

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

INTEGRATED HEALTH SERVICES,  
INC., et. al.

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CHAPTER 11

Case No. 00-389 (MFW)

Jointly Administered

Objection Date: Jan. 27, 2003

Hearing date: Jan. 29, 2003 at 9:30 a.m.

Relates to Docket No. 1797

**MOTION FOR AN ORDER TO DETERMINE AND APPORTION  
BENEFITS ATTRIBUTABLE TO THE TRANSFER OF CERTAIN  
NURSING FACILITIES TO SENIOR HOUSING PROPERTIES TRUST  
AND RELATED ENTITIES AND FOR THE ENTRY OF AN ORDER  
COMPENSATING THE WOLFE ENTITIES FOR CONFERRING  
A VALUABLE BENEFIT ON CERTAIN DEBTORS' ESTATES**

Buchanan/SCC, Inc., Galaxy Pest and Richard W. Wolfe (“Buchanan” or “Wolfe” or “Galaxy” or together the “Wolfe entities”) move this Honorable Court for an Order to Determine and Apportion Benefits Attributable to the Transfer of Certain Nursing Facilities by Certain Debtors to Senior Housing Properties Trust (“SNH”) and related entities (together with SNH “SNH entities”) and for the Entry of An Order Granting, Authorizing and Directing that the Wolfe entities be compensated as a result of the direct benefit which the Wolfe entities have conferred on certain Debtors’ estates, to be paid directly from the proceeds of the sale (which is now pending before this Honorable Court) of certain assets by the Debtors to THI, Inc., if the sale is approved by the Court, or otherwise from the assets of the estate as an Administrative Expense of Integrated Health Services, Inc. and related Debtors (case 00-00389 et. al.) and for grounds state as follows:

1. On May 2, 2000 this Honorable Court conducted a hearing in regard to Integrated Health Services, Inc (“IHS”) and certain other estates as debtors and debtors-in-possession (collectively “the IHS Debtors”) motion for an Order, inter alia, approving a certain Settlement Agreement dated April 11, 2000 among the IHS Debtors and the SNH Entities, together with all appendices and agreements ancillary thereto (collectively the “Settlement Agreement”). IHS was on May 2, 2000 (and is presently) a Debtor in Possession being case # 00-00389 which is now pending before this Honorable Court. There are also 437 other affiliated cases now pending before this Court which are being jointly administered, but which have not been substantively consolidated with case 00-00389.

2. In furtherance of the motion to approve the Settlement Agreement, the IHS Debtors submitted pleadings to this Honorable Court concerning the financial rationale for the Settlement Agreement. The Debtors indicated that all objections to the motion had been resolved or withdrawn with the exception of the objection filed by the Wolfe entities (and the United States Department of Health and Human Services). Argument from the Wolfe entities was presented at a hearing conducted May 2, 2000 but the hearing was not closed with regard to the objection. At the conclusion of the proceedings, the hearing was continued for later submission with regard to the Wolfe entities’ objection. The Government’s objection related to transfer of the IHS entity facilities without an agreement by the transferee to accept or reject certain Medicare contracts and did not relate in any way to the allocation of the benefits of the sale to the various transferring estates, which number twenty two. In this regard, it was only the Wolfe entities that furthered the interest of the Debtors who were transferring positive cash flow facilities to SNH, and in this regard objected (on behalf of the transferring facilities) because no

consideration was being paid by SNH to the estates which provided the benefits (in the form of positive cash flow facilities) of the Settlement Agreement.

3. In support of the motion, IHS advised the Court that if the Settlement Agreement were consummated, the IHS Debtors would enjoy “a projected aggregate improvement of approximately \$16,889,000 in EBDTA after Capital Expenditures for the year 2000; (b) savings of more than \$5,000,000 in administrative rent payments, and (c) the release of several millions of dollars of mortgage debt and other pre-petition claims. Debtors believe that the Settlement Agreement presents the best, indeed the only, feasible alternative for alleviating the financial burden associated with the *SNH-related facilities*”. (Emphasis and underline added). See Debtors’ Supplemental Pleadings Paragraph 2 attached hereto as Exhibit “A.”<sup>1</sup> What the Debtors failed to point-out to the Court was that the “aggregate improvement” was at the expense of the estates that contributed positive cash flow facilities, yet they received nothing in return.

4. In response to the IHS Debtor’s motion, this Honorable Court asked whether the transfers contemplated by the Settlement Agreement would disadvantage the IHS Debtors that were transferring profitable facilities to the SNH Entities. In answer to this inquiry the Debtors admitted the cost of consummating the Settlement Agreement would be at the expense of the estates which were transferring the profitable facilities. See Paragraph 3 of Exhibit “A.”

5. In furtherance of the Wolfe entity’s objection, and to the direct benefit of the transferring estates, Wolfe (on behalf of himself and the Wolfe entities) traveled to Sparks Maryland prior to the entry of this Court’s order on the motion to approve the sale in order to

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<sup>1</sup> Exhibits are only being provided to Debtors' counsel, counsel for the Official Committee of Unsecured Creditors, and the office of the U.S. Trustee.

take the deposition of Daniel Booth who had been designated by the IHS Debtors as the individual with the most knowledge of the facts surrounding the Settlement Agreement. Mr. Booth's deposition is attached hereto as Exhibit "B". In pertinent part Mr. Booth testified that as a result of the transfer of the facilities to SNH one estate (case number 00-00531) would retain fee simple title to a facility located in Slidell, Louisiana, and would be released from an \$18,000,000 mortgage by SNH, but in return was required to pay nothing for the release. (Tr. Page 24 Line 13-18). The forgiveness almost equals the collectively stated book value according to the balance sheet prepared by the Debtors (See Exhibit "B-1") which was produced in response to the discovery request of the Wolfe entities. The Slidell facility is now being sold to THI, Inc. (see Exhibit 3.8 (a) of the purchase agreement, page S-65). Mr. Booth further testified that 19 leased facilities would be transferred to the SNH entities without any consideration other than a waiver of the transferring entities obligation to make future payments. (Tr. P 25 Line 21 and 26 Line 1-9). In actuality there were twenty five leased and managed homes transferred (see Debtors schedule of transferred properties attached hereto as Exhibit "C"). Of the leases transferred, 3 estates (cases 00-00435, 00-00449, 00-00689) transferred homes which had combined positive EBTDAX (Earnings Before Tax Depreciation Amortization and Capital Expenditures) of \$994,851 per annum. Yet the estates which contributed these facilities with positive EBTDAX received no compensation in return for the transfer. In addition, the Cannonsburg, Pennsylvania facility which was retained (case number 00-00540) received the benefit of having its lease with SNH reduced from \$2,000,000 per annum to \$1,200,000 while paying absolutely nothing for the benefit. The Cannonsburg lease is also being sold to THI, Inc. (see Exhibit 3.8 (b) of the purchase agreement, page S-74).

6. Mr. Booth further testified that various estates were contributing positive cash flow facilities to offset the negative cash flow of other estates. In particular Mr. Booth testified “This is part of the larger settlement whereby certain other facilities are going to have either debts forgiven or lease payments waived” See Booth Deposition (T. P 79 Line 21 and Page 80 Lines 1-7). In addition to the homes leased by SNH, all 12 mortgaged homes had a combined positive EBTDAX of \$3,234,568 per annum. Yet these 6 estates which transferred these facilities (cases 00-00439, 00-533, 00-00534 00-00734, 00-00817, and one management contract with an unknown estate number) received no consideration for the transfer. See Booth Deposition (Tr. Page 90 Lines 9-21 and Page 91 Line 1).

7. Mr. Booth further testified that ninety percent of the total negative cash flow was attributable to only three facilities (Tr. P83 Lines 1-21). These three homes were managed (with the obligation to fund negative cash flow such as in a lease) and had negative EBTDAX of (\$5,731,111) per annum (See Exhibit “C”). Moreover, the exhibits attached to Mr. Booth’s deposition, which were prepared by the IHS Debtors (as a result of the Wolfe entities' request for more detailed information), to the benefit of the various estates, conclusively established that nine facilities (one leased and eight owned) which had not been previously leased by or encumbered by SNH were transferred free and clear to SNH, yet five estates (00-00148, 00-00425, 00-00439, 00-00615, and 00-00733) which contributed these valuable assets, and which had a combined positive EBTDAX of \$876,255 per annum (see Exhibit “C”) and a net book value of approximately \$9,077,330 received no consideration in return for giving up these facilities or their positive cash flow.

8. On July 7, 2000 this Honorable court resumed the hearing on the motion to approve the transfer to SNH and had been provided with a proposed Order by IHS’ counsel

which provided that the estates which owned or leased the facilities being transferred would receive the proceeds from the sale, if any. Of course there were no proceeds and to this day the aforementioned estates have received no consideration whatsoever in return for transferring these valuable assets.

9. Upon hearing the Wolfe entities objections on July 7, 2000 the Court noted that the IHS cases had not been substantively consolidated and the Court expressed its' concern with the SNH transfer in this regard. As a result, the Court amended IHS' proposed order and entered its order reserving jurisdiction to resolve these matters and ordered that the approval of the Settlement Agreement was without prejudice to any claims of the creditors of the IHS Debtors or any claims of the IHS Debtors for an allocation of the benefits conferred or the burdens incurred as a result of the transactions to be effected under the Settlement Agreement and transfer to SNH. This Court's order of July 7, 2000 is attached hereto as Exhibit "D".

10. SNH later reported in its' filing with the Securities and Exchange Commission (report 10-k for the period ending December 31, 2000) in part on page four:

"At the beginning of 2000 we leased 27 nursing homes, including three with some adjacent senior apartments, located in nine states and had mortgage investments secured by 12 nursing homes in three states all of which were operated by IHS. IHS stopped paying rent and debt service to us in January 2000 and filed for bankruptcy on February 2, 2000. After the IHS bankruptcy we negotiated a settlement of IHS' obligations to us as follows: IHS surrendered to us its leasehold interest for 26 of our properties, IHS gave us deeds to nine nursing homes (including one of which was closed) and various parcels of land which it had owned debt free and IHS paid us some of our rental arrearages. In exchange, we released IHS from its obligations for the 26 surrendered leaseholds and the 11 mortgaged properties, we released our mortgage for one property which was retained by IHS and the rent for one of our properties which IHS continues to operate was lowered and the lease term extended for a new 10 year period" (underline added). Due to the voluminous size of the 10-k page 4 and 5 are attached to this motion and the entire 10-k is attached to the filed motion as Exhibit "E". A full copy of the 10-k is available on line through the SEC Edgar system, or will be provided by the Wolfe entities upon request.

SNH further explained on page 8 of the 10-k also attached as part of Exhibit “E” that “IHS was unable or unwilling to pay us in money for the damages we incurred as a result of its lease terminations and mortgage defaults. As part of the settlement approved by the IHS Bankruptcy court, IHS *delivered title to nine nursing homes which it previously owned debt free in partial satisfaction of our claims against IHS* (emphasis added). Because we did not own or mortgage these properties prior to the IHS bankruptcy, these properties were not foreclosed properties ....” (emphasis and underline added) 2000 10-k Page 8. As a result of the Settlement Agreement, SNH reported that they recorded a **gain** of \$7,100,000 on the transaction and a recovery of expenses in the amount of \$3,500,000. See 2000 10-k page 33.

Accordingly, the Wolfe entities respectfully move this Honorable Court for an Order finding that the following benefits have been conferred and burdens incurred, and that the benefits should be apportioned as follows:

A. That the estate (case number 00-00531) which owns the Slidell Louisiana facility has benefited in the amount of \$18,000,000 as a result of its’ mortgage being released, without paying any consideration for the benefit;

B. That the Cannonsburg, Pennsylvania facility (case number 00-00540) received the benefit of having its lease with SNH reduced by \$800,000 per annum (from \$2,000,000 per annum to \$1,200,000) without paying any consideration for the benefit;

C. That the estates listed on Exhibit “F” (the detail) have contributed both positive and negative cash flow facilities. Yet, the estates listed on Exhibit “F-1” (the summary) have contributed facilities with positive cash flow to the SNH transaction but to date have received no consideration for having transferred the valuable assets.

D. That SNH benefited from the transfers to the detriment of the transferring estates by realizing a gain of \$7,100,000 and recovering \$3,500,000 in expenses to the detriment of the estates which received no consideration for transferring the positive cash flow facilities;

E. That four times EBTDAX is a reasonable multiple to determine the value of a nursing home or a nursing home lease. See the affidavit of Linda Holmes-Rubin attached as Exhibit G.

Accordingly, the following cases have conferred a benefit by contributing facilities with an annual positive EBTDAX of \$5,899,893 to the SNH transaction and after applying a multiple of 4 to the positive EBTDAX, the fair value of the allocated benefits can be summarized as follows:

| <u>Case #</u> | <u>EBTDAX</u> | <u>Multiple of<br/>EBTDAX</u> | <u>Fair value of<br/>contributed<br/>assets</u> |
|---------------|---------------|-------------------------------|---|
| 148           | 457,713       | 4                             | 1,830,852                                       |
| 425           | 14,264        | 4                             | 57,056  |
| 435           | 305,888       | 4                             | 1,223,552                                       |
| 439           | 1,568,408     | 4                             | 6,273,632                                       |
| 449           | 268,536       | 4                             | 1,074,144                                       |
| 533           | 342,209       | 4                             | 1,368,836                                       |
| 534           | 1,062,604     | 4                             | 4,250,416                                       |
| 540           | 800,000       | 4                             | 3,200,000                                       |
| 615           | 91,917        | 4                             | 367,668   |
| 689           | 420,427       | 4                             | 1,681,708                                       |
| 733           | 157,214       | 4                             | 628,856   |
| 734           | 165,243       | 4                             | 656,472   |
| 817           | 183,361       | 4                             | 733,444   |
| unknown       | 62,109        | 4                             | 248,436   |
| Total         | 5,899,893     |                               | 23,595,072                                      |

I. That through the efforts of the Wolfe entities in pursuing the proper determination and apportionment of benefits conferred, the Wolfe entities have single-handedly conferred a

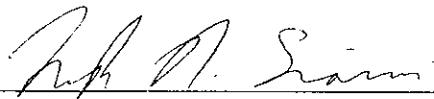


valuable benefit on the estates which transferred the positive EBT-DAX facilities to SNH, but only if the Court grants the Wolfe entities motion to apportion the proceeds from the sale between the IHS estates and THI, Inc. In such event, the Wolfe entities move this Court pursuant to Section 105 and 503 et. seq. of the Bankruptcy Code for an Order compensating them for their efforts in an amount equal to twenty five (25%) percent of the total benefit conferred, or \$5,898,768, which sum shall be paid directly at the time of closing from of the proceeds of the sale between IHS, the related cases and THI, Inc. if approved by this Honorable Court, and if the sale between IHS and the related cases and THI is not approved by the Court, the Wolfe entities move this Honorable Court that they be granted an Administrative Expense in the IHS case (00-00389) and related cases of \$5,898,768 with the balance of the conferred benefit (\$17,696,304) being apportioned and allocated to each case as follows:

| <u>Case #</u>               | <u>Annual EBT-DAX</u>                       | <u>Multiple of EBT-DAX</u> | <u>Fair value of contributed assets</u> | <u>Net allocation after 25% deduction</u> |
|-----------------------------|---|----------------------------|---|---|
| 148                         | 457,713                                     | 4                          | 1,830,852                               | 1,373,139                                 |
| 425                         | 14,264                                      | 4                          | 57,056                                  | 42,792                                    |
| 435                         | 305,888                                     | 4                          | 1,223,552                               | 917,664                                   |
| 439                         | 1,568,408                                   | 4                          | 6,273,632                               | 4,705,224                                 |
| 449                         | 268,536                                     | 4                          | 1,074,144                               | 805,608                                   |
| 533                         | 342,209                                     | 4                          | 1,368,836                               | 1,026,627                                 |
| 534                         | 1,062,604                                   | 4                          | 4,250,416                               | 3,187,812                                 |
| 540                         | 800,000                                     | 4                          | 3,200,000                               | 2,400,000                                 |
| 615                         | 91,917                                      | 4                          | 367,668                                 | 275,751                                   |
| 689                         | 420,427                                     | 4                          | 1,681,708                               | 1,261,281                                 |
| 733                         | 157,214                                     | 4                          | 628,856                                 | 471,642                                   |
| 734                         | 165,243                                     | 4                          | 656,472                                 | 492,354                                   |
| 817                         | 183,361                                     | 4                          | 733,444                                 | 550,083                                   |
| unknown                     | 62,109                                      | 4                          | 248,436                                 | 186,327                                   |
| Total of benefits conferred | 5,899,893                                   |                            | 23,595,072                              |   |
|                             | Less 25%                                    |                            | -5,898,768                              |   |
|                             | Net to be allocated to contributing estates |                            | 17,696,304                              | 17,696,304                                |

Respectfully submitted this 21st day of January 2003.

Dated: January 21, 2003



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