

**IN THE CHANCERY COURT FOR LEWIS COUNTY  
AT HOHENWALD, TENNESSEE**

**IN RE:** )  
 )  
**SENTINEL TRUST COMPANY** ) **No. 4781**  
 )  
 )

**BRIEF IN SUPPORT OF OBJECTION TO DENIAL OF  
RELIANCE HEALTH CARE/RECEIVER'S CLAIM**

Comes now Reliance Health Care Management, Inc. ("Reliance"), through counsel of record and in its capacity as court-appointed Receiver in *Sentinel Trust Company v. Park Place, Ltd. and Tyler Health Facilities Development Corporation*, Dist. Court of Smith County, Texas, Case No. 99-2572-A (the "Park Place Receivership Case"), relative to the Park Place Nursing Center nursing home property which was located at 2450 East Fifth Street, Tyler Smith County, Texas (the "Tyler Park Place Property"), and submits the following Brief in support of its objection to the denial of its claim filed in this case.

**HISTORY OF PARK PLACE RECEIVERSHIP**

In 1999 Sentinel Trust Company (before this receivership) filed suit in Texas to preserve collateral and asked the Court to authorize the receiver there, Tri-Health, to take steps to preserve and sell the collateral. Pursuant to Sentinel's request and the Court's orders the receiver continued the operations of the nursing home collateral until sold. In the course of continuing the operations during the receivership certain parties provided services and supplies to the nursing home in anticipation of payment for same. When Tri-Health handled the sale of the nursing home in September, 2003 the proceeds were

primarily used to pay the expenses incurred in operating the Collateral and administering the receivership. However, Tri-Health turned possession of more than \$425,000 of the funds (this is an estimate-Sentinel/Receivership Management should have the exact dollar amounts and dates received) over to Sentinel Trust Company. On or about the time of the sale in September, 2003 Sentinel became aware of potential unlawful conduct on the part of principals of Tri-Health. Sentinel asked the Texas court to replace Tri-Health as receiver and an order was entered replacing Reliance Health Care Management, Inc. as receiver on December 9, 2003.

Sentinel kept in its bank account(s) approximately \$425,000 of the funds Tri-Health sent to Sentinel out of the Tyler Park Place sale proceeds. Sentinel distributed the remainder it had received from Tri-Health to bondholders. Upon information and belief, as of the time that Receivership Management, Inc. took over Sentinel Trust Company, Sentinel Trust Company held approximately \$425,000 in funds which Sentinel received from the Park Place Receivership. Upon information and belief, these funds were retained by Sentinel in part because it was unclear as to whether Tri-Health had properly distributed the sale proceeds and in part to ensure that funds would be available in the event there arose or remained outstanding obligations related to the operation of the Tyler Park Place Property Collateral and administration of the Park Place Receivership. In fact, in approximately November, 2004, Sentinel (then through its receiver Receivership Management, Inc.) asked the Texas court to establish a proof of claim process and deadlines, presumably to finalize any potential outstanding claims related to the Tyler Park Place Receivership. On November 4, 2004, the Texas court established this process and required notice to all "post-receivership" creditors, meaning the creditors who

claimed they were owed monies for which the debt was incurred during the time when Sentinel asked and the Court authorized the Tri-Health receiver to continue to operate the Collateral and related to the sale of the Collateral. See order of November 4, 2004, attached hereto and incorporated by reference). Numerous creditors filed post-receivership claims in the Park Place Receivership.

There were very limited funds left for payment of obligations owed to post-receivership creditors in the Tyler Park Place Receivership. When the current receiver, Reliance, became aware that funds had been held by Sentinel/Receivership Management, Inc., and that there would be a claims process in the Sentinel case, the receiver elected to try to recover those funds via the Sentinel Receivership claims process, on the basis that these funds belong to the Texas receivership for payment of post-receivership claims and Sentinel in such sums as the Texas court deems proper.

#### PARK PLACE RECEIVERSHIP ORDERS APPOINTING RECEIVERS

In 1999 Sentinel Trust Company ("Sentinel") sought the appointment of a receiver for the Tyler Park Place Property to preserve its collateral for bonds issued relative to the property. A copy of the November 19, 1999 Order appointing the first receiver in the Park Place Receivership, Tri-Health Services, Inc. ("Tri-Health") is attached hereto as Exhibit A and incorporated by reference. This original order authorized Tri-Health to "take complete possession of all property and instruments...and the income, profits, including without limitation the cash on hand to operate the Project..." and to "receive, collect and preserve all incomes, profits and other revenues generated from the Collateral", to "pay over to Sentinel all excess revenues" (page 6 of the November 19, 1999 Order). The order directs the receiver to "institute, prosecute,

defend and settle such legal proceedings as the receiver deems necessary relating to the...collection of rents or other payments of any description past due, currently due, or hereafter to become due..." (page 8 of the Order). The order further authorizes the receiver to "generally do, execute, and perform any other act, deed, matter, or thing whatsoever that the Receiver reasonably deems ought to be done, executed, and performed in and about or with respect to the Collateral and its revenues" (page 9 of the Order).

On December 9, 2003, the Court entered an Order substituting Reliance Health Care Management, Inc. as receiver in the Park Place Receivership. A copy of the Order is attached hereto and incorporated by reference.

**THE PARK PLACE RECEIVER'S PROOF OF CLAIM IN THE SENTINEL  
RECEIVERSHIP**

It is the Park Place Receiver's position that it is fundamentally unfair for Sentinel to take actions to preserve the Collateral, permit services to be rendered and debts to be incurred in preserving the Collateral, then collect the proceeds from the sale of the Collateral without paying those remaining claimants who are owed monies relative to the post-receivership operation of the Collateral and administration of the receivership suit. Sentinel, by its receiver, contends that the service of notice on the individual Park Place claimants and their failure to present an individual proof of claim is sufficient to bar them from their claims. The Receiver disagrees that this is the exclusive method by which these claimants are entitled to recover these monies. These claimants are entitled to rely on the Receiver to collect all monies that belong in the Park Place Receivership for payment to claimants. Pursuant to the above-described orders the Park Place Receiver has ample authority from the Texas Court to take all steps necessary

to pursue monies for purposes of paying claimants and Sentinel in such manner as is ordered by the Texas Court. That is precisely what this Receiver is doing and the Receiver therefore respectfully moves that the Court sustain the Receiver's objection and approve the Receiver's claim. Once approved, the Court should require Sentinel, through its receiver, to identify the amounts received and remaining in its possession relative to the Park Place sale proceeds and should order such amounts distributed to the Park Place Receiver for distribution by the Texas Court in the Park Place Receivership.

Respectfully submitted,

RELIANCE HEALTH CARE MANAGEMENT, INC.,  
RECEIVER

KEATON & TURNER

BY: 

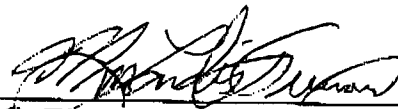
Landis Turner, BPR # 3299  
102 North Court Street  
P. O. Box 789  
Hohenwald TN 38462  
Phone: 931-796-2264  
Facsimile: 931-796-5961

**CERTIFICATE OF SERVICE**

I, Landis Turner, do hereby certify that a true and correct copy of the foregoing has been mailed with sufficient postage thereon this 12th day of May, 2006, to the following:

Jeanne B. Bryant, Receiver  
Receivership Management, Inc.  
215 Centerview Dr., Suite 133  
Brentwood, TN 37207

J. Graham Matherne  
2525 West End Avenue  
Suite 1500  
Nashville, TN 37203-1423



\_\_\_\_\_  
Landis Turner

11/05/2004 12:51 FAX 8152581726

WYATT, TARRANT & COMBS

002/005

NOV. 5. 2004 12:00PM RAMEY & FLOCK LAW

NO. 349 P. 2

NO. 99-2572-A

SENTINEL TRUST COMPANY,

Plaintiff,

v.

PARK PLACE, LTD. and  
TYLER HEALTH FACILITIES  
DEVELOPMENT CORPORATION

Defendants.

IN THE DISTRICT COURT OF

SMITH COUNTY, TEXAS

7<sup>TH</sup> JUDICIAL DISTRICT

SMITH COUNTY TEXAS

DEPUTY

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LOIS ROGERS  
DISTRICT CLERK

**ORDER ESTABLISHING PROOF OF CLAIM PROCEDURE AND ESTABLISHING DEADLINES, INCLUDING PROOF OF CLAIM BAR DATE**

This matter came before the Court through the filing by Sentinel Trust Company in Receivership ("Sentinel") of a Motion to Establish Proof of Claim Procedure and Timeframes Including Setting of a Bar Date for Submission of Proof of Claim ("Motion"). That Motion seeks an order (a) establishing a proof of claim procedure for post-receivership creditors to submit claims to the Receiver, Reliance Healthcare Management, Inc. ("Reliance"), (b) establishing a final Proof of Claim Bar Date for submission of such claims, (c) approving the Proof of Claim form, (d) approving the form of a correspondence that would be sent to all post-receivership creditors known to Reliance that gives notice of the Proof of Claim process ("Notice Letter") and (e) approving that, based upon information concerning applicable payment priorities, amounts available for distribution and amounts of post-receivership claims, the Proof of Claim process be directed only to post-receivership creditors.

This Court, having reviewed the Motion, finds as follows:

1. Given the priorities of payment set forth in Texas CPRC § 64.051, given the amount of funds available for distribution and given the amounts known to be claimed by post-

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P. 3

receivership creditors, the Proof of Claim procedure set forth herein need only be directed to post-receivership creditors set forth in the records of the Receiver and/or in Sentinel's Motion.

2. Establishing a Proof of Claim procedure, including the establishment of a Proof of Claim Bar Date by which post-receivership creditors must assert claims against the receivership estate, is necessary and appropriate for the efficient administration and closure of this receivership proceeding.

3. Notice of this Proof of Claim procedure, through the Notice Letter from Reliance to all known post-receivership creditors and others, as mentioned in Sentinel's Motion, is fair and reasonable and will give good and sufficient and due notice to the post-receivership creditors of their rights and obligations in connection with any claims they may assert against the receivership estate.

THEREFORE, IT IS ORDERED that the Proof of Claim procedure be directed only to post-receivership creditors of the receivership estate as set forth in the records of the Receiver and/or in Sentinel's Motion.

IT IS FURTHER ORDERED that each post-receivership creditor wishing to submit a claim against the Park Place/Tyler, Texas nursing home facility must do so in a fashion that the Proof of Claim and supporting documentation be received by Reliance by 5:00 p.m. C.S.T. on December 6, 2004 at the following address:

Reliance Healthcare Management, Inc.  
723 Parkway Street  
Conway, AR 72034  
(501) 932-0050  
(501) 932-0056 (fax)

IT IS FURTHER ORDERED that each proof of claim shall be submitted, in English, on the Proof of Claim form set forth as Exhibit D to the Motion and pursuant to the instructions set

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forth on that Proof of Claim form and in the Notice Letter from Reliance, a draft of which is set forth as Exhibit E to the Motion.

IT IS FURTHER ORDERED that any person or entity who/which fails to timely file a Proof of Claim form with attached supporting documentation shall not be treated as a creditor of the receivership estate, will not receive, or be entitled to receive, payment or distribution from the receivership estate, and will be barred from asserting any claim thereafter regarding any amounts it asserts it is owed.

IT IS FURTHER ORDERED that Reliance is authorized to and, within two weeks of entry of this Order, will send to all known post-receivership creditors a copy of this Order, a Proof of Claim form (as attached as Exhibit D to the Motion) and a Notice Letter (a draft of which is attached as Exhibit E to the Motion).

IT IS FURTHER ORDERED that, within three weeks of December 6, 2004, Reliance will have submitted to the Court, with a copy to all persons and entities who/which presented timely Proofs of Claim, a recommendation concerning payment of the funds available to it. Reliance will also submit, at that time, a statement of the fees and expenses that it has incurred in this receivership proceeding. Objection to Reliance's filing must be submitted to the Court within two weeks of the submission by Reliance. It will then be for the Court to further order Reliance as to the distribution of the funds available to it and, upon certification of distribution and submission of final accounting by Reliance, to approve the discharge of Reliance and its bond at a later date based upon proper motion & notice to all interested parties.

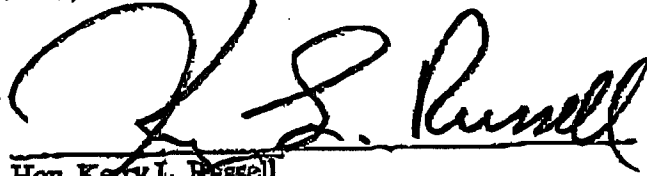
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NO. 349 P. 5

It is so ORDERED, this the 4<sup>th</sup> day of November, 2004.

  
Hon. Kerry L. Russell  
Presiding Judge

Approved and Submitted for Entry:



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State Bar #00790553  
Ramey & Flock, P.C.  
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(903) 597-3301

J. Graham Mathern  
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2525 West End Avenue, Suite 1500  
Nashville, TN 37203-1423  
(615) 244-0020

Counsel for Receivership Management, Inc.,  
Receiver of Sentinel Trust Company, in Liquidation

NO. 99-2572-A

FILED  
RECEIVED  
CITY CLERK  
MAY 15 2006

SENTINEL TRUST COMPANY,

Plaintiff,

v.

PARK PLACE, LTD., and TYLER HEALTH  
FACILITIES DEVELOPMENT  
CORPORATION,

Defendants.

IN THE DISTRICT COURT OF

BY *[Signature]*  
DEPUTY

SMITH COUNTY, TEXAS

7TH JUDICIAL DISTRICT

**ORDER SUBSTITUTING RECEIVER**

This matter came on for consideration on the Emergency Motion To Substitute Receiver (the "Motion") filed herein by Plaintiff, Sentinel Trust Company, as indenture trustee ("Sentinel"). This Court, having reviewed the pleadings, considered the statements of counsel, and being fully advised in the premises, finds as follows:

1. Sentinel is a Tennessee corporation with its principal place of business located in Hohenwald, Tennessee.
2. Sentinel is the indenture trustee for those municipal bonds issued in the original principal face amount of \$6,055,000 by the Tyler Health Facilities Development Corporation ("Issuer") on or about December 1, 1985 (the "Bonds" or the "Bond Issue").
3. Among the assets securing the Bond Issue is that 120-bed, skilled nursing facility located at 2450 East Fifth Street in Tyler, Texas, and all personal property located thereon (the "Project"), including the revenues generated thereby.
4. Sentinel initiated this action by filing Plaintiff's Original Petition And Verified Complaint For Appointment Of Receiver And Injunctive Relief seeking, among other things, the

appointment of a receiver for the assets of Defendant Park Place, Ltd. ("Borrower"), which serve as Collateral for the Bond Issue.

5. This Court has appointed Tri Health Services, Inc. ("Tri Health" or the "Receiver"), as receiver for the Collateral, pursuant to the Agreed Order Appointing Receiver And Granting Injunctive Relief (the "Receivership Order"), which the Court entered in this case on November 19, 1999. Unless otherwise indicated, all capitalized terms herein shall have the same meaning as ascribed to them in the Receivership Order.

6. All the ownership interests of the Borrower are currently held by Park Place Holdings, Inc., an entity controlled by the Receiver pursuant to that Agreed Order Approving Settlement And Continuing Receivership which was entered by this Court on December 14, 2000.

7. On July 24, 2002, at Sentinel's request, this Court entered its Order Authorizing Receiver To Engage Listing Agent (the "Listing Order").

8. On December 6, 2002, this Court entered its Amended Order Authorizing Receiver To Sell Project (the "First Sale Order") authorizing the Receiver to sell the Project.

9. The Receiver conducted the first sale on January 13, 2003, at 1:00 p.m., local time (the "First Sale Date"), at the offices of Thompson & Knight, LLP, 3300 Three Allen Center, 333 Clay Street, Houston, Texas, 77002.

10. The first sale did not close.

11. Subsequently, on August 13, 2003, this Court entered its Amended Second Order Authorizing Receiver To Sell Project (the "Second Sale Order").

12. The Receiver conducted the second sale on September 15, 2003, at 1:00 p.m., local time (the "Second Sale Date"), at the offices of Thompson & Knight, LLP, 3300 Three Allen Center, 333 Clay Street, Houston, Texas, 77002.

13. The second sale closed on September 30, 2003.
14. On September 25, 2003, Sentinel learned for the first time that James E. Koch, the President of Tri Health, along with six other defendants, had been indicted on August 28, 2002, in the United States District Court for the District of South Carolina, on charges of Conspiracy to Defraud Medicare and Obstruction of Criminal Investigation of Health Care Offenses, and that Mr. Koch had entered into a plea agreement on September 16, 2003, whereby a guilty plea was entered as to a certain lesser offense. Attached hereto as Group Exhibit A are true and correct copies of the indictment and plea agreement.
15. As best this Court can ascertain, none of the charges relate to the Project or Tri Health's activities as Receiver in this case. Nevertheless, on October 1, 2003, Sentinel notified Mr. Koch, as President of the Receiver, that Sentinel intended to ask this Court to replace the Receiver in this case as a result of such criminal charges and the plea agreement.
16. In light of Mr. Koch's indictment and guilty plea, Sentinel believes, and the Court is convinced, that Tri Health's removal as Receiver and the appointment of Reliance Health Care Management, Inc. ("Reliance Health Care") as Substitute Receiver (the "Substitute Receiver") is in the best interests of Sentinel, the receivership estate, and any other party who might assert an interest in the Project or other Collateral. Reliance Health Care has the requisite skill and resources to be the Substitute Receiver in this case.
17. The substitution of Reliance Health Care for Tri Health, as Receiver, will not result in any prejudice to the parties.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Tri Health is relieved of all duties as Receiver upon entry of this Order. Reliance Health Care shall be and hereby is duly appointed as the Substitute Receiver, and shall replace Tri Health in that capacity, to take

immediate possession and control of the Project and other Collateral, including all cash, proceeds, profits, and revenues generated therefrom, either now existing or hereafter acquired.

IT IS FURTHER ORDERED that the Substitute Receiver is hereby granted all the usual, necessary, and incidental rights, powers, duties, authority, and protections ordinarily granted to a receiver for the purposes of managing, operating, maintaining, and preserving the Collateral, and which were previously granted to the Receiver in the Receivership Order.

IT IS FURTHER ORDERED that the Substitute Receiver is also hereby granted any and all other rights as the Court may consider necessary, including but not limited to the powers enumerated in the Receivership Order.

IT IS FURTHER ORDERED that the Substitute Receiver is hereby empowered to take all necessary action to sell any remaining Collateral, upon terms hereafter approved by Sentinel and the Court.

IT IS FURTHER ORDERED that the compensation of the Substitute Receiver shall be paid in the same manner as the current Receiver in the amount of \$85.00 per hour for professional services and \$40.00 per hour for non-professional services, and that the Substitute Receiver shall be reimbursed for its expenses in accordance with the terms of the Receivership Order.

IT IS FURTHER ORDERED that Tri Health is prohibited from interfering in any way with the Substitute Receiver.

IT IS FURTHER ORDERED that Tri Health is prohibited from collecting, withdrawing, transferring, conveying, concealing or otherwise disposing of the Collateral, including but not limited to any profits, revenues and proceeds generated from the Project and shall immediately pay all profits, revenues and proceeds generated from the Project to the Substitute Receiver.

IT IS FURTHER ORDERED that Tri Health is prohibited from removing any of the Collateral or destroying, removing, concealing, changing or altering in any manner any of the books or records relating to the ownership, possession or operation of the Project or other Collateral.

IT IS FURTHER ORDERED that Tri Health is required to pay and turn over immediately to the Substitute Receiver, and to perform all acts necessary to transfer immediately to the Substitute Receiver, all accounts receivable and other collectibles, all funds on hand in cash, and all funds held in deposit accounts of or for the benefit of the Project, Receiver or Borrower arising from the ownership, possession or operation of the Project or other Collateral, and all keys, books, records, equipment, and other things in any manner related to the ownership, possession or operation of the Project or other Collateral.

IT IS FURTHER ORDERED that Tri Health shall prepare a final written accounting of all receipts, disbursements, and expenses incurred during its tenure as Receiver (the "Final Report") to be filed with this Court and served upon all parties hereto within ten (10) days of entry of this Order. The Final Report shall include Tri Health's fees and expenses through the date of such accounting, and shall specify that amount of fees and expenses which remains unpaid as of that date. Such Final Report shall also include (1) how much cash and accounts receivable, if any, the Receiver is transferring to the Substitute Receiver, and (2) the name and address of any post-receivership creditors of the Project, as well as the amount and nature of any outstanding liabilities asserted by such creditors, excluding those amounts due under the Bonds and *ad valorem* taxes which have been assessed against the Project or other Collateral.

IT IS FURTHER ORDERED that Tri Health shall file with the Court and serve on counsel for Sentinel and the Substitute Receiver, within ten (10) days after entry of this Order, a motion for discharge and final fee application for final approval of all fees and expenses paid to

the Receiver during the pendency of the receivership, as well as for any amounts Tri Health claims are due and owing as of the filing of said motion (the "Final Fee Application").

IT IS FURTHER ORDERED that the Substitute Receiver and/or Sentinel shall have the right to object to such Final Fee Application, either in part or in its entirety, within thirty (30) days after the filing of the Final Fee Application.

IT IS FURTHER ORDERED that if no objections to the Receiver's Final Fee Application are filed in this Court within thirty (30) days after service of such Final Fee Application, Tri Health may cancel its bond and shall be entitled to payment of its outstanding fees and expenses as set forth in the Final Fee Application, subject to this Court's approval.

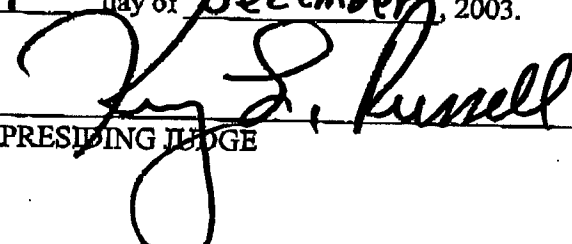
IT IS FURTHER ORDERED that the Substitute Receiver shall post a bond in the amount of \$10,000.00, with sufficient surety, prior to taking possession of the Collateral and assuming responsibilities as Substitute Receiver.

IT IS FURTHER ORDERED that the relief granted herein is without prejudice to the other relief sought by Sentinel in this matter, or such other relief to which Sentinel is entitled under the Agreement, at law or in equity.

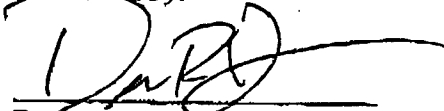
IT IS FURTHER ORDERED that, upon proper motion and notice to all parties, any party hereto or the Substitute Receiver may seek modification of this Order for cause.

IT IS SO ORDERED.

ENTERED this 9<sup>th</sup> day of December, 2003.

  
PRESIDING JUDGE

Submitted by:

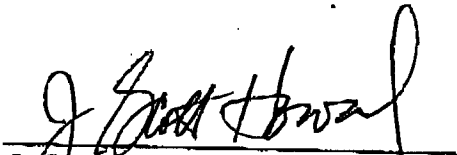


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and

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Facsimile: (615) 244-6804

**ATTORNEYS FOR SENTINEL TRUST  
COMPANY, AS INDENTURE TRUSTEE**



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**ATTORNEYS FOR TRI HEALTH SERVICES, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served by First Class U.S. Mail, properly addressed and postage prepaid, upon:

**Sarah B. Foster**  
600 Congress Avenue, Suite 1600  
Austin, TX 78701  
(Attorneys for Park Place, Ltd.)

**Michael E. Jones**  
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Tyler, TX 75710  
(Attorneys for Tyler Health Facilities  
Development Corporation)

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Services, f/k/a Health Care Financing  
Administration, Dallas Regional Office**  
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Dallas, TX 75202

**Texas Department of Human Services,  
Long Term Care – Regulatory, Facility  
Enrollment Section**  
P.O. Box 149030  
Austin, TX 78714-9030

**U.S. Department of Justice**  
950 Pennsylvania Avenue, Northwest  
Washington, D.C. 20530-0001

**Texas Department of Human Services,  
Office of General Counsel (W-615)**  
Attn: Deborah Green  
P.O. Box 149030  
Austin, TX 78714-9030

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Support Office-Region 6**  
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59<sup>th</sup> Medical Wing  
2200 Bergquist Drive, Suite 1  
Lackland AFB, Texas 78236-5300

**MTV Realty**  
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205 West Street  
Batesville, Mississippi 38606

**Tri Health Services, Inc.**  
Attn: James E. Koch  
2207 Hidden Valley Drive, Suite 103  
Little Rock, AR 72212

**J. Scott Howard**  
Brown McCarroll, LLP  
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Longview, TX 75601-5157

**Reunion Park, L.L.C.**  
Attn: John V. Rich, CEO  
1401 Rice Road  
Tyler, TX 75703

**James B. Gillen, Jr.**  
Gillen & Anderson, P.C.  
613 Shelley Park Plaza  
Tyler, TX 75701

**Counsel for the Greenlaw Group**

**RCI Properties, Inc.**  
ATTN: Bradley H. Smith  
1283 Boulevard Way  
Walnut Creek, CA 94595

**Reliance Health Care Management, Inc.**  
Attn: Brandon A. Adams  
950 Hogan Lane, Suite 5  
Conway, AR 72034

On this the 7<sup>th</sup> day of November, 2003.

A handwritten signature in black ink, appearing to be 'D. Adams', written over a horizontal line.

CAUSE NO. 99-2572-A

**FILED**  
 NOV 19 1999  
 Becky Dempsey  
 District Clerk  
 Smith Co., Tx  
 By *[Signature]* Deputy

**SENTINEL TRUST COMPANY,**

**Plaintiff,**

**v.**

**PARK PLACE, LTD., and TYLER HEALTH  
 FACILITIES DEVELOPMENT  
 CORPORATION,**

**Defendants.**

IN THE DISTRICT COURT OF

SMITH COUNTY, TEXAS

7TH JUDICIAL DISTRICT

**AGREED ORDER APPOINTING RECEIVER AND GRANTING INJUNCTIVE RELIEF**

This cause came before the Court on Plaintiff's Verified Complaint For Appointment Of Receiver And Injunctive Relief, and the Court, having considered the Verified Complaint in this action, makes the following findings of fact and conclusions of law:

1. Sentinel is a Tennessee corporation with its principal place of business located at 8122 Sawyer Brown Road, Nashville, Tennessee 37221.
2. Defendant Park Place, Ltd. ("Borrower") is a Texas limited partnership with its principal place of business located at 2450 East Fifth Street, Tyler, Texas 75701.
3. The Tyler Health Facilities Development Corporation ("Issuer") is a Texas nonprofit corporation organized by the City of Tyler, Texas, and existing pursuant to the Health Facilities Development Act, Article 1528j, Vernon's Texas Civil Statutes.
4. Jurisdiction and venue are proper in this Court.

501252.1

*V-m10 pg 427-440*

5. Issuer, Borrower, and Sentinel as trustee are the proper parties to that December 1, 1985 Loan Agreement (the "Loan Agreement"), as amended from time to time, that Building Loan Agreement (the "Building Loan Agreement"), that December 20, 1985 Deed of Trust Note (the "Note"), that December 1, 1985 Indenture of Trust and Security Agreement (the "Indenture"), that December 20, 1985 Deed of Trust and Security Agreement (and UCC Financing Statement for Fixture Filing) (the "Deed of Trust"), and certain UCC-1 Financing Statements (collectively, with the Loan Agreement, Building Loan Agreement, the Note, the Indenture, and the Deed of Trust, and all amendments to thereto, the "Loan Documents"), which are the subject of and made a part of the Verified Complaint.

6. The purpose of the Loan Documents, and the funds loaned thereunder, was to finance Borrower's acquisition, construction, and installation of a 120-bed, skilled nursing care facility located at 2450 East Fifth Street, Tyler, Texas (the "Project"). Pursuant to the Indenture, the Issuer was authorized to issue \$6,055,000 of Health Facilities Revenue Bonds, Series 1985 (collectively the "Bonds"), the proceeds of which were used to fund the loan to Borrower.

7. Sentinel is the successor trustee under the Loan Documents, and the proper party to enforce the rights thereunder.

8. Pursuant to the Loan Documents, Sentinel has liens against and security interests in the Project, including the following described property in order to secure payment of the Bonds, and all other obligations of the Borrower under the Loan Documents:

- (i) the land (the real estate or any interest therein);
- (ii) improvements (any and all buildings, structures, open parking areas and other improvements, and any and all accessions, additions, replacements, substitutions or alterations thereof or appurtenances thereto, now or at any time hereafter situate, placed or constructed upon the land or any part thereof);

(iii) fixtures (all materials, supplies, equipment, apparatus and other items now or hereafter attached to, installed on or in the land or the improvements or which in some fashion are deemed fixtures to the land or improvements under the laws of the State of Texas, including without limitation all items of personalty to the extent that the same may be deemed fixtures under applicable law);

(iv) personalty (all of the right, title and interest of Borrower in and to tangible and intangible personal property, including all equipment, inventory, goods, consumer goods, accounts, chattel paper, instruments, money, general intangibles, documents, minerals, crops and timber (as those terms are defined in the Texas Business and Commerce Code) which is attached to, installed on or placed or used on, in connection with or is acquired or such attachment, installation, placement or use, or which arises out of the development, improvement, financing, leasing, operation or use of, the land, the improvements, fixtures or other goods located on the land or improvements, together with all additions, accessions, accessories, amendments and modifications thereto, extensions, renewals, enlargements and proceeds thereof, substitutions therefor, and income and profits therefrom. The following are included, without limitation, in the definition of personalty: furnishing, building materials, supplies, machines, engines, boilers, stokers, pumps, fans, vents, blowers, dynamos, furnaces, elevators, ducts, shafts, pipes, furniture, cabinets, shades, blinds, screens, plumbing, heating, air conditioning, lighting, lifting, ventilating, refrigerating, cooking, medical, laundry and incinerating equipment, partitions, drapes, carpets, rugs and other floor coverings, awnings, call and sprinkler systems, fire prevention and extinguishing apparatus and equipment, water tanks, swimming pools, compressors, vacuum cleaning systems, disposals, dishwashers, ranges, ovens, kitchen equipment, cafeteria equipment, recreational equipment, loan commitments, financing arrangements, bonds, construction contracts, leases, licenses, permits, sales contracts, insurance policies and proceeds therefrom, plans and specifications, surveys, rent rolls, books and records, funds, bank deposits and all other intangible personal property);

(v) leases (any and all leases, subleases, licenses, concessions or other agreements (written or verbal, now or hereafter in effect) which grant a possessory interest in and to, or the right to extract, mine, reside in, sell or uses the mortgaged property, and all other agreements, including, but not limited to, management agreements, utility contracts, maintenance agreements and service contracts, which in any way relate to the use, occupancy, operation, maintenance, enjoyment or ownership of the mortgaged property, save and except any and all leases, subleases of other agreements pursuant to which Borrower is granted a possessory interest in the land); and

(vi) rents (all of the rents, revenues, income, proceeds, royalties, profits and other benefits paid or payable for using, leasing, licensing, possessing operating from or in, residing in, selling, mining, extracting or otherwise enjoying or using the mortgaged property); together with:

(vii) all rights, privileges, tenements, hereditments, rights-of-way, easements, appendages and appurtenances in anywise appertaining thereto, and all right, title and interest of Borrower in and to any street, ways, alleys, strips or gores of land adjoining the land or any part thereof, which Borrower now owns or at any time hereafter acquires;

(viii) all betterments, accessions, additions, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein;

(ix) all of Borrower's right, title and interest in and to any award, remuneration, settlement or compensation heretofore made or hereafter to be made by any governmental authority to Borrower, including those for any vacation of, or change or grade in, any streets affecting the land or the improvements;

(x) all plans and specifications for the improvements; all contracts and subcontracts relating to the improvements, all deposits (including tenant's security deposits), funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, service marks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions;

(xi) all other interest of every kind and character which Borrower now has or at any time hereafter acquires in and to the above described real and personal property and all property which is used or useful in connection therewith, including rights of ingress and egress, easements, licenses, and all reversionary rights or interest of Borrower with respect to such property. To the extent permitted by law all of the foregoing personal property and fixtures are to be deemed and held to be a part of and affixed to the real property. In the event the estate of the Borrower in and to any of the land and improvements is a leasehold estate, this conveyance shall include and the lien, security interest and assignment created hereby shall encumber and extend to all other, further or additional titles, estates, interest or rights which may exist now or at any time be acquired by Borrower in or to the property demised under the lease creating such leasehold estate and including Borrower's rights, if any, to purchase the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Borrower, such fee simple interest shall be encumbered by this Deed of Trust in the same manner as if Borrower had fee simple title to such property as of the date of execution hereof; and

(xii) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the indebtedness or the performance and discharge of the obligations.

(Hereinafter, the above-described property may be referred to collectively as the "Collateral."

That portion of the Collateral consisting of rents, revenues, income, proceeds, royalties, profits, cash on hand, accounts, funds, deposits, money, instruments, documents of title, and other cash

or cash equivalents generated by or from the Project may be referred to collectively as the "Cash Collateral." The term "Collateral" shall be deemed to include "Cash Collateral").

9. Prior to the entry of this order, Borrower failed to make timely its debt service payment to Sentinel which was due on June 1, 1999, as required by the Loan Documents. The Borrower is in default of its respective obligations under the Loan Documents.

10. On June 15, 1999, Sentinel declared a default under the Loan Documents, sending proper notice to Borrower and Issuer. As of the current time, neither Borrower nor Issuer has cured the default, and therefore Borrower remains in default.

11. Section 7.6(a) of the Deed of Trust gives Sentinel the right, as indenture trustee, to seek the appointment of a receiver to take possession, custody, and control of the Collateral for the purpose of renting, maintaining, and operating same while Sentinel pursues its other remedies under the Loan Documents, including foreclosure. In addition to its rights granted under the Loan Documents, Sentinel is also entitled to appointment of a receiver as a matter of equity and under Tex. Civ. Prac. & Rem. Code Ann. § 64.001(a)(2) (West 1999).

12. Because of the nature of the Collateral, its ability to be dissipated, the failure of the Borrower to provide to Sentinel an accounting of the funds or the financial condition of the Project as required under the Loan Documents, the failure of the Borrower to pay debt service while enjoying possession of the Project, the likelihood based on information from the Borrower that it will not make the next debt service payment when due, the importance that the Project continue as a going concern to protect its value, and the lack of harm to defendants from granting extraordinary relief, the Court finds that appointment of a receiver is appropriate, and will do more good than harm.

13. In addition, for these reasons, and in order to secure the health and welfare of the residents of the Project by assuring that appropriate healthcare continues to be provided them without interruption, the Court finds that Sentinel is entitled to temporary injunctive relief. Without extraordinary relief, Sentinel will suffer immediate and irreparable injury which will tend to render final judgment ineffectual in this action.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED, that:

1. Plaintiff's Motion For Appointment of A Receiver and Injunctive Relief is hereby GRANTED.
2. Tri Health Services is hereby appointed as Receiver of all of the Collateral, and is hereby directed, immediately, to enter upon, receive, and take complete possession of all of the property and instruments embodying the property rights and the income, and profits, including without limitation, cash on hand to operate the Project located on said premises. The Clerk of the Court is hereby directed to issue such Writs of Possession as may be necessary for the Receiver herein, without further Order of the Court.
3. The Receiver is hereby granted all of the usual, necessary, and incidental powers of Receivers for the purposes of managing, operating, and maintaining the property and property rights as he may consider necessary, including the power and authority to:
  - (a) take possession of the Collateral, including all goods, chattels, and equipment thereon, and all books and records relating to same;
  - (b) contact residents and any third-party payors of the Project and receive, collect, and preserve from them all rents and other sums due the Borrower;

- (c) receive, collect, and preserve all incomes, profits, and other revenues generated from the Collateral;
- (d) manage and operate the Collateral;
- (e) enter into all contracts necessary to continue, operate, maintain, and preserve the Collateral;
- (f) pay from the revenues of the Project the ordinary and necessary expenses of operating and maintaining the Collateral incurred from and after the date of the receiver's appointment and said other reasonable expenses necessary to maintain the Collateral; provided, however, the receiver may not be permitted to exceed in any given month in the aggregate or with respect to any particular line item the expenses set forth in such budget approved hereafter by Sentinel and the receiver, without further order of this Court after notice to the parties and an opportunity for hearing;
- (g) pay over to Sentinel all excess revenues;
- (h) make an accounting to keep accurate records concerning the Collateral, including the actual income collected and expenses paid each month, and to make such records available to Sentinel and the Court;
- (i) permit Sentinel and its agents and independent contractors to inspect fully the Collateral and the Borrower's books and records;
- (j) permit the Issuer and the Borrower to inspect fully the Collateral;
- (k) appoint agents and employees that are necessary to take charge of, repair, and maintain the Collateral;

- (l) rent, lease, or license from time to time any part of the Collateral that may be deemed appropriate;
- (m) make, cancel, enforce, or modify contracts, leases, or licenses relating to any part of the Collateral;
- (n) operate and manage all other services which are a part of the operation of the Collateral;
- (o) comply with all requirements of all governmental authorities;
- (p) pay taxes, assessments, and utility charges;
- (q) employ such persons as necessary to operate the skilled nursing care facility and to collect from any source, government or private or third-party payor, all sums which may be due for the services or goods provided any person living in the skilled nursing care facility;
- (r) pay himself a reasonable fee, subject to court approval, for the time expended in carrying out his duties as receiver;
- (s) employ independent accountants and legal counsel to assist the receiver in the performance of his duties as may be necessary during the period of the receivership and pay reasonable value for those services;
- (t) institute, prosecute, defend, and settle such legal proceedings, as the receiver deems necessary, relating to the protection or proper care of the Collateral and the collection of rents or other payments of any description past due, currently due, or hereafter to become due, including summary proceedings for the removal of occupants or other persons therefrom, and to employ counsel therefor;

(u) obtain such insurance as necessary to insure the acts and conduct of the receiver and those persons who he may employ to carry out the duties voted upon him;

(v) take all such actions and expend all such sums as may be necessary to obtain or maintain in effect or transfer all licenses, insurance, zoning approvals, certificates of need, provider numbers, and other approvals to ensure that the property may continue to be used as a commercial building and specifically as a skilled nursing care facility;

(w) generally do, execute, and perform any other act, deed, matter, or thing whatsoever that the Receiver reasonably deems ought to be done, executed, and performed in and about or with respect to the Collateral or its revenues; and

(x) hire on an interim basis a management company, if necessary, to help manage and operate the Project on terms consistent with the order of this Court appointing the receiver and in accordance with the monthly budget contemplated herein;

4. The Receiver shall protect and conserve the Collateral and property rights; maintain appropriate insurance; endorse checks and drafts now or hereafter made payable to Borrower, and the servants, agents, and employees thereof concerning such rents, income, and profits; take possession insofar as reasonably possible of all patient or tenant deposits, leases, books, records, documents, patient or tenant lists, and any and all pertinent records, and perform all of the acts reasonably necessary to sequester the income and to operate and manage the Collateral and property rights.

5. The Receiver is directed and required to keep full and complete records of all receipts and disbursements that may arise from the operation of the property. The Receiver is further directed to deposit all funds received from the operation of the property into a Receiver's account, which shall be opened specifically for the operation of the Receivership and shall be maintained at a federally insured depository. The Receiver shall submit and file with the court income and disbursement statements on a monthly basis during the term of the Receivership and shall deliver copies of such statements to counsel of record for Plaintiff and for Defendants. The Receiver shall submit and file such other accountings as the Court may require from time to time.

6. The Receiver shall be entitled to collect all Medicaid and Medicare payments relating to the Project, and the Medicaid administrator for Texas and Medicare administrator are hereby directed to forward all Medicaid and Medicare payments relating to the Project to the Receiver and to honor all future allowable Medicaid and Medicare claims submitted by the Receiver, until further order of the Court.

7. The Receiver shall not sell or dispose of all or substantially all of the Collateral except upon further order of this Court after notice to the parties and an opportunity for hearing.

8. In addition, in accordance with Sentinel's request for injunctive relief, it is hereby ORDERED, ADJUDGED, AND DECREED, that Borrower, and its successors, assigns, agents, employees, attorneys, or anyone acting for or in concert with it are:

(1) enjoined from possessing or managing the Collateral and from interfering in any way with the possession or management of the Collateral by the receiver during the tenancy of the receiver;

(2) enjoined from collecting, withdrawing, transferring, conveying, concealing, or otherwise disposing of the Cash Collateral, including the revenues derived

therefrom, subsequent to the entry of this order and during the tenure of a receiver, requiring Borrower to pay the Cash Collateral and the revenues derived therefrom to the receiver;

(3) enjoined from removing any of the Collateral and from removing, destroying, concealing, changing, or altering in any manner any of the books or records relating to the ownership, possession, or operation of the Collateral; and

(4) required to pay and turn over immediately to the receiver, and to perform all acts necessary to transfer immediately to the receiver, accounts receivable, all funds on hand in cash, and all funds held in deposit accounts of or for the benefit of the Borrower arising from the ownership, possession, or operation of the Collateral and all accounts, accounts receivable, instruments, and any other collectibles and all keys, books, records, equipment, and all things in any manner related to the ownership, possession or operation of the Project; and

9. This order shall be without prejudice to the rights of Sentinel, or its assignee, without further notice or order of this Court, to foreclose on the Collateral and to exercise any and all other rights and remedies provided for under the Loan Documents, at law, and in equity. The Receiver's authority, and any agreements, including management agreements, entered into by the Receiver pursuant to the terms requested above shall terminate upon the earlier of foreclosure of the Collateral by Sentinel or upon further order of the Court, without any further liability by the receiver or Sentinel for termination of same;

10. IT IS FURTHER ORDERED THAT the Receiver shall post a bond in the amount of \$ 10,000.00, with sufficient surety, prior to taking possession of the Project and assuming the responsibilities of Receiver.

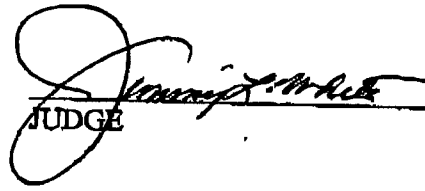
11. IT IS FURTHER ORDERED THAT Sentinel shall post an injunction bond in the amount of \$ 1,000.<sup>00</sup>, with sufficient surety, and upon such posting the injunction provisions of this order shall take effect.

12. The Court retains jurisdiction to enter any further orders which shall be necessary to carry the terms and conditions of this Order into effect.

*Trial is hereby set for May 15, 2000 at 9:00 am*

SO ORDERED, ADJUDGED, AND DECREED, this 19<sup>th</sup> day of

September, 1999.

  
\_\_\_\_\_  
JUDGE

APPROVED FOR ENTRY:

RAMEY & FLOCK

By:   
\_\_\_\_\_  
Deron Dacus

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ATTORNEYS FOR DEFENDANT PARK PLACE, LTD.

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause in accordance with the applicable Rules of Civil Procedure on this the 19<sup>th</sup> day of November, 1999 as follows:

Sarah B. Foster  
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DERON R. DACUS