No. 12-98

In the Supreme Court of the United States

ALBERT A. DELIA, SECRETARY, NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Petitioner,

v.

E.M.A., (BY AND THROUGH HER GUARDIAN AD LITEM, DANIEL H. JOHNSON), WILLIAM EARL ARMSTRONG, AND SANDRA ARMSTRONG,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF THE FEDERATION OF DEFENSE AND CORPORATE COUNSEL, AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

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December 2012

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INTEREST OF *AMICUS CURIAE* [1]

The Federation of Defense and Corporate Counsel (the "FDCC") was formed as the Federation of Insurance Counsel in 1936. It has an international membership of approximately 1,400 lawyers. FDCC members are experienced attorneys in private practice, as well as general counsel and insurance claims executives from around the world. Membership is limited, available solely by nomination, and includes only those who have been judged by their peers to have achieved professional distinction and demonstrated leadership in their respective fields. The FDCC is committed to promoting knowledge, fellowship, and professionalism among its members.

Through its amicus curiae efforts, the FDCC seeks to assist courts in addressing issues of importance to its membership, including the issues surrounding North Carolina's Medicaid recovery statute that are involved in this case. The position advocated by Petitioner—that North Carolina may statutorily usurp up to one-third of all settlement proceeds to recoup medical expenses paid under Medicaid—has far-reaching and undesirable implications. Certainly, as described in Respondents' brief, the North Carolina statute runs afoul of the anti-lien provisions of the federal Medicaid Act and this Court's decision in *Arkansas Department of Health & Human Services v. Ahlborn*, 547 U.S. 268 (2006). The FDCC, however, finds Petitioner's stance troubling for additional rea-

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[1] No counsel for a party authored this brief in whole or in part. No person or entity other than the FDCC, its counsel, or its members, made any monetary contribution toward preparation or submission of this brief. (Rule 37.6.) Letters indicating the parties' consent to the filing of this brief have been submitted to the Clerk. (Rule 37.3.)

sons. Not only is it blatantly unfair but, if adopted, Petitioner's view would: (1) have a significant chilling effect on parties' incentives to settle personal injury cases involving Medicaid; and (2) result in increased burdens on state and federal courts because fewer cases would settle in their early stages.

Because of the impact on settlement motivations, this case affects the interests of all litigants and potential litigants in personal injury cases. The FDCC is committed to safeguarding the rights of defendants and ensuring that state laws are construed fairly and not in a way that dissuades parties from resolving their differences. Notably, the issues involved in this case are somewhat unique in that they bridge the ideological divide that often separates plaintiffs and defendants; indeed, all litigants can agree that settlement incentives are an important consideration and should be preserved. Accordingly, the FDCC supports the position of Respondents, who were the plaintiffs before the trial court.

STATEMENT OF THE CASE

In *Ahlborn*, this Court considered the function of the anti-lien provision of the federal Medicaid Act as it relates to a state's efforts to recoup its Medicaid costs. *See Ahlborn*, 547 U.S. at 272. Specifically, the issue before the Court was whether a state may impose a lien on property belonging to a Medicaid recipient when the state's Medicaid costs exceed what the recipient recovered as compensation for medical expenses. *See id.* This Court held that the Medicaid Act precludes such liens. *Id.* States may recover Medicaid expenditures from damages a Medicaid re-

cipient receives from a third-party tortfeasor—but only to the extent those damages represent compensation for medical expenses. *See id.* at 284-85.

Ahlborn does not establish a mechanism by which damages are to be allocated between compensation for medical expenses and compensation for other aspects of a claimant's injury (pain and suffering, or lost wages, as examples). Certainly, the parties are best situated to know how, why, and for what reasons a Medicaid recipient is compensated for his/her injuries. Instead of allowing the litigants to participate in the allocation of damages, though, North Carolina has declared by statute that one-third of any verdict or settlement received by a Medicaid recipient constitutes compensation for medical expenses and is subject to recovery. *See* N.C. GEN. STAT. §§ 108A-57, 108A-59. Throughout its brief, Petitioner refers to the one-third assessment as a "calculation" or "formula." Petitioner's description is a misnomer that does not adequately convey the arbitrary nature of North Carolina's take. The statute creates an irrebuttable one-third allocation that just as easily could have been set at one-half, or two-thirds, or any other amount that satisfied the General Assembly's whim. In short, the statute ignores what the parties (and in cases that go to trial, the jury) actually determined was appropriate compensation for medical expenses.

For these and other reasons, the Fourth Circuit concluded that North Carolina's statutory allocation was preempted by the federal Medicaid Act. *E.M.A. v. Cansler*, 674 F.3d 290 (4th Cir. 2012). This Court granted certiorari. As explained below, and in Respondents' brief, the Fourth Circuit should be affirmed.

SUMMARY OF ARGUMENT

Under Petitioner's interpretation of North Carolina's Medicaid recovery statute, one-third of any settlement or verdict is subject to being taken by the state regardless of whether the recovery was paid as compensation for medical expenses. As noted above, Petitioner's view, if adopted, would violate the federal Medicaid Act and this Court's decision in *Ahlborn*. The FDCC finds Petitioner's stance disconcerting for other reasons as well: (1) it is patently and inherently unfair; (2) reversing the Fourth Circuit would have a negative impact on parties' incentives to settle; and (3) the imposed reluctance to settle would result in increased burdens on our court system.

Petitioner's view unjustly allows the state to take a significant share of the total recovery without any regard for the level of compensation received for medical expenses. Moreover, it does so by statutory proclamation, leaving the injured party to bear all of the costs of recovery. The state is free to exercise its right of subrogation, in which case it would bear the expense of its recovery. Instead, under Petitioner's scheme, the state can sit back, allow the injured party to do all of the recovery work, and then seize its arbitrary share.

This inequitable procedure would lead to further disruptive consequences. When coupled with the contingency fee normally required to pay the injured party's counsel, under Petitioner's view, an injured party would see his/her recovery reduced by more than sixty-six percent (or more, depending on the percentage of the attorney's contingency fee) before

realizing a single dime. Accordingly, under this scheme, injured parties would need to insist on increased compensation before being willing to settle. In other words, they would need to demand higher settlements to offset the state's one-third assessment, so that their net recovery would reasonably compensate them for their injuries. For their part, defendants surely would not volunteer to bear the cost of the state's one-third Medicaid assessment and would only be willing to pay what they believe to be a reasonable value of the claim. As the injured party's demands and the defendant's offers grow farther apart, fewer and fewer litigants will be able to identify common ground on which to settle.

With fewer cases settling, the number of lawsuits pending before courts, whose resources already are strained, will grow. Among other problems, an increased caseload would increase the time it takes cases to reach resolution and otherwise slow the administration of justice. For these reasons, which Petitioner largely ignores, the Fourth Circuit's decision should be affirmed.

ARGUMENT

I. Petitioner's Position Is Patently and Inherently Unfair

Under Petitioner's view of the law, the state is entitled to take up to one-third of an injured party's recovery to recoup medical expenses paid under Medicaid regardless of the amount of compensation actually received for medical expenses. This Court already has determined that a state can exercise a lien only over funds paid as compensation for medical ex-

penses. *Ahlborn*, 547 U.S. at 284-85. In other words, a state cannot impose a lien and seek to take funds paid as compensation for pain and suffering, or any other aspect of damages besides medical expenses. To facilitate its end-run around the Court's holding in *Ahlborn*, Petitioner reads the North Carolina Medicaid recovery statute as a proper allocation of compensation for medical expenses. It is not.

Petitioner's reading is misguided and flatly unfair for at least two reasons. First, in the face of *Ahlborn*, it wholly ignores the actual compensation received by the injured party for medical expenses. Whether an allocation is determined by the parties or a jury (or not determined at all), the state has imposed by fiat its one-third medical expenses allocation in all cases involving Medicaid.

Cases such as the one presently before the Court illustrate the blatant unfairness of Petitioner's view. Here, the injured party, a minor, suffered permanent life-altering injuries. Because there was limited insurance available, and a defendant who was not fully solvent, the injured party was forced to settle for what was available. The entirety of her settlement reasonably and justifiably could have been allocated by the superior court judge to pain and suffering without her being made whole. Under Petitioner's view of the statute, though, the state is empowered to swoop in and seize one-third of the full amount received, further depleting the injured party's already insufficient recovery and exacerbating the inadequacy of the compensation received for her injuries. The state should be required to respect, or to at least consider, the actual compensation received for medi-

cal expenses so that its lien is not disproportionate to the total compensation provided to the injured party.

Petitioner's view is patently unjust for another reason. The mechanism of recovery utilized by the state is an absolute power-play that shifts the entire burden of recovery to the injured party. In appropriate cases, the state has a right of subrogation for expenses paid under Medicaid. The state is free to exercise its right of subrogation, and pursue on its own a recovery of healthcare expenses paid on account of another's tortious acts. If the state were to follow that route, it would incur and bear the expenses associated with its recovery (time, resources, attorneys' fees, and costs, among other expenses). It would also bear the risk associated with recovery efforts. Under Petitioner's view, though, the state does not have to bear any cost or risk. Instead, it can sit back and wait for the money to appear, while the injured party bears all of the cost and risk associated with obtaining a recovery. If the injured party is successful, the state can then seize its presumptive share free and clear, without risk. It is unreasonable for the state to shift the costs and risks associated with recovery to the plaintiff and, at the same time, ignore the extent to which the plaintiff is actually compensated for his/her medical expenses.

The inequities of Petitioner's position, if adopted, also would prove disruptive to our legal system. Particularly worrisome are the undesirable impact the state's presumptive lien would have on settlement prospects in cases involving Medicaid and the resulting increased burden on our court system. If the Fourth Circuit is overturned, as Petitioner urges, these undesirable outcomes could become reality.

II. If Adopted, Petitioner's Position Would Strongly Dissuade Settlement in Tort Cases Involving Medicaid

As Petitioner notes, under North Carolina's statutory scheme, the Medicaid recipient's lawyer is charged with enforcing the state's lien against proceeds received from a third-party tortfeasor as compensation for medical expenses. (Pet.'s Br. at 24.) According to Petitioner, at the time of settlement discussions, the recipient's lawyer can (and should) notify all parties of the amount of medical expenses paid so that the state's lien can factor into the parties' settlement evaluations. (*Id.*) Because the lien amount is statutorily prescribed at one-third of the settlement proceeds, Petitioner argues, all parties will know in advance what impact the lien will have on any settlement payment and will negotiate accordingly. (*Id.*) Petitioner views this feature of North Carolina's statutory scheme as a positive development that benefits all parties in litigation. (*See generally id.* (highlighting the purported benefits of North Carolina's statute).) Petitioner's stance is naive, and ignores the realities of adversarial litigation.

A. Petitioner Ignores the Realities of Settlement Motivations

Numerous courts have observed that the vast majority of cases are resolved through settlement. *See, e.g.*, *Pratt v. Philbrook*, 109 F.3d 18, 20 n.4 (1st Cir. 1997) (discussing the role of courts in encouraging settlements); *Bell, Boyd, & Lloyd v. Tapy*, 896 F.2d 1101, 1103 (7th Cir. 1990) (noting that most case settle to avoid the costs of trial); *Delaventura v. Colum-*

bia Acorn Trust, 417 F. Supp. 2d 147, 150-52 (D. Mass. 2006) (noting that most cases settle and discussing that federal MDL procedures are designed to encourage settlement). The judiciary's limited resources make settlement a speedier alternative in many cases. Moreover, settlements are overtly encouraged through court-sponsored mediation programs, which are now mandatory in many jurisdictions. These (and other) factors contribute to the current litigation landscape, in which the majority of all cases filed are resolved through settlement, with only a fraction of cases proceeding to trial. For example, of the 218,316 civil cases filed in North Carolina's district and superior courts from July 1, 2011 through June 30, 2012, only 463—or, less than one percent—were determined by a jury. *See* NORTH CAROLINA COURTS STATISTICAL AND OPERATIONAL REPORT, TRIAL COURTS (July 1, 2011 – June 30, 2012).[2]

Because so many cases settle, the impact that laws have on settlement incentives is a paramount consideration that should not be overlooked. Petitioner's view of North Carolina's Medicaid recovery statute, however, would have a lasting negative impact on parties' settlement motivations. For example, certainty and cost savings are two primary reasons parties choose to settle instead of taking cases to trial. Parties gain certainty because they know and control what they will pay or receive in settlement; costs come into play because parties can avoid much of the expense of litigation by resolving their differences early. As explained below, both of these set-

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[2] Available at <www.nccourts.org/Citizens/SRPlanning/Documents/2011-12_SOR-TrialCourts.pdf>.

tlement drivers would be significantly diminished under Petitioner's application of the law.

1. North Carolina's Presumptive Statutory Lien Is Especially Probelmatic in Contingency Fee Cases

The vast majority of personal injury cases—including those filed by or on behalf of Medicaid recipients—are brought by counsel under a contingency fee arrangement. In other words, the Medicaid recipient's lawyer will be compensated for his/her services with a percentage of the proceeds of the litigation. Common contingencies range from one-third to forty percent of the verdict or settlement amount.[3] Most Medicaid recipients, therefore, have to use at least one-third of their recovery to pay for the legal services that enabled them to obtain compensation for their injuries.

Petitioner contends, however, that another one-third of the Medicaid recipient's recovery should be paid to North Carolina, regardless of how the recovery is structured and regardless of the extent to which the recovery is intended to compensate for medical expenses. Under Petitioner's view, then, the Medicaid recipient—the injured party—will never see two-thirds (or more) of his/her compensation. Importantly, Petitioner would reduce the injured party's recovery by two-thirds even if only a small portion of the settlement or verdict was intended as compensation for medical expenses.[4]

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[3] In some instances, particularly in the event of a trial or when a verdict is appealed, the contingency fee can be even higher.

[4] Often, because of the prevalent use of general verdicts, the parties cannot know with any certainty how a jury allocated or

Because such a large segment is consumed by legal fees and the state's statutory assessment, injured parties will have little choice but to insist on higher compensation before agreeing to compromise their claims. If there were no lien imposed by the state, a Medicaid recipient who subjectively and reasonably believes that $100,000 net would be fair compensation could settle his/her case for $150,000. One-third ($50,000) could be used to pay the injured party's lawyer, and the remaining $100,000 would fairly compensate the injured party. When the state's irrebuttable one-third lien is injected into the equation, however, the same injured party would have to demand $300,000 to realize the same level of compensation (one-third, or $100,000, to the recipient's lawyer and another one-third, or $100,000, to satisfy the lien). In other words, under this example, the injured party's settlement target is doubled, from $150,000 to $300,000, simply because of the existence of the statutory lien.

Certainly other examples using different numbers would yield different results. The analogy, however, is valid; under Petitioner's view of the law, Medicaid recipients will have to demand significantly more money in settlement in order to realize an amount

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calculated damages. Petitioner's argument seems to be that even in cases when a special verdict form is used, and a jury separately compensates the injured party for each aspect of his/her claim for damages, the one-third lien still is triggered. This position is troubling, as it usurps the role of the jury in determining damages, demonstrates the arbitrary nature of decreeing one-third as the lien amount, and directly disobeys this Court's holding in *Ahlborn* that only compensation for medical expenses is subject to recovery by the state. *See, e.g.*, *Ahlborn*, 547 U.S. at 284-85.

that approaches what they believe is fair compensation for their injuries. Contrary to the rosy picture painted by Petitioner, this outcome would not represent a positive development in the law.

2. Higher Settlement Demands Necessarily Would Adversely Impact Settlement Prospects

Unfortunately, the negative consequences of Petitioner's application of the law do not simply end with higher settlement demands. Increased settlement demands will not, *ipso facto*, translate into higher settlements. Indeed, as injured parties are compelled to seek higher recoveries, settlement demands will more consistently fall outside the range of what defendants are willing to pay to avoid the risks associated with going to trial. Although this phenomenon is true in all cases, it will be particularly noticeable in cases when medical expenses did not play a significant role in the settlement discussion and are not a key feature of the compensation paid. As a natural consequence of having higher settlement demands, fewer cases will settle. *See generally* Stephen Bundy, *The Policy in Favor of Settlement in an Adversary System*, 44 HASTINGS L.J. 1, 13-15 (1992) (discussing settlement incentives and the claim value range in which both parties benefit from settlement).

As noted above, two of the primary drivers of settlement discussions are certainty and cost avoidance. Parties obtain certainty through settlement because they can control what they pay/receive in settlement, and they can avoid the unpredictability that is inherent in jury trials. Parties can avoid costs through settlement by resolving their difference before too much time and too many resources are directed at

discovery and trial; the sooner they settle, the more they can save. As the cost of settlement increases, however, these settlement motivations will become less and less attractive. In short, the relative cost of settlement will no longer compare as favorably to the cost of continued litigation. Once the cost savings associated with settlement diminishes (or vanishes outright), litigants will be less concerned with avoiding the uncertainty of juries and will be more willing to roll the dice in hopes of a positive outcome at trial.

To reiterate, the FDCC's concerns are not exaggerated and are not merely hypothetical. The existence of an irrebuttable one-third statutory lien would have a negative impact on settlement discussions. As shown above, the one-third lien can as much as double the target settlement amount required to fairly compensate an injured party for his/her injuries. To the extent North Carolina is entitled to seek recovery of amounts paid under Medicaid, it should be a matter of seeking actual medical expenses paid from actual compensation received for medical expenses.[5]

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[5] Although not directly addressed by the parties, the plain language of the federal Medicaid Act's anti-lien provision seems to preclude the existence of any state-asserted lien. *See* 42 U.S.C. § 1396p(a)(1). The Medicaid Act provides: "No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf" except (1) pursuant to the judgment of a court on account of benefits incorrectly paid or (2) in the case of real property belonging to the individual if certain specified conditions are met. *Id.* Here, there is no allegation of incorrectly paid benefits and the injured party, E.M.A., is a minor who owns no real property. Therefore, under a plain reading of the Medicaid Act, a lien in favor of North Carolina should not arise in any event.

Applying the law in any other way—and particularly imposing an irrebuttable one-third lien on the Medicaid recipient's full recovery regardless of the amount of compensation actually received for medical expenses—is untenable and inconsistent with this Court's directives in *Ahlborn*. If a lien must arise, it should be commensurate with the compensation actually received for medical expenses. If that were the case, the parties would be free to negotiate a settlement to resolve their differences without having to consider the weight of an automatic one-third assessment. Then, if appropriate, the Medicaid recipient would be free to negotiate with the state to determine the proper scope of the state's recovery.

B. Petitioner Ignores the Realities of How Damages Claims Are Evaluated

Petitioner claims throughout its brief that the one-third statutory lien is necessary to eliminate the incentive for litigants to avoid the state's lien by allocating most or all of the plaintiff's recovery to damages categories other than medical expenses. (*See* Pet.'s Br. at 30-33 (discussing the need for an automatic and unyielding lien to keep parties from allocating away the state's interest).) While Petitioner's argument may appear to have some simplistic appeal, it ignores the reality of how damages typically are evaluated for purposes of settlement.

Curiously, the National Governors Association and others who provided *amici curiae* support to Petitioner do not agree with North Carolina's reading of its own statute.[6] According to the National Gover-

[6] Joining the National Governors Association in a single *amici curiae* brief were the National Conference of State Legislatures,

nors Association's brief, North Carolina's statute, when read in conjunction with *Ahlborn*, encourages parties to allocate their settlements among the various aspects of damages, (*see* Nat'l Gov. Assoc. Br. at 9-11), something that Petitioner says cannot occur, (*see* Pet.'s Br. at 25-26). More specifically, the National Governor's Association affirmatively states that parties can avoid the one-third lien by allocating a specific portion of the damages recovery to medical expenses. (*Id.* at 10-11 ("*Ahlborn* . . . give[s] a Medicaid recipient a clear method for delineating the State's entitlement: specify the allocation in the settlement agreement."); *see also id.* at 4 (stating that the one-third lien is "avoidable" if the parties would specify a reasonable damages allocation in their settlement agreement).) According to the National Governors Association, if the parties specify a portion of damages as compensation for medical expenses, as long as the allocation is reasonable, the state will be bound by it. (*See id.* at 4, 10-11.)

Petitioner, of course, takes a very different stance in its brief. According to Petitioner, the state is not bound by the parties' allocation; it can utilize the one-third lien to recover its take notwithstanding the amount of compensation that may have been designated by the parties as compensation for medical expenses. (*See* Pet.'s Br. at 14-15, 25-26 ("Irrespective of whether the parties to a settlement purport to 'designate' the amount of the medicals or not, the Medi-

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the Council of State Governments, the National Association of Counties, the International City/County Management Association, the National League of Cities, the United States Conference of Mayors, the Government Finance Officers Association, and the City of New York.

caid lien is protected since it is established and defined by statute.").) In other words the very basis under which the National Governors Association found the North Carolina recovery statute consistent with *Ahlborn* is flatly undermined by Petitioner's opposite and unsupportable stance. As even the National Governors Association makes clear, without any ability for the parties to specify an appropriate and reasonable damages allocation, the North Carolina statute cannot be reconciled with *Ahlborn* because there is no way to ensure that the lien is representative of actual compensation for medical expenses. Petitioner's disregard for allocations by the parties, even if those allocations are reasonable, confirms that Petitioner is concerned not with accuracy, fairness, or following the law, but rather, with recovering as much money as it can, regardless of the consequences to the injured party or to the legal system.

Petitioner's proposed treatment of damages also is shortsighted for another reason—it fails to account for the fact that not all medical expenses claimed in personal injury litigation resulted from the actions of the tortfeasor. In many cases, the injured party suffers from pre-existing medical conditions; sometimes the incident that prompts a lawsuit aggravates a pre-existing condition; other times it does not. In any event, defendants often look for evidence of pre-existing medical conditions to counter the injured party's claims. Such evidence can show that the plaintiff would have experienced pain anyway, and in some cases, that the plaintiff was already injured at the time of the incident at issue in the lawsuit. When the validity of claimed medical expenses is called into question with evidence of a pre-existing condition, the settlement value of the plaintiff's claim necessarily is

diminished. Often, the amount of medical expenses the defendant is willing to cover or factor into its valuation of the case is thereby reduced, and this reduction is reflected in a concomitant reduction of the plaintiff's total recovery.

There is no room under Petitioner's theory, however, for this type of analysis. The state can acquire one-third of the plaintiff's total recovery regardless of the validity of the medical expenses involved in the case and regardless of what steps the defendant has taken to expose weaknesses in the plaintiff's claim for medical expenses. There is no start date or end date for medical expenses and, more importantly, no tracing of the expenses actually and ultimately at issue in a plaintiff's cause of action. Instead, the state categorically claims entitlement to one-third of the recovery without regard to the true nature of the recoverable expenses. Allowing the parties to allocate categories of damages, or to determine damages through some other adversarial process, would improve accuracy by ensuring that only damages actually caused by the tortfeasor are subject to recovery by the state. Unfortunately, these methods are not permitted under North Carolina's statute.

III. If Adopted, Petitioner's Position Would Result in Increased Burdens on Our Court System

As described above, the position advanced by Petitioner, if adopted, would neutralize settlement incentives, resulting in fewer settlements. Fewer cases settling necessarily would mean more cases pending. The obvious and unavoidable consequence would be a

noticeable increase in the burden on our court system.

As already explained, almost all cases are resolved in some manner prior to trial. Court-sponsored mediation programs offer a good demonstration of how effective settlement is at reducing the caseload of our judiciary. For example, on July 1, 2011, there were approximately 9,931 civil cases pending in North Carolina's superior court system. *See* NORTH CAROLINA COURTS MEDIATED SETTLEMENT CONFERENCE (MSC) STATISTICAL REPORT (July 1, 2011 – June 30, 2012).[7] By June 30, 2012, 2,813 of those pending cases were resolved through court-mandated mediated settlement conferences. (*Id.*) Another 1,967 cases were reported settled prior to or during a recess in the mediated settlement conferences. (*Id.*) In other words, North Carolina's mandatory mediation program had a hand in resolving 4,780 of the 9,931 cases that were pending on July 1, 2011. These figures represent a mediation success rate of almost fifty percent.[8] (*See id.*)

With settlement figures like these, it is apparent that North Carolina (as well as all other states) is heavily dependent on court-mandated mediation programs to manage caseloads and ensure efficient administration of justice. While Petitioner's position would not prevent all cases from settling, the FDCC expects it would result in a very significant and noticeable reduction in the frequency of settlement.

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[7] Available at <www.nccourts.org/Courts/CRS/Councils/DRC/Documents/msc_stats11-12.pdf>.

[8] Notably, these figures do not account for the numerous cases that settle after mediation has ended at an impasse.

Reduced settlement rates would soon translate into significant increased burdens on our court systems. These burdens would tax the resources of our court system and slow the administration of justice. The FDCC urges the Court to affirm the Fourth Circuit's decision in order to prevent such an untenable result.

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Petitioner's view of North Carolina's Medicaid recovery statute is inconsistent with the federal Medicaid Act and this Court's opinion in *Ahlborn*. Petitioner believes that the state is entitled to seize one-third of a Medicaid recipient's tort recovery regardless of what portion of that recovery represents compensation for medical expenses. This view is unfair and violates the law. Moreover, it would significantly diminish settlement prospects in personal injury cases involving Medicaid and increase the already substantial burden on our court system. The decision of the Fourth Circuit adequately protects North Carolina's interest while ensuring that the portion of the recipient's settlement or verdict that is subject to recovery is tied to actual recovery for medical expenses. The Fourth Circuit should be affirmed.

CONCLUSION

For the foregoing reasons, the decision of the Fourth Circuit should be affirmed.

Respectfully submitted,

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December 17, 2012