

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-3995

ABBEVILLE GENERAL HOSPITAL, ET AL.,

Plaintiffs-Appellants,

versus

DAVID L. RAMSEY, Secretary,
Department of Health and Hospitals, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana

ON PETITION FOR REHEARING

(Opinion September 22, 5th Cir., 1993, _____3d_____)

(November 26, 1993)

Before EMILIO M. GARZA, and DeMOSS, Circuit Judges, and ZAGEL*,
District Judge.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the
above entitled and numbered cause be and the same is hereby DENIED.
However, the panel opinion reported at 3 F.3d 797 is amended, by
the addition of footnote 19 to the last paragraph of the opinion,
as follows:

* District Judge of the Northern District of Illinois, sitting by
designation.

This Court cannot endorse such a *pro forma* compliance with the findings requirement of the Boren Amendment. LDHH's inability to articulate an orderly process of evaluation or to identify specific documents reviewed renders suspect its "findings" and renders meritless its argument that it engaged in a *bona fide* findings process. Because we find that LDHH, as a matter of law, failed to comply in practice with the Boren Amendment findings requirement, this Court REVERSES the district court's grant of LDHH's summary judgment motion and denial of the Hospitals' summary judgment motion. This case is REMANDED for proceedings not inconsistent with this opinion.¹⁹

¹⁹ We express no view on whether the Hospitals' summary judgment motion may be defeated, in part or in whole, by various affirmative defenses which were neither ruled on in the district court nor argued in this Court.

ENTERED FOR THE COURT:

United States Circuit Judge