

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. No. 99 - 1435 (PG)

THE COMMONWEALTH OF PUERTO RICO;
PEDRO J. ROSSELLO, GOVERNOR OF THE
COMMONWEALTH OF PUERTO RICO;
DR. CARMEN FELICIANO, VDA. DE
MELECIO, SECRETARY, DEPARTMENT OF
HEALTH; JOSE DE LEON, DIRECTOR,
MENTAL RETARDATION PROGRAM,

Defendants.

SUPPLEMENTAL INTERIM SETTLEMENT AGREEMENT

WHEREAS, the parties entered into an Interim Settlement Agreement on or about April 21, 1999; and

WHEREAS, the Court approved the Interim Settlement Agreement on April 29, 1999; and

WHEREAS, the Interim Settlement Agreement, commencing on page 6 at section II entitled "Interim Remedial Measures," provides for implementation of interim remedial measures by defendants by dates certain; and

WHEREAS, despite defendants' efforts to achieve remediation pursuant to the terms of the Interim Settlement Agreement, full compliance with its terms in accordance with the prescribed time deadlines has not been achieved; and

WHEREAS, the parties desire to develop additional appropriate remedial steps, embodied in a comprehensive resolution of this case, which establish the details of and timetable for performance required by defendants to bring those aspects of the Commonwealth's Mental Retardation Program that are subject to this suit into full compliance with the constitutional and federal statutory rights of persons with developmental disabilities,

NOW THEREFORE, the parties, subject to the approval of the Court, hereby agree as follows:

1. The Interim Settlement Agreement shall remain in full force and effect.
2. Upon the Court's approval of this Supplemental Interim Settlement Agreement, John J. McGee, Ph.D., shall be immediately appointed to the position of Joint Compliance Coordinator ("JCC") in the case. Dr. McGee shall devote such time to his duties as he considers necessary to fulfill the purposes of his obligations pursuant to this supplemental agreement. Dr. McGee shall not be involuntarily discharged or replaced absent Court Order. In that event, or in the event that Dr. McGee resigns or is no longer able to continue to serve as the JCC, the parties shall select a mutually acceptable replacement as soon as possible, who shall serve in keeping with the provisions of this supplemental agreement as specified for Dr. McGee. In the event that the parties are unable to agree on a replacement, they shall submit names to the Court, which shall make the final determination.
3. Dr. McGee shall have unimpeded reasonable access to all persons, residences, facilities, programs, services, documents and materials he deems necessary or appropriate to consult or utilize in performing his duties as the JCC. The parties shall be permitted to have counsel or other representatives present at any inspection of the residences by Dr. McGee. The

parties may have *ex parte* contacts with Dr. McGee at any time. Unless otherwise agreed to by the parties, Dr. McGee's communications with the Court shall consist of participating in any Court proceedings, including status conferences and in-chambers meetings, discussions during parties' meetings as set forth in ¶ 8 herein, and correspondence and reports with copies to the parties.

4. The defendants shall provide factual reports and/or copies of relevant documents and records to Dr. McGee that he determines to be relevant to his review. All reports and copies of documents shall be available for inspection and copying by all parties to this action. The defendants shall provide timely notice to Dr. McGee of all resident deaths and timely notice of pending or ongoing administrative investigations of alleged neglect or abuse of residents, and shall forward upon request copies of any completed and certified autopsies and/or death summaries, as well as all final reports of administrative investigations of alleged neglect or abuse of residents.
5. In his role as JCC, Dr. McGee shall be compensated by the Commonwealth of Puerto Rico. In addition, Dr. McGee shall be reimbursed for reasonable expenses incurred in the discharge of his responsibilities hereunder. Dr. McGee shall have access to clerical assistance, office space and office supplies as necessary, to be supplied by the defendants. Dr. McGee shall also have the right to hire consultants he deems necessary to fulfill his obligations in this case. The Commonwealth of Puerto Rico shall bear the costs of these consultants. The parties and Dr. McGee shall endeavor to agree upon the financial terms and conditions of Dr. McGee's compensation and reimbursement for expenses, including the cost of consultants, in his role as JCC. In the event the parties and Dr. McGee are unable to reach agreement on the financial

terms and conditions of his compensation and reimbursement, the Court shall make a determination thereon upon consideration of the positions of the parties and Dr. McGee. In any event, within fourteen (14) days of the filing of this supplemental agreement, Dr. McGee will submit to the parties and the Court for approval a proposed annual budget. Should either party object to Dr. McGee's proposed annual budget, either party may address their concerns in writing to the Court within seven (7) days of their receipt of the submission of the proposed annual budget. Within one week of the entry of the Court's Order approving Dr. McGee's proposed annual budget, the defendants shall deposit into the Registry of the Court as interim payment of costs incurred by Dr. McGee, an advance quarterly payment equal to one fourth of Dr. McGee's approved annual budget. This deposit and all other deposits shall be held in the Court Registry. Dr. McGee shall submit monthly statements to the Court detailing all expenses incurred during the prior month and shall provide copies to the parties. The parties shall have three business days from receipt of Dr. McGee's monthly statements to submit to the Court any comments on or objections to the statements. The Court will then review the statements and order the Clerk to make appropriate payments to Dr. McGee within ten days of the entry of the Order authorizing payment. Periodically, defendants shall replenish the fund to restore the fund's total to an amount equal to one fourth of Dr. McGee's approved annual budget and ensure that there will always be sufficient funds in the Court Registry to pay Dr. McGee's monthly expenses.

6. In his capacity as Joint Compliance Coordinator, Dr. McGee shall undertake any needed additional analysis of the Mental Retardation Program to design appropriate programmatic and facility-by-facility remedial efforts, and establish a timetable for completion of such

remedial efforts, to bring the Program into full compliance with the constitutional and federal statutory rights of persons with developmental disabilities. In preparing his recommendations, Dr. McGee shall consult with the standing Steering Committee of the Department of Health chaired by the Governor's Personal Representative and with the U.S. Department of Justice.

7. Dr. McGee shall have ninety (90) days from the commencement of his position as Joint Compliance Coordinator within which to complete his analysis and prepare, on the basis thereof, a report and set of recommendations regarding remediation of the system. Upon completion of his report and recommendations, he shall submit a set thereof to each of the parties. The parties shall have thirty (30) days from receipt thereof to provide their written comments to Dr. McGee and to endeavor to negotiate a comprehensive settlement agreement that will be filed as an Order of the Court. Absent such a settlement, within fifteen (15) days from receipt of the parties' comments, Dr. McGee shall consider such comments, make whatever modifications to his report and recommendations he deems appropriate, and submit his final report and recommendations to the Court. The parties shall have thirty (30) days from the date of Dr. McGee's submission to the Court to file comments or objections with the Court. The Court shall then conduct whatever proceedings it deems appropriate and thereupon enter a Remedial Order based on Dr. McGee's report and recommendations and the parties' comments and/or objections.
8. The Court's Remedial Order shall provide, *inter alia*, that Dr. McGee shall be retained at the expense of the Commonwealth of Puerto Rico to oversee its implementation of the Remedial Order, on financial terms and conditions to be agreed upon by the parties and Dr. McGee or determined by the Court in the absence of such agreement, pursuant to ¶ 5 above.

Implementation shall include oversight of the defendants' program of remediation through the standing Steering Committee and any other committees or persons so designated by Dr. McGee. During this remedial process, Dr. McGee shall meet monthly with the standing Steering Committee to discuss progress and identify whatever problems might exist and their proposed solutions. Opposing counsel may attend these meetings, and the Court is invited to attend as well. Dr. McGee shall report in writing to the Court and the parties periodically on the status of compliance, setting forth the factual basis for his findings, and any recommendations for further remedial steps. Prior to filing any such submission with the Court, Dr. McGee shall circulate a draft to the parties, who shall have fifteen (15) days from receipt thereof to provide their written comments to Dr. McGee, with a copy served on all other parties. Dr. McGee shall consider these comments and, within ten (10) days of receipt thereof, file his submission with the Court, making whatever modifications he deems appropriate in light of the parties' comments. The parties shall have fifteen (15) days from the date of service of Dr. McGee's submission to the Court within which to file comments or objections. The Court will then conduct any proceedings and issue any orders it deems appropriate to address whatever deficiencies, if any, Dr. McGee observes. In the interim, the Commonwealth will take prompt action to remedy any deficiencies cited by Dr. McGee. In an emergency, the United States may use Dr. McGee's draft report in an enforcement action before the Court prior to the completion of the review and submission period set forth above.

9. Nothing in this Supplemental Interim Settlement Agreement shall relieve defendants of their burden and obligation to fulfill the terms of the Interim Settlement Agreement as set forth therein. The pendency of Dr. McGee's report and recommendations shall not be cause for

any delay in implementation of the Interim Settlement Agreement.

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CONSENTED TO BY THE UNDERSIGNED:

FOR THE PLAINTIFF:

GUILLERMO GIL

Acting United States Attorney

District of Puerto Rico

Federal Office Building

Room 452

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Hato Rey, Puerto Rico 00918

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(202) 307-3116

FOR THE DEFENDANTS:

ANGEL E. ROTGER SABAT

Secretary of Justice

Commonwealth of Puerto Rico

WHEREFORE, the parties to the action having agreed to the provisions of the Supplemental Interim Settlement Agreement set forth above, and the Court being advised in the premises, this Supplemental Interim Settlement Agreement is hereby entered as the partial Order and Judgement of this Court.

IT IS SO ORDERED, this _____ day of _____, 2000, at San Juan, Puerto Rico.

HON. JUAN M. PEREZ-GIMENEZ
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

The United States of America,

Plaintiff,

Case No.: 99-1435 (PG)

v.

The Commonwealth of Puerto Rico, et al.,

Defendants.

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U.S. DISTRICT COURT
SAN JUAN, P.R.

ORDER

Pending before this Court is the "Supplemental Interim Settlement Agreement" jointly filed by the parties on April 14th, 2000. The Court having reviewed the same, it is

ORDERED AND ADJUDGED that the Supplemental Interim Settlement Agreement be entered as the Partial Order and Judgment of this Court. It is further

ORDERED AND ADJUDGED that said Supplemental Interim Settlement Agreement be and is hereby binding between the parties. It is further

ORDERED AND ADJUDGED that John J. McGee, Ph.D., be and is hereby appointed the Joint Compliance Coordinator in the case. It is further

ORDERED AND ADJUDGED that the Supplemental Interim Settlement Agreement be and is hereby made part of this judgment as though set forth in extenso.

SO ORDERED this 21st day of July, 2000, in San Juan, Puerto Rico.

Juan M. Perez-Gimenez
JUAN M. PEREZ-GIMENEZ
UNITED STATES DISTRICT COURT