

some one-hundred fifty (150) days of payments remained in Mrs. Farmer's policy with Defendant. It is also the understanding of this Court that the continuation of Medicaid/TennCare payments for Mrs. Farmer's long term care will be unaffected by the expiration of her policy benefits. In other words, Mrs. Farmer's care is established and will continue regardless of this injunction.

The injunction at issue was an agreed one between these parties, but now the Defendant does not agree to any further modification. Therefore, the Court must consider whether the circumstances now warrant, in effect, permitting Plaintiff to unilaterally amend the current injunction. Under these circumstances, this Court does not believe it is necessary or needed. As Defendant now argues, this effort is premature and not ripe for adjudication, since payments are being made. But even when the policy payments are exhausted, it seems clear that Mrs. Farmer will be able to remain in the same position she is in now, unaffected by any dispute(s) with Defendant over the terms and conditions of her policy or the policy limits. Should Plaintiff prevail later, then Defendant would be liable to pay. But, none of the current scenarios merit the modification or extension of the existing agreed injunction. Thus, the Magistrate Judge recommends that Plaintiff's second motion to amend [D.E.105] be denied.

Respectfully submitted,

s/Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

Date: December 3, 2010

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.