over the years suggested that a particular
4 procedure was appropriate; eleven of the twelve Courts of
5 Appeals followed that procedure, but because of plain
6 language of the statute or rules seemed inconsistent, the
7 court said we are sorry, maybe we suggested that you could
8 do this, but now that we looked at it carefully, we are not
9 so sure.

10 And for all these reasons, we think that there is a
11 risk to the plaintiff class if the case does not remain
12 open, which is part of the reason we negotiated the current
13 arrangement, and I think it would be very difficult for us
14 to recommend to the class this settlement if it were
15 structured around the dismissal.

16 Thank you.

17 THE COURT: Thank you.

18 Counsel.

19 MR. SOURCE: We would support plaintiff's counsel's
20 argument. The retention of jurisdiction was a major point
21 in negotiations. And trying to put ourselves in the
22 plaintiff's shoes, they do want that no way to come back to
23 court if necessary.

24 We think that won't happen; and if it does happen,
25 it will be a very rare occurrence because of the dispute

1 resolution we felt in the agreement.

2 So given the concerns that plaintiff's counsel
3 expressed, it is our position that we would ask the court to
4 retain jurisdiction.

5 THE COURT: There are mediation provisions.

6 MR. SOURCE: That is correct, it is a three-stage
7 dispute resolution process, informal resolution, mediation,
8 and the court. And we expect that the vast overwhelming
9 majority of disputes to be resolved either at the first or
10 the second stage.

11 THE COURT: Well, considering everything, I think
12 it is appropriate to retain jurisdiction and to have the
13 case remain open as requested by respective counsel and
14 parties in this matter.

15 I think that they have articulated ample grounds
16 for the retention and safeguard against any significant
17 changes in the law, which as plaintiff's counsel have
18 pointed out can happen, especially in settlement agreements
19 as certain provisions come in and out of both.

20 There wouldn't be any question regarding the
21 jurisdiction if the case remains open, so I will accept that
22 portion of the settlement agreement.

23 Does any counsel feel there is anything else that
24 we need to address before I rule on acceptance of the
25 settlement agreement at this time?

1 MR. BURMIN: No, Your Honor.

2 MR. SOURCE: No, Your Honor.

3 THE COURT: Well, I would just incorporate all of
4 my previous comments and commend counsel for their joint
5 efforts to resolve a very serious situation, and I will
6 accept the settlement agreement in this case.

7 MR. BURMIN: Thank you.

8 MR. SOURCE: Thank you, Your Honor.

9 THE COURT: There will be a written order so
10 indicating.

11 Counsel.

12 MR. BURMIN: I was going to ask the question if the
13 court would like us to try our hand at a draft order.

14 THE COURT: Well, you can do that, or by minute
15 entry, a minute entry reflecting simply that the settlement
16 agreement that has been submitted in this case is accepted
17 by the court and the court makes a determination following
18 hearing from counsel and considering written submissions at
19 a fairness hearing that the settlement is appropriate.

20 MR. BURMIN: That is fine, Your Honor.

21 THE COURT: It might be a way of making certain
22 that nothing is overlooked and also just not requiring
23 further detail.

24 I think it is covered in the agreement, unless
25 counsel feel something more is needed.

1 MR. SOURCE: No, Your Honor.

2 I think that covers it. In fact, I think the
3 agreement pretty much speaks for itself, so an order
4 confirming the agreement is sufficient.

5 MR. BURMIN: That is fine.

6 THE COURT: Is there anything further at this time?

7 MR. BURMIN: No.

8 MR. SOURCE: No.

9 THE COURT: Thank you very much.

10 We will stand at recess.

11 (Thereupon, the proceedings adjourned.)

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C E R T I F I C A T E

BE IT KNOWN that the foregoing proceedings were taken
before me, CHRIS WALLACE, and that the foregoing 26 pages
are a true and correct transcript of all proceedings had,
all done to the best of my skill and ability.

s/Chris Wallace

Dated: March 23, 2010

