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United States District Court,
E.D. Arkansas,
Western Division.

PEDIATRIC SPECIALTY CARE, INC.; Child & Youth Pediatric Day Clinics, Inc.; Family Counseling & Diagnostic Clinic, Inc.; Tomorrow's Child Learning Center, LLC; D & D Family Enterprises, Inc .; James and Stacey Swindle, as Parents and Next Best Friends of Jacob and Noah Swindle, Minors; and Susann Crespino, as Parent and Next Best Friend of Michael Crespino, a Minor, Plaintiffs
v.
ARKANSAS DEPARTMENT OF HUMAN SERVICES; Kurt Knickrehm, in his Individual Capacity and in his Official Capacity as Director of the Arkansas Department of Human Services; and Ray Hanley, in his Individual Capacity and in his Official Capacity as Director of the Division of Medical Services of the Arkansas Department of Human Services, Defendants.

No. 4:01CV00830–WRW. | Nov. 27, 2002.

Attorneys and Law Firms

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Breck G. Hopkins, Lee S. Thalheimer, Arkansas Department of Health and Human Services—LR Office of Chief Counsel, Little Rock, AR, for Defendants.

Opinion

ORDER

WM. R. WILSON, JR., United States District Judge.

I. PROCEDURAL HISTORY

***1** For a number of years, the Medicaid plan in Arkansas has provided medical services to developmentally-delayed children under the Child Health Management Services ("CHMS") program. These services include diagnosis and evaluation, early intervention day treatment, and a wide array of therapies. On November 30, 2001, citing shortfalls in state revenue, the Defendants announced a decision to redefine the CHMS program and no longer pay for daycare and therapy services.[1] In response to this decision, the Plaintiffs[2] filed this lawsuit requesting declaratory relief and an injunction to prevent the decision from going into effect.

1 This announcement will sometimes be referred to as "the decision," and sometimes as "the press release."

2 Plaintiffs are a group of qualified providers of Child Health Management Services ("CHMS") throughout the state of Arkansas and several individual recipients of CHMS services who are represented by their parents.

In Count I of their Complaint, the Plaintiffs allege that the decision, if implemented, will violate their rights to substantive due process because the day treatment and therapy services provided under the CHMS program are mandatory and cannot be eliminated. In Count II of their Complaint, the Plaintiffs allege that the decision, if implemented, will violate their rights to procedural due process because the Defendants failed to utilize methods and procedures that consider the factors of efficiency, economy, quality of care and equal access prior to making the decision. In Count III of their Complaint, the Plaintiffs allege that the decision, if implemented, will violate their rights to substantive due process and their rights under 42 U.S.C. § 1396(a)(19) because the Defendants have no rational basis for the decision and have failed to consider the best interests of all Medicaid recipients in this case.

When the Plaintiffs filed their Complaint on December 6, 2001, they also filed a motion for a temporary restraining order. On December 13, 2001, I held a hearing on the motion, at which time the parties agreed to treat the hearing as one for permanent injunctive relief. At the conclusion of that hearing, I ruled that the early intervention day treatment and therapy services provided under the CHMS program result in the maximum reduction of physical or mental disabilities and restore

children to their best-possible functional level. Because the Defendants intended to terminate payment for those services under the CHMS program, and based on the finding that early intervention day treatment services are not provided anywhere else under the State Medicaid Plan, I held that early intervention day treatment services, provided in conjunction with therapy services, are mandated by the Medicaid Act. Therefore, I issued a permanent injunction that requires the Defendants to pay for early intervention day treatment and therapy services under the CHMS program.[3]

3 *See* order dated December 18, 2001 (Doc. No. 8).

The Defendants appealed. The Eighth Circuit affirmed the injunction to the extent it requires the Arkansas Department of Human Services ("ADHS") to pay for CHMS-type services. However, the Eighth Circuit reversed the injunction to the extent it required "that CHMS early intervention day treatment services be specifically named in the State Plan." The Eighth Circuit also held that the State Plan "need not specifically list every treatment service conceivably available under the EPSDT [Early and Periodic Screening, Diagnosis and Treatment ("EPSDT")] mandate." But, the Court firmly reminded the Defendants that they have a duty under 42 U.S.C. § 1396a(43) "to inform Medicaid recipients about the EPSDT services that are available to them and that they must arrange for the corrective treatments prescribed by physicians." The Court also warned the Defendants that they "may not shirk their responsibilities to Medicaid recipients by burying information about available services in a complex bureaucratic scheme." The Eighth Circuit concluded by remanding the case for modification of the injunction, according to its order, and directed consideration of Plaintiffs' procedural due process claim.[4]

4 *See* Eighth Circuit opinion of July 15, 2002 (Doc. No. 30).

***2** On remand, a series of on-the-record telephone conferences were held in an effort to modify the permanent injunction. An amended injunction was issued on August 10, 2002, and the remaining claims were scheduled for a hearing. Prior to that hearing, which is the subject of this Order, the Defendants filed a motion for summary judgment. The Defendants then argued, *for the first time,* that the decision they made in November of 1999 had nothing to do with eliminating payment for early intervention day treatment and therapy services under the CHMS program. Instead, the Defendants argued that the decision they made last November was simply to remove the CHMS program from the State Medicaid Plan, but that they intended to continue paying for early intervention day treatment and therapy services under the EPSDT program. Defendants argued that they were entitled to summary judgment because they had not engaged in rate setting and, therefore, were not obligated under federal law to consider the factors of efficiency, economy, quality of care and equal access prior to making their decision.[5] Plaintiffs contended, among other things, that the plain language of 42 U.S.C. § 1396a(a)(30) is broader than rate-setting. I found that there were material questions of fact to be decided, and denied the motion.

5 *See* September 3, 2002 Order Denying Motion for Summary Judgment (Doc. No. 46).

On September 12, 2002, another hearing was held in order to consider the remaining issues in this case—that is, those set forth in Count II and Count III of the Plaintiffs' Complaint. A resolution of those issues requires an accurate view of "the decision" made by the Defendants. According to the allegations made by the Plaintiffs in their Complaint, Defendants' decision is set forth in the ADHS press release[6] dated November 30, 2001, which states that ADHS has decided to redefine the CHMS program and no longer pay for early intervention day treatment and therapy services.[7]

6 The press release actually refers to day care, not early intervention day treatment services. However, I found that CHMS clinics provide early intervention day treatment services, not just day care, and that finding was affirmed on appeal. *See* Eighth Circuit opinion of July 15, 2002, at 5–6, 9–10 (Doc. No. 30).

7 *See* Plaintiffs' Exhibit 4.

As noted above, the Defendants are now arguing, for the first time, that they never intended to stop paying for such services. The new argument is that they simply intended to remove the CHMS program from the State Medicaid Plan, but that they intended to continue to provide early intervention day treatment services and related therapies

under EPSDT. I will now attempt again to determine what "the decision" really was.

II. THE DECISION

As stated above, according to the allegations made by the Plaintiffs in their Complaint, the Defendants' decision is set forth in the November 30, 2001 press release. This release states that ADHS has decided to redefine the CHMS program and no longer pay for early intervention day treatment and therapy services.[8] Despite this undisputed fact, the Defendants maintain that they never intended to stop paying for such services—rather, that they claim that they merely intended to reduce Medicaid expenditures by removing all references to CHMS services from the State Plan, while still paying for those services under the EPSDT program. The EPSDT program requires a "screening" to determine which services are "medically necessary;" therefore, the projected savings would come from fewer services being provided as a result of more intense screening.[9]

8 *See* Plaintiffs' Exhibit 4 and footnote 4.

9 *See* page 49–52 of the September transcript.

***3** The Defendants argue that Joe Quinn, who is the spokesperson for ADHS and the author of the press release, did not have authority to make Medicaid policy decisions. Nevertheless, he had the authority to *announce* Medicaid policy decisions actually made, which he accomplished with a press release. Mr. Hanley testified at the September hearing that he would have seen the press release prior to publication and did not recall making any objection to it.[10] In addition, Mr. Hanley testified that the Director of ADHS, Defendant Kurt Knickrehm, approved the decision before the press release was issued.[11] Consequently, the press release *was* state policy. Joe Quinn had the authority to release it to the public. While the Defendants adopted a "get thee behind me Satan" attitude toward the press release, I find that it was an *approved* announcement of the Defendants' position, *i.e.,* their "decision."

10 *See* page 45 of the September transcript.

11 *See* page 36 of the September transcript.

At the first hearing in December of 2001, there was no contention that the decision made by the Defendants was what they now claim it to be. In other words, based on the whole record, it is clear to me that the press release reflects Defendants' decision, which was to redefine CHMS *and* no longer pay for early intervention day treatment and therapy services. Contrary to what the Defendants now suggest, the press release did *not* say that ADHS merely intended to remove reference to CHMS treatment services from the State Plan or that it intended to provide early intervention day treatment and therapy services under the EPSDT program.

If the Defendants had decided to simply remove reference to CHMS services from the State Plan but continue paying for those services under EPSDT, as they now suggest, they surely would have said so in their Answer. Their Answer, which was filed several days after the press release, however, does not say anything of the sort. To the contrary, the Defendants admit in their Answer that their decision *was* reflected in the press release they issued on November 30, 2001. Prior to losing in December of 2001, the Defendants said nothing to suggest that my view of their decision was incorrect or that early intervention day treatment services would still be paid for under the EPSDT program. Plaintiffs argued that the services provided by CHMS were mandated under the EPSDT, and Defendants argued that they were not. T do not accept the Defendants' new-found argument that they always intended to pay for CHMS-type services under EPSDT.

III. "OFF–PLANNING"

Defense counsel originally contended that early intervention day treatment services are not mandated by the Medicaid Act.[12] Mr. Hanley has made similar remarks. For example, Mr. Hanley testified that, if the decision at issue in this case goes into effect, early intervention day treatment services would no longer be provided under the State Plan.[13] The Defendants argue that, while it is true Mr. Hanley intended to delete CHMS day treatment provisions from the plan, deletion was appropriate in light of the Eighth Circuit's ruling. The Eighth Circuit ruled that it was not necessary for the "State Plan to specifically list every treatment service conceivably available under the EPSDT mandate." However, this ruling in no way

permitted deletion of the services.

12 *See* page 15 of the December transcript.

13 *See* page 198 of the December transcript.

***4** After the Eighth Circuit opinion, along came “off-planning.” At some point since my ruling of December 18, 2001, and the Eighth Circuit decision of July 15, 2002, the Defendants developed this thing described as “off-planning.” Despite the Eighth Circuit’s clear mandate, they now intend to take CHMS-type services off of the Arkansas State Medicaid Plan and place them elsewhere under the services provided by ADHS.

The novelty of this new position is supported by the testimony of Plaintiffs’ witness, Mr. Tom Dalton, former Director of ADHS. As of September 12, 2002 (the date of the last hearing), this “off-plan” notion was new to him. I note that his experience with the issues involved in this case is quite extensive—and I credit his testimony. Among other things, Mr. Dalton testified that he had never heard that phrase used by Defendants until after the Eighth Circuit decision.[14] Mr. Dalton also testified that, during his tenure at ADHS, the term “off-plan” was never mentioned, nor had “off-planning” been implemented with any other programs.[15]

14 *See* page 107 of the September transcript.

15 *See* page 109 of the September transcript.

The only conclusion that I can reach is that the Defendants intend to use the “off-plan” concept to side-step the requirements of federal and state law as interpreted by the Eighth Circuit. This, they may not do. Again (and again), while the required services need not be specifically listed, they still must be provided under state Medicaid.

To accept the Defendants’ current view would require me to ignore their Answer, their press release, and their sworn testimony back in December of last year. This view also contradicts the testimony of their own expert witness, Dr. Michael Moody, who testified that early intervention day treatment services would *not* be provided under any part of the State Plan if the decision made in November of 2001 goes into effect.[16] This new view also contradicts the December 2001 testimony of Defendant, Mr. Ray Hanley, who testified that the services, now conceded by the Defendants to be required, were optional.[17] In fine, the “off-plan” is off limits.

16 *See* pages 248, 250, 439 of the December transcript.

17 *See* pages 201–203 of the December transcript.

IV. PROCEDURAL DUE PROCESS

Having determined that the record as a whole reflects that the decision at issue was expressed by the Defendants in their press release dated November 30, 2001, I next consider the issues presented in Count II of the Plaintiffs’ Complaint. The Plaintiffs have argued throughout this litigation that the Defendants failed to consider the factors of efficiency, economy, quality of care and equal access prior to making their decision. Their argument is based on 42 U.S.C. § 1396a(a)(30), which provides that a state plan for medical assistance must:

> Provide such methods and procedures relating to the payment for ... care and services available under the plan ... as may be necessary to ... assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area....

***5** In *Arkansas Medical Society, Inc. v. Reynolds,* 6 F.3d 519, 528 (8th Cir.1993), the Eighth Circuit held that 42 U.S.C. § 1396a(a)(30)(A) creates rights that are enforceable in a civil rights lawsuit brought pursuant to 42 U.S.C. § 1983. The issue thus becomes whether the

Defendants have violated the provisions of 42 U.S.C. § 1396a(a)(30)(A) in deciding to terminate funding for early intervention day treatment services under the State Plan.

Under *Arkansas Medical Society,* whenever a state cuts reimbursement *rates* for Medicaid services, it must first consider the effect its decision will have on the factors set forth in 42 U.S.C. § 1396a(a)(30)(A)—that is, economy, efficiency, quality of care and equal access. The Defendants concede that they did not consider these factors before making their decision to terminate funding for early intervention day treatment services. They admitted as much in the statement of undisputed facts filed in support of their motion for summary judgment, as well as through the testimony of Mr. Hanley.[18]

18 *See* pages 198–199 of the December transcript and Statement of Undisputed Material Facts (Doc. No. 44).

The Defendants argue that they were not obligated to consider the four factors set forth under the statute because 42 U.S.C. § 1396a(a)(30)(A) only applies to rate setting. I also reject this argument. The statute obligates the Defendants to provide "such methods and procedures relating to the payment for ... care and services available under the plan ... as may be necessary to ... assure that payments are consistent with" economy, efficiency, quality of care and equal access.[19] The statute speaks in reference to the adequacy of "payments," and is not limited to situations where the only thing being changed is a payment rate. In view of the specific facts of this case, I do not find Defendants' cases from other circuits addressing rate-setting to be persuasive.[20]

19 42 U.S.C. § 1396a(a)(30)(A).

20 *Rimes v. Shalala,* 999 F.2d 684, 691 (2d Cir.1993)(Court of Appeals held that public notice requirements of federal regulations did not apply to changes in requirements for Medicaid eligibility); *Moody Emergency Med, Servs. v. City of Millbrook,* 697 F.Supp. 488, 495–497 (M.D.Ala.1997)(District Court found that provider's claim challenging distribution of Medicaid recipients for use of its services, rather than adequacy of reimbursement rates for its services, failed to state actionable claim under equal access provision); *Sobky v. Smoley,* 855 F.Supp. 1123, 1138 (E.D.Cal.1994)(The District Court found that the state practice of allowing counties to determine whether and in what amount to provide Medicaid funded methadone maintenance treatment did not violate equal access provision of Medicaid statute). *See* the legislative history found in H.R.Rep. No. 101–247 (1989), *reprinted in* 1989 U.S.C.C.A.N.1906, 2060, 2115–16.

Plaintiffs argue that changes in payments for Medicaid services can trigger this statute and that payment is equal to the rate established for a particular type of service multiplied by the number of units of service provided.[21] Payment may be reduced by lowering the rate, and payment may also be reduced by lowering the units of service that may be provided. Here, the Defendants decided to *stop* paying for early intervention day treatment services altogether. Defendants contend that moving the services to EPSDT will not affect the rate changes for such services—so they are not required to consider the factors of economy, efficiency, quality of care and equal access. The facts, however, reveal that moving the services previously provided by CHMS to EPSDT will decrease the availability of these services to developmentally-delayed children due to the added level of screening required under EPSDT.[22] This action reduces the number of services paid for by the state, which, in turn, reduces the state's expenditures. Consequently, this affects payment for Medicaid services.

21 For example: basic eye examination (type of service provided at fixed rate) x 15 children (units) = payment.

22 *See* pages 49–50 and 112–114 of the September transcript.

Had the Defendants decided to reduce the rate for early intervention day treatment services to a penny per unit, then the provisions of 42 U.S.C. § 1396a(a)(30)(A) would be implicated and the four factors set forth under that statute would have to be studied. But, accepting the argument proposed by the Defendants would allow them to eliminate payment for those services altogether, thereby avoiding the necessity of performing any analysis. If Defendants' reasoning were followed, it would create a gaping loophole in the Medicaid Act. I decline to accept this notion.

***6** If the Defendants' decision were to go into effect,

early intervention day treatment services would not be paid for under any other part of the Arkansas Medicaid Plan. Because early intervention day treatment services would not be available under any other part of this plan, the decision would obviously also have a substantially adverse impact on equal access to this care.

The decision made by the Defendants affects *payment* for early intervention day treatment services.[23] I do not believe that the language of the statute is limited to *rate*-setting cases. In *Seniors United for Action v. Ray,* 529 F.Supp. 55, 60 (N.D.Iowa 1981), the court held that “the elimination of a Medicaid service is a change in both the level and method of payment.” While the case did not involve the Medicaid statute before me today, the reasoning of that decision is sound and is analogous. Before the Defendants can terminate Medicaid payment for such services, they *must* conduct a proper study and assure the citizens of Arkansas that the factors of economy, efficiency, quality of care and equal access will not be jeopardized.

23 Both parties agree that the proposed plan amendment does not specifically address rate setting. The undisputed evidence establishes that, after the Plan is amended in accordance with the July 30, 2002 amended injunction (Doc. No. 41), future EPSDT services that are equivalent to existing CHMS services will be paid at the present CHMS rates.

V. SUBSTANTIVE DUE PROCESS

In Counts I and III of their Complaint, the Plaintiffs allege that the decision made by the Defendants violates their right to substantive due process. The Fourteenth Amendment guarantees substantive due process, “which prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty.”[24] The Fourteenth Amendment also prohibits “conduct that is so outrageous that it ... offends ‘judicial notions of fairness, [or is] offensive to human dignity.’ “[25]

24 *Moran v. Clarke,* 296 F.3d 638, 643 (8th Cir.2002).

25 *Wetter v. Purkett,* 137 F.3d 1047, 1051 (8th Cir.1998)(en banc).

In the present case, the Plaintiffs have presented evidence of a course of conduct at ADHS, implemented by the individual defendants over a number of years, that raises deep concerns. ADHS lost in *Arkansas Medical Society,*[26] a case involving the factors of economy, efficiency, quality of care and equal access. It seems to me that should have been a word to the wise. Nonetheless, the Defendants decided in 1999 to cut CHMS payment rates for early intervention day treatment services without considering those factors.[27] ADHS amended its Medicaid plan and changed reimbursement rates for CHMS providers which would have reduced the bundled cap rate for core treatment services from $95.00 to $75.00 per day.[28] By failing to conduct any kind of analysis, the Defendants ignored federal law when they decided to cut rates. A lawsuit was filed and the United States District Court for the Eastern District of Arkansas enjoined them.[29] This should have been another word to the wise.

26 *Arkansas Medical Society, Inc. v. Reynolds,* 6 F.3d 519, 528 (8th Cir.1993)(The district court held that ADHS violated 42 U.S .C. § 1396a(a)(30)(A) by failing to consider whether proposed reimbursement rate reductions to Medicaid providers based on state budgetary concerns were consistent with efficiency, economy, and quality of care and whether the rate cuts would affect Medicaid recipients’ access to health care services).

27 *See Pediatric Specialty Care, Inc. v. Arkansas Department of Human Services,* No. 4:99CV00810–JMM, Complaint filed October 28, 1999 (Doc. No. 1).

28 *Id.*

29 *See* page 114 of the December transcript which references *Pediatric Specialty Care, Inc. v. Arkansas Department of Human Services,* No. 4:99CV00810–JMM, Order of Injunction filed November 5, 1999 (Doc. No. 8).

Despite the above, the Defendants decided in this case, in November of 2001, to stop paying for early intervention

day treatment services altogether.[30] The Defendants now attempt to cast their decision in a different light. I have been perplexed at Defendants' change of position between December, 2001, and September, 2002. After considering all the evidence, it looks to all the world like political considerations may well have been a motivating factor in Defendants' original decision reflected in the November 30, 2001 press release and its change of position reflected in its current arguments.

30 Plaintiffs' Exhibit 4.

***7** The Plaintiffs presented evidence that the decision was motivated by "politics." Don Tilton testified that he spoke with Mr. Knickrehm and Mr. Hanley at the State Capitol on November 26, 2001.[31] During that conversation, Mr. Tilton says that he explained that it would make more sense for the Defendants to spread the budget cuts that needed to be made across the entire Medicaid program in Arkansas, rather than just focus cuts on the CHMS program .[32] Mr. Tilton says that he described it as a "fairness issue," and Mr. Knickrehm agreed with his remark.[33] Mr. Knickrehm said, "Don, the truth of the matter is, this is getting ready to get down to just plain old politics."[34] While Mr. Knickrehm and Mr. Hanley denied these statements, I credit Mr. Tilton's testimony.

31 *See* page 152 of the December transcript.

32 *See* page 155 of the December transcript.

33 *See* page 157 of the December transcript.

34 *See* pages 152 and 157 of the December transcript.

Mr. Tilton also testified that the Defendants harbor ill will toward the CHMS program because of its past association with Nick Wilson, a former state senator from Arkansas who at one point was involved in the CHMS program.[35] Senator Wilson and the Governor of Arkansas were bitter political adversaries and, according to the testimony of Mr. Tilton, Mr. Knickrehm and Mr. Hanley both mentioned a "Nick Wilson factor" when dealing with the CHMS program.[36] Since Nick Wilson was no longer on the scene (either in the Senate or with CHMS), it is a little hard to understand why the Defendants were still concerned with this factor; but, apparently, the ill will lingered.

35 *See* page 158 of the December transcript.

36 *See* pages 157 to 160 of the December transcript.

It is hard for me to think of any other reason for Defendants' adamant and continuing refusal to accept the plain language of the Eighth Circuit decision. If politics is not the explanation, what else could be?

On top of this evidence, the press release indicates that the only state Medicaid program targeted for extinction in November of 2001 was the CHMS program. While there were other cuts proposed at that time, no other program was to be eviscerated in the same manner as was the CHMS program. Rather than consulting with CHMS providers in an effort to solve the budget problems at ADHS, and rather than proposing rate reductions for all Medicaid programs in Arkansas (supported by an appropriate study), the Defendants decided to stop paying for early intervention day treatment services and leave other programs completely intact.

As a result of this decision, many children will be denied "the same degree of access to the technical professional concerns that might have come from therapists."[37] Mr. Dalton testified that "fewer children will use the service ... fewer children will have that service available to them because primary care physicians, maybe not skilled, not as skilled in some areas in issues of pediatrics, will be loathe to recommend the levels of service that many of these children with developmental delays will be requiring."[38] Developmentally delayed children should not be treated in this way. The proposed result of the Defendants' decision is the type of behavior that "shocks the conscience 'of the court,' " and, therefore, it is enjoined.

37 *See* page 112 of the September transcript.

38 *See* page 113 of the September transcript.

***8** After the Defendants were enjoined last December from cutting early intervention day treatment services, they are now attempting to sidestep the injunction by “off planing” the CHMS program. Under the decision set forth in the press release, the Defendants intended to stop paying for early intervention day treatment and therapy services in CHMS clinics, allowing the clinics to perform only those services related to the diagnosis and evaluation of developmental delays. Under their “new” way of thinking, it is apparent that the Defendants intended to get rid of the CHMS program altogether and CHMS clinics would no longer exist. In fact, the Defendants acknowledge in a letter dated October 1, 2002[39] that “off planning” the CHMS program will allow them to reduce rates for CHMS services without conducting the study required by 42 U.S.C. § 1396a(a)(30)(A) and without considering the best interests of all Medicaid recipients required by 42 U.S.C. § 1396a(a)(19).

39 Plaintiffs submitted the letter as an Exhibit pursuant to Court order. *See* page 134–135 of the September transcript.

I find that the Defendants violated Plaintiffs’ substantive due process rights, and I enjoin the Defendants from “off planning” the *type* of services now offered by the CHMS program. As stated at the September hearing, I have had a difficult time understanding Defendants’ adamant positions—many of which are squarely contrary to the Eighth Circuit’s opinion and contrary to my orders which were upheld by the Eighth Circuit.[40] Perhaps this Order will help the Defendants’ see it from another angle.

40 *See* page 8 of the September transcript.

VI. CONCLUSION

For these reasons, I hold for the Plaintiffs. The Plaintiffs are prevailing parties and may file a motion for their costs and attorneys fees within the time provided under the applicable rules of procedure. Judgment will be entered accordingly.

IT IS SO ORDERED.