IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
CHARTWELL HEALTHCARE, INC.,	§	CASE NO. 98-38546-SAF-7
DEBTOR.	§	
	§	
IN RE:	§	
	§	
EAST TEXAS HEALTHCARE, INC.,	§	CASE NO. 98-38547-SAF-7
et al.,	§	(JOINTLY ADMINISTERED)
DEBTORS.	§	
	§	
DIANE G. REED and JOHN LITZLER,	§	
PLAINTIFFS,	§	
	§	
vs.	§	ADVERSARY NO. 99-3273
	§	
HELLER HEALTHCARE FINANCE,	§	
INC., et al.	§	
DEFENDANTS.	§	

MEMORANDUM OPINION AND ORDER

By order entered June 28, 2001, the court directed the parties to brief the following issues:

(1) Does UCC §9.302(a)(5) apply if the assignor lacks "outstanding accounts?"

(2) Did the assignors have "outstanding accounts" at the time of the entry of the security agreements?

Memorandum Opinion and Order, entered June 28, 2001, at 27-29.

The East Texas Noteholders filed their supplemental brief on August 10, 2001. Heller Healthcare Finance, Inc., filed its response brief on August 28, 2001. The Noteholders filed their reply brief on September 10, 2001. On September 25, 2001, Heller filed a motion to strike issues raised for the first time in the Noteholders reply brief or, alternatively, to accept Heller's supplemental response.[1] The trustees take no position on these issues.

Like the construction of all codes, the construction of the Uniform Commercial Code is a holistic endeavor. See United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Inc., 484 U.S. 365, 371 (1988)(construing the Bankruptcy Code). The court must consider the particular statutory language, the design of the statute as a whole, and its object and policy. Kelly v. Robinson, 479 U.S. 36, 43 (1986). The court must give meaning to every word in the statute. United States v. Nordic Village, Inc., 503 U.S. 30, 36 (1992). The court must avoid readings of the UCC that create inconsistencies or contradictions. If the statutory scheme of the Code is coherent and consistent, then the

[1]The court disposes of the motion to strike as follows: The Florida and Missouri filing exemption statutory provisions read the same as the Texas provision. See Fla. Stat. §679.302(1)(e); Mo. Rev. Stat. §400.9-302(1)(e); and Tex. Bus. & Com. Code §9.302(a)(5). The court does not consider issues of the perfection and priority of Heller's lien or the collection efforts by Heller in this bifurcated portion of the adversary proceeding.

court generally need not enquire beyond the statute's language. United States v. Ron Pair Enterprise, Inc., 489 U.S. 235, 240-41 (1989). In Texas, the UCC directs that each section be "liberally construed and applied to promote its underlying purpose and policies." Tex. Bus. & Com. Code §1.102(a). The UCC intends to simplify, clarify and modernize the law governing commercial transactions and to permit the continued expansion of commercial practices through custom, usage and agreement of the parties. Tex. Bus. & Com. Code §1.102(a).

Section 9.302(a)(5) of the Uniform Commercial Code provides: "(a) A financing statement must be filed to perfect all security interests except the following: (5) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignors." Tex. Bus. & Com. Code §9.302(a)(5).

In its memorandum opinion entered June 28, 2001, the court observed that "[t]he filing exemption does not address the grant of a security interest in future acquired accounts, but rather addresses a security interest in outstanding accounts." The Noteholders contend that the court has misconstrued that provision in light of other Code provisions. Moreover, the Noteholders maintain that the provision covers existing and future accounts. With that recognition, the Noteholders read the provision to require that the court either look at the proportion of the receivables which the Noteholders reasonably expected to receive as security during the term of the loans or apply the percentage to the outstanding accounts at the time of attachment under §9.203. Tex. Bus. & Com. Code §9.203. Heller counters that by requiring "outstanding accounts," the exemption mandates the existence of outstanding accounts when the parties enter a security agreement. Consequently, Heller asserts that the exemption has no application to future accounts.

The filing exemption states that it applies to "an assignment of accounts." The parties recognize that the use of the term "accounts" in the UCC applies to both existing and after-acquired accounts. See e.g., Tex. Bus. & Com. Code §§9.301(a)(4), 9.306(e), 9.402, cmt. 2. Accordingly, the assignment of accounts covered by the filing exemption may be present or future accounts. Therefore, the court withdraws its contrary conclusion in the memorandum opinion entered June 28, 2001, at p. 27, quoted above.

But, the assignment of accounts only triggers the exemption test itself. The assignment of accounts, either alone or in conjunction with other assignments to the same assignee, cannot transfer a significant part of "the outstanding accounts of the assignor."

By the statute's plain language, the test applies to "outstanding accounts." "Outstanding accounts" does not mean the same as “accounts” under the UCC. The word “outstanding” modifies the word “accounts.” As just discussed, “accounts” may include existing and after-acquired accounts. “Outstanding accounts” constitutes a subset, therefore, of “accounts.”

The UCC does not define “outstanding.” The court should give the words of a statute their ordinary, contemporary, common meaning, absent an indication that the legislature intended them to bear some different import. Williams v. Taylor, 529 U.S. 420, 431 (2000). “Outstanding” commonly means “uncollected, unpaid.” Webster’s Third New Int’l Dictionary 1604 (1986). “Outstanding” is “remaining undischarged; unpaid; uncollected; as an outstanding debt.” Black’s Law Dictionary 994 (5th ed. 1979). Thus, an outstanding account is an existing, unpaid account; as contrasted with a future or after-acquired account.

Therefore, the plain language of §9.302 applies to an assignment of accounts, defined by the UCC as existing and after-acquired, which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding, meaning existing unpaid, accounts of the assignor. The assignor may assign existing and after-acquired accounts to the Noteholders as security, but the filing exemption only applies if the assignment does not amount to a significant part of the outstanding accounts of the assignor.

Section 9.302 does not define the time to determine the outstanding accounts. The Noteholders contend that the court should either consider their expectations at the time they entered the security agreement or apply the test at the time the security attaches to an account. In contrast, Heller maintains that the test applies at the time of the entry of the security agreement.

With a floating lien on after-acquired accounts, the lien attaches when the account comes into existence. Tex. Bus. & Com. Code §9.203. Under the Noteholders theory, the court would apply the filing exemption test each time an account comes into existence. However, that reading is neither coherent nor consistent with the UCC when read as a whole. As a general proposition, to perfect a security interest, the creditor must file its UCC financing statement in the appropriate place. See, e.g., Tex. Bus. & Com. Code §9.203(a)-(b). Notice filing furthers the UCC's objectives. Tex. Bus & Com. Code §9.402, cmt. 2. Notice filing simplifies, clarifies, and modernizes the law governing commercial transactions and permits the continued expansion of commercial practices.

But, the drafters recognized that non-commercial lenders in casual or isolated transactions take assignments of accounts. Tex. Bus & Com. Code §9.302(a)(5), cmt. 5. Because many of these lenders would not think of filing a financing statement, the drafters adopted §9.302(a)(5) as a filing exemption to assure that casual or isolated assignments would not be invalidated.

The filing exemption, therefore, must be construed to accomplish its purpose. The Noteholders have obtained a security interest in each and every account generated by the respective assignors for a period of ten years. Reading the exemption to require a percentage analysis at the time the account comes into existence would mean that the exemption would apply on a daily basis for a decade. That reading directly conflicts with the drafters' intent to protect only the casual or isolated assignment; not the daily and constant decade long series of assignments.

The United States Court of Appeals for the Eighth Circuit, however, has held that:

> The test requires a court to examine the circumstance surrounding the transaction, including the status of the assignee, to determine whether the assignment was casual or isolated. If a court finds that the transaction was not part of a regular course of commercial financing, it will not require filing. The underlying rationale behind the test appears to be the conclusion that it would not be unreasonable to require a secured creditor to file if he regularly takes assignments of a debtor's accounts, but it would be unreasonable if this was not a usual practice.

In re B. Hollis Knight Co., 605 F.2d 397, 401 (8th Cir. 1979)(citations omitted). The Noteholders invoke that explanation of the purpose of the filing exemption to support a proposition that the court should determine the percentage based on what the Noteholders reasonably expected to receive at the time of the assignment.

But the Noteholders misread Hollis Knight. In Hollis Knight, the Eighth Circuit dealt with an existing, outstanding account of $9,720. The court examined the face amount of the total accounts outstanding on the date of the assignment. 605 F.2d at 400. In the course of that analysis, the court examined the purpose of the filing exemption. The court did not purport to substitute the drafters' comment for the actual words of the statute. Rather, the court assessed the purpose of the filing exemption in adjudicating the application of the exemption.

The Noteholders would have the court read "outstanding" out of the statute. This the court may not do. The court must give each word meaning, assuring that no word is superfluous. Woodfork v. Marine Cooks & Stewards Union, 642 F.2d 966, 970-71 (5th Cir. 1981).

As previously discussed, "outstanding" means existing and unpaid or uncollected. Plainly, then, outstanding accounts must be the accounts existing and unpaid or uncollected at the time of the execution of the security agreement. At that time, the assignor and assignee enter a contractual arrangement providing for a security interest in accounts. Under the UCC, the accounts may be existing and hence outstanding and/or they may be future or after-acquired. The UCC establishes a filing requirement for perfection of the security agreement against third persons. But §9.302(a)(5) provides a filing exemption. If the assignor is assigning existing and/or future accounts, then the assignee must file the financing statement unless the assignee does not obtain a significant part of the outstanding accounts when the parties enter the security agreement. Reading the exemption consistently with the UCC's general filing requirements, the requirement of "outstanding accounts" must mean at the time of the entry of the security agreement. At that time, the UCC instructs whether the filing exemption applies.

If the assignee is a casual or isolated player not engaged in the regular course of commercial financing, then assignee will be protected by the exemption so long as the assignee does not obtain a significant part of outstanding accounts. The drafters believed that such casual lenders would neither expect nor consider the need to file a financing statement when they acquire only an insignificant part of outstanding accounts.

The Noteholders, however, do not fall within that category. For the most part, they acquired a security interest in future accounts generated from nursing home operations to be acquired by the assignor in part from the proceeds of the loans. For the most part, the assignors had no operations generating accounts at the time of the entry of the security agreements. The Noteholders looked to recover from future accounts over a period of ten years. Assignments of accounts, where the assignor has no present operations and thus no outstanding accounts, to be paid from a business to be acquired and then to be operated, over ten years, is neither casual nor isolated. It is a long term transaction, with daily attachments of a security interest to accounts, as generated, once the assignor acquires the business and begins operating the business, lasting a decade. It is both consistent and coherent with the UCC that such lenders would not be exempt from the filing requirement.

The UCC addresses the commercial lender, while protecting the non-commercial casual or isolated lender. A commercial lender looking to advance a secured loan to an entity knows that any prior security interests in collateral with priority would have a filed financing statement unless a filing exemption applied. The commercial lender would naturally consider the borrowers financial records in the course of due diligence leading to the loan. The commercial lender would look for outstanding accounts. If the borrower had outstanding accounts, then the commercial lender would know that an assignment of accounts (both outstanding and future) may not be filed if the assignment did not involve a significant part of the outstanding accounts. If the commercial lender found the borrower had outstanding accounts, then the commercial lender would be on notice by §9.302(a)(5) to review the borrowers records for an assignment of accounts and then proceed in its prudent business judgment. Conversely, if the commercial lender found that the borrower had no outstanding accounts, then the lender would know that an assignment of accounts would have to be filed to have priority over any security interest it obtained.

The Noteholders would turn that commercially prudent practice on its head, with a"gotcha" statutory interpretation. Even though §9.302(a)(5) has an "outstanding accounts" requirement, a lender could circumvent the filing requirement and defeat another lender by entering a security agreement when the borrower has no outstanding accounts without a filed financing statement and then invoke the filing exemption sometime in the future against after acquired or future accounts. The commercial lender who advanced a secured loan in the meanwhile would face a "gotcha" when it proceeded against the accounts. That reading does not simplify, clarify or modernize the law governing commercial transactions, nor does it permit the continued expansion of commercial practices.

But, the court's reading of the provision does advance those UCC policies. The casual or isolated non-commercial lender who takes a security interest in accounts need not file a financing statement if the assignment does not amount to a significant part of outstanding accounts at the time of the entry of the security agreement. Any contemporaneous or subsequent commercial lender would be on notice, if the borrower has outstanding accounts, that an assignment of accounts may be exempt from the filing requirement, but the commercial lender need not worry about the exemption if the borrower lacks outstanding accounts.

Barkley Clark has joined the Noteholders legal staff. He appears to be troubled by the court's reading, as the brief labors, with quotations from learned treatises and commentators, to re-write the language of the statute. But, that concern is misplaced. The filing exemption contemplates that the assignor will have outstanding accounts at the time of the entry of the security agreement. It contemplates an operating borrower. All of the cases cited by the parties involved operating borrowers. However, the filing exemption does not apply to borrowers without operations generating accounts. Neither the official comment nor the treatises or commentaries address a concern of an investor lending money to an entity to acquire a business. That is not the type of casual or isolated non-commercial lender that the filing exemption sought to protect. Rather, the filing exemption sought to protect the business lender who casually or on an isolated basis in the course of a routine business transaction takes an assignment of accounts without a thought to becoming a secured lender with a filed financing statement. By its very nature, the arrangement to be protected involves a transaction with a borrower operating a business generating outstanding accounts.

The Noteholders have cited several cases for the proposition that the assignment of accounts under §9.302(a)(5) may include future accounts. As the court has explained in this memorandum opinion, the court agrees with that reading of the UCC and has corrected its earlier conclusion to the contrary. But, each of the cases cited had outstanding accounts at the time of the entry of the security agreement. None stand for the proposition that the filing exemption applies if the assignor had no outstanding accounts at the time of the entry of the security agreement.

The other commentators, like Clark, apparently have a difficult time with the provision. Each commentator cited to the court had to explain the statutory test by re-writing it. Thus, Grant Gilmore changes the language to whether the "assignment, together with others which may be made to [the assignee] in the future will . . .result in the 'transfer [of] a significant part.'" East Texas Noteholders' Supplemental Brief on UCC Lien Issues at 3, <u>In re Diane G. Reed V. HCFP Funding, Inc.</u> (Adversary Proc. No. 99-3273). Gilmore writes "outstanding accounts" out of the statue. Professor Coenen states that the rule should read that the percentage test would be applied "on the dollar value of accounts held and transferred as of the date of each separate account comes into existence, at which time, under UCC section

9-203, the security interest in that account actually attaches." Id. That too reads "outstanding accounts" out of the statute. Moreover, it implies an ongoing, non-casual, not isolated, series of assignments of accounts. Maybe his language could be reconciled with the statute if the court applied the statute at the time each account comes into existence. But, that would create a litigation and jurisprudential nightmare, hardly consistent with the UCC's directive to simplify commercial transactions. Coenen recognizes that his analysis would present complex and artificial computation difficulties. Consequently, he suggests that a court would likely analyze cases by focusing more generally on the dollar value of accounts held and transferred over a continuing period. With all due respect, courts must adhere to the statutory language, and apply its plain meaning if consistent and coherent with the provisions of the UCC. If the commentators conclude that the statute does not cover all lenders they believe should be covered, then the remedy is with the legislature.

The court, therefore, concludes that an assignor must have outstanding accounts at the time of the entry of the security agreement purporting to assign accounts for the filing exemption of §9.302(a)(5) to be applicable.

Application of the Filing Exemption

East Texas Healthcare I, Inc.

In response to Heller's requests for admissions and interrogatories, Diane G. Reed, the Chapter 7 trustee of the bankruptcy estate of East Texas Healthcare I, Inc., admitted that East Texas Healthcare I, Inc., did not have any outstanding accounts on the date of each security agreement granted to the Noteholders. East Texas Healthcare I, Inc., executed security agreements with the Noteholders from May 12, 1993, to September 15, 1993. It did not acquire the right to operate a nursing home until after September 15, 1993. Consequently, there is no genuine issue of material fact that East Texas Healthcare I, Inc., did not have outstanding accounts at the time of the execution of the security agreements with the Noteholders. The filing exemption of §9.302(a)(5) does not apply.

East Texas Healthcare II, Inc.

In response to Heller's requests for admissions and interrogatories, Reed admitted that East Texas Healthcare II, Inc., did not have outstanding accounts on the date of each security agreement granted to the Noteholders. East Texas Healthcare II, Inc., executed security agreements with the Noteholders from October 1, 1993, to October 29, 1993. It did not acquire the right to operate a nursing home until after

October 29, 1993. Consequently, there is no genuine issue of material fact that East Texas Healthcare II, Inc., did not have outstanding accounts at the time of the execution of the security agreements with the Noteholders. The filing exemption of §9.302(a)(5) does not apply.

East Texas Healthcare, Inc.

In response to Heller's requests for admissions and interrogatories, Reed admitted that East Texas Healthcare, Inc., and its subsidiaries did not have any outstanding accounts on the date of each security agreement granted to the Noteholders. East Texas Healthcare, Inc., executed security agreements with the Noteholders from November 29, 1993, to March 21, 1994. The Noteholders have presented summary judgement evidence that subsidiaries of Chartwell Healthcare, Inc., acquired the right to operate seven nursing homes in East Texas effective December 31, 1993. There is summary judgment evidence that Joel Patrick Collier, O. L. Kimbrough, and Clark Collier Owen entered their security agreements on January 3, 1994. There is also summary judgment evidence that Edward Mack and W. M. Mathews entered their security agreements on March 21, 1994. As those security agreements post-date the acquisition of several nursing homes, there are genuine issues of material fact of whether East Texas Healthcare, Inc., or its subsidiaries had outstanding accounts on January 3, 1994, and/or March 21, 1994. But there is no genuine issue of material fact that East Texas Healthcare, Inc., or its subsidiaries did not have outstanding accounts at the time of the execution of the security agreements that pre-date December 31, 1993, and, as to those security agreements, the filing exemption of §9.302(a)(5) does not apply.

Chartwell Healthcare of Florida, Inc.

In response to Heller's requests for admissions and interrogatories, Reed admitted that Chartwell Healthcare of Florida, Inc., and its subsidiaries did not have any outstanding accounts on the date of each security agreement granted to the Noteholders. Chartwell Healthcare of Florida, Inc., executed promissory notes containing security agreements with the Noteholders with an effective date of March 15, 1996. Subsidiaries of Chartwell Healthcare of Florida, Inc., executed leases for the operation of nursing homes on March 18, 1996, to be effective no later than July 1, 1996. The nursing homes did not generate receivables for the Chartwell entities until May 1996. Consequently, there is no genuine issue of material fact that Chartwell Healthcare of Florida, Inc., and/or its subsidiaries did not have outstanding accounts at the time of the execution of the security agreements with the Noteholders. The filing exemption of §9.302(a)(5) does not apply.

Chartwell Healthcare Services of Florida, Inc.

In response to Heller's request for admissions and interrogatories, the trustee admitted the Chartwell Healthcare Services of Florida, Inc., and its subsidiaries did not have outstanding accounts on the date of each security agreement granted to the Noteholders. Chartwell Healthcare Services of Florida, Inc., executed promissory notes with security agreements with the Noteholders effective August 1, 1997. The subsidiaries of Chartwell Healthcare Services of Florida, Inc., executed leases for the operation of nursing homes effective July 31, 1997. There is no summary judgment evidence contradicting the trustee's admission that the subsidiaries did not have outstanding accounts at the time of the execution of the security agreements. There is no summary judgment evidence of accounts generated on or before August 1, 1997. The only reasonable inference to be drawn from the summary judgment evidence is that accounts were generated after the effective date of the security agreements. Consequently, there is no genuine issue of material fact that Chartwell Healthcare Services of Florida, Inc., and its subsidiaries did not have outstanding accounts at the time of the execution of the security agreements with the Noteholders. Therefore, the filing exemption of §9.302(a)(5) does not apply.

Chartwell Healthcare of Missouri, Inc.

In response to Heller's request for admissions and interrogatories, the trustee could neither admit nor deny that Chartwell Healthcare of Missouri, Inc., or its subsidiaries did not have outstanding accounts at the date of each security agreement granted to the Noteholders. The trustee could not locate any business records of these entities indicating accounts receivable balances as of November 28, 1994, the effective date of the security agreements. There is summary judgment evidence that Chartwell Healthcare of Missouri, Inc., or its subsidiaries acquired the stock of existing nursing homes corporations on November 24, 1994. There is summary judgment evidence that under the stock purchase agreement Chartwell Healthcare of Missouri, Inc., or its subsidiaries obtained all pre-existing receivables. Thus, there is a genuine issue of material fact of whether Chartwell Healthcare of Missouri, Inc., or its subsidiaries had outstanding accounts on the date of the security agreements.

Chartwell Healthcare Services of Missouri, Inc.

In response to Heller's request for admissions and interrogatories, the trustee admitted that Chartwell Healthcare Services of Missouri, Inc., and its subsidiaries did not have any outstanding accounts on the date of each security agreement with the Noteholders. The security agreements had an effective date of January 1, 1996. On December 18, 1995, subsidiaries of

Chartwell Healthcare Services of Missouri, Inc., executed subleases under which they acquired the right to operate nursing homes, effective January 1, 1996. The summary judgment evidence establishes that they began generating accounts in January 1996. There is no summary judgment evidence to contradict the trustee's admission. The summary judgment evidence establishes that the operation of the nursing homes began generating accounts sometimes after the effective date of the security agreements. Consequently, there is no genuine issue of material fact that Chartwell Healthcare Services of Missouri, Inc., and its subsidiaries did not have outstanding accounts on the date of the security agreements with the Noteholders. Therefore, the filing exemption of §9.302(a)(5) does not apply.

Chartwell Home Healthcare, Inc.

In response to Heller's request for admissions and interrogatories, the trustee could neither admit nor deny that either Chartwell Home Healthcare, Inc., or its subsidiary had outstanding accounts on the date of the security agreement with the Noteholders. The trustee could not determine the source of funds in certain bank accounts. There is summary judgment evidence that on or after May 15, 1997, Chartwell Home Healthcare, Inc., issued promissory notes to the Noteholders containing a security agreement. The summary judgment evidence does not establish the date of execution or the effective date.

The purpose of the notes was “to provide for debt financing for the acquisition of 70% of the stock of Valley Health Group, Inc[.]” There is summary judgment evidence that Chartwell Home Healthcare, Inc., acquired the 70% of the stock of Valley Health Group, Inc., on May 30, 1997, and that the acquired corporation had existing receivables. Consequently, there is a genuine issue of material fact of whether either Chartwell Home Healthcare, Inc. or its subsidiary had outstanding accounts on the date of the security agreements.

Conclusions

Based on the memorandum opinion entered June 28, 2001, as corrected by this memorandum opinion, and on this memorandum opinion, there is a genuine issue of material fact on the issue of whether the parent corporations had sufficient rights in the receivables of the subsidiary nursing home corporations which would enable the parent corporations to pledge those receivables to the Noteholders as security. The court need not decide that issue if the filing exemption of §9.302(a)(5) does not apply. For the filing exemption to apply, the assignor must have outstanding accounts at the time of the security agreement. If the assignor does not have outstanding accounts at that time, then the filing exemption does not apply. If the assignor does have outstanding accounts at that time, then the court would determine the percentage of the outstanding accounts of an assignor assigned to each Noteholder. The court would then determine if the percentage is a "significant part" of the outstanding accounts of the assignor.

There is no genuine issue of material fact that East Texas Healthcare I, Inc.; East Texas Healthcare II, Inc.; East Texas Healthcare, Inc., and its subsidiaries prior to January 1, 1994; Chartwell Healthcare of Florida, Inc., and its subsidiaries; Chartwell Healthcare Services of Florida, Inc., and its subsidiaries; and Chartwell Healthcare Services of Missouri, Inc., and its subsidiaries did not have outstanding accounts on the date of the execution or on the effective date of the security agreements with the Noteholders. Therefore, the filing exemption does not apply to them. Consequently, the court need not conduct a trial on the rights in collateral issue.

There is a genuine issue of material fact of whether East Texas Healthcare, Inc., and its subsidiaries after January 1, 1994; Chartwell Healthcare of Missouri, Inc., and its subsidiaries; and Chartwell Home Healthcare, Inc., and its subsidiary had outstanding accounts on the date of execution or the effective date of the security agreement. The court does not apply the "significant part " test of the filing exemption until the "outstanding accounts" issue is decided.

Orders

Based on the foregoing,

IT IS ORDERED that the motion of Diane G. Reed for partial summary judgment against the East Texas Noteholders is **GRANTED IN PART and DENIED IN PART.**

IT IS FURTHER ORDERED that the cross-motion of the Noteholders for partial summary judgment concerning the proceeds of receivables of East Texas Healthcare I, Inc., and East Texas Healthcare II, Inc., is **DENIED.**

IT IS FURTHER ORDERED that the motion of Heller Healthcare Finance, Inc., for partial summary judgment against the Noteholders is **GRANTED IN PART and DENIED IN PART.**

IT IS FURTHER ORDERED that the East Texas Noteholders do not hold an enforceable security interest in the accounts of East Texas Healthcare I, Inc.; East Texas Healthcare II, Inc.; East Texas Healthcare, Inc., and its nursing home subsidiary corporations for security agreements pre-dating January 1, 1994; Chartwell Healthcare of Florida, Inc., and its nursing home subsidiary corporations; Chartwell Healthcare Services of Florida, Inc., and its nursing home subsidiary corporations; and Chartwell Healthcare Services of Missouri, Inc., and its nursing home subsidiary corporations.

IT IS FURTHER ORDERED that the court shall conduct a trial on whether the Noteholders have an enforceable security interest in the accounts of East Texas Healthcare, Inc., and its nursing home security corporations for the security agreements of January 3, 1994, and March 21, 1994; Chartwell Healthcare of Missouri, Inc., and its nursing home subsidiary corporations; and Chartwell Home Healthcare, Inc.

Counsel for Diane Reed shall prepare an interlocutory judgment consistent with this order.

The court shall conduct a scheduling conference on **November 28, 2001, at 9:30 a.m.**

Signed this _____ day of October, 2001.

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Steven A. Felsenthal
United States Bankruptcy Judge