IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HEALTHCARE TECHNOLOGY SERVICES, INC.	:	CIVIL ACTION
v.	:	
DONNA SHALALA, as Secretary, United States Department of Health and Human Services; UNITED HEALTHCARE INSURANCE COMPANY, ADMINASTAR FEDERAL, INC. and PALMETTO GOVERNMENT BENEFIT ADMINISTRATORS, INC.	:	NO. 99-4467

Philadelphia, Pennsylvania
August 17, 2000

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

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BEFORE: HONORABLE HARVEY BARTLE III, J.

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APPEARANCES:

JAMES A. BACKSTROM, ESQ.
Two Penn Center
Suite 200
Philadelphia, PA 19102-1706
for the Plaintiff

BARBARA ROWLAND, ESQ.
K. L. TOMLINSON, ESQ.
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for Donna Shalala, Secretary of HHS; United Healthcare Insurance Company; AdminaStar Federal, Inc. and Palmetto Government Benefit Administrators, Inc.

Courtroom Deputy: Katherine Gallagher

ESR Operator: Benjamin Ratti

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1 THE COURTROOM DEPUTY: All rise. Oyez, oyez, oyez,
2 all manner of persons having anything to do before the
3 Honorable Judge Harvey Bartle III, in the United States
4 District Court, in and for the Eastern District of Pennsylvania
5 may at present appear and they shall be heard.
6 God save the United States and this Honorable Court.
7 THE COURT: Good afternoon.
8 MR. BACKSTROM: Good afternoon.
9 MS. ROWLAND: Good afternoon, your Honor.
10 THE COURT: The case before us this afternoon is
11 Healthcare Technology Services, Inc. v. Donna Shalala,
12 Secretary of Health and Human Services, et al., Civil Action
13 No. 99-4467.
14 The plaintiff Healthcare Technology Services, Inc.,
15 hereinafter called "Healthcare Technology, formerly a supplier
16 of wound care products under the Medicare program,seeks to
17 compel the Secretary of the United States Department of Health
18 and Human Services, and three regional corporate administrators
19 of the Medicare program, to pay money allegedly due and owing.
20 The plaintiff also seeks other relief.
21 In December 1999, plaintiff voluntarily dismissed all
22 claims against a fourth corporate administrator of the Medicare
23 program. At the same also dismissed as moot Count II of the
24 complaint in which plaintiff sought an order compelling
25 defendants to issue explanations of medical benefits for

1 certain claims for benefits the plaintiff had filed.

2 On January 28, 2000, we denied defendants' motion to
3 dismiss insofar as it related to plaintiff's claims seeking
4 mandamus to compel defendants to pay monies due pursuant to
5 Counts III and IV of the complaint.

6 With the consent of the parties we deferred ruling on
7 the motion to dismiss Count I in which plaintiffs sought an
8 order compelling defendants to conduct timely hearings
9 regarding defendants' determination that plaintiff had been
10 overpaid for certain claims. We have been advised that the
11 requested hearings have now taken place and thus Count I is
12 moot.

13 We held a non-jury trial on the remaining counts on
14 August 10, 2000. We now make the following findings of fact
15 and conclusions of law in accordance with Rule 52(a) of the
16 Federal Rules of Civil Procedure.

17 Medicare is a federal program with health insurance
18 for persons age 65 or older and for disabled persons. It was
19 established by Title 18 of the Social Security Act as amended.
20 Title 42, United States Code, §1395, *et seq*. The Medicare
21 program consists of two parts, Part A and Part B. Part A
22 provides major medical insurance coverage for such things as
23 the cost of hospital care. Part B is a federally-subsidized
24 voluntary health insurance program providing supplemental
25 insurance coverage for certain items excluded from Part A,

1 including wound care products which, under Medicare, are
2 categorized as durable medical equipment.
3 Plaintiff Healthcare Technology is a corporation
4 formed under the laws of the State of Delaware. It is
5 headquartered in Bensalem, Pennsylvania. Prior to the
6 government's freezing of its assets in August 1998, at which
7 time it ceased ongoing operations, Healthcare Technology
8 supplied wound care products, such as bandages, to Medicare
9 beneficiaries. As such, it was categorized by Medicare as a
10 durable medical equipment supplier.
11 Healthcare Technology's founder, president and 57.1
12 percent shareholder is Alan Rose. Rose is also the founder,
13 president and majority shareholder of three other corporations
14 who formerly did business as durable medical equipment
15 suppliers: Core Care Services, Inc., known as "Core Care,"
16 Priority Medical Systems, Inc., known as "Priority," and
17 Progress Health Care, Inc., known as "Progress."
18 Defendant Donna Shalala, as Secretary of the United
19 States Department of Health and Human Services, administers the
20 Medicare program. For purposes of administering Part B of
21 Medicare the Secretary has contracted with four private
22 companies known as "carriers" or "Durable Medical Equipment
23 Regional Carriers" or "DMERCs", D-M-E-R-C-s, to administer the
24 claims of durable medical equipment suppliers originating in
25 their respective assigned regions of the country.

1 Three of the four DMERCs are currently defendants in
2 this case. They are United HealthCare Insurance Company,
3 AdminaStar Federal Incorporated and Palmetto Government Benefit
4 Administrators, Inc.
5 Under Medicare in order to obtain payment the
6 supplier submits a request for payment to the appropriate DMERC
7 which then issues a remittance notice setting forth its initial
8 determination as to the payment of the claim. The Medicare Act
9 establishes an admninistrative appeal process for suppliers
10 aggrieved by a DMERC's termination, subject to certain
11 jurisdictional amounts. First, a supplier may request
12 reconsideration by the DMERC. Second, a still aggrieved
13 supplier may appeal to a fair hearing officer appointed and
14 paid by the DMERC. Third, a party aggrieved by the hearing
15 officer's decision is entitled to request a hearing before an
16 admnistrative law judge. Fourth, if unhappy with the decision
17 of the administrative law judge, a party may then request
18 review by the Medicare Appeals Council, also known as the
19 Departmental Appeals Board. Fifth, an aggrieved supplier may
20 file a complaint in the district court challenging a decision
21 by the Medicare Appeals Council, or, if the Council declines to
22 review an administrative law judge decision. At each stage a
23 decision becomes final if it is not appealed within an
24 established period of time. For example, fair hearing
25 decisions and administrative law judge decisions become final

1 if they are not appealed within 60 days. If a fair hearing
2 officer determines that additional payments are due the
3 supplier, the Medicare Carriers Manual directs carriers to
4 initiate effectuation of that decision in 15 days of its
5 issuance.
6 The Medicare regulations allow a DMERC to obtain
7 recoupment if it determines that a supplier has been overpaid.
8 The DMERC may recover an overpayment to a supplier by reducing
9 the present or future Medicare payments owed to that supplier
10 and by applying the amount withheld to the supplier's
11 indebtedness. *See*, 42 Code of Federal Regulations, §§ 405.370
12 and 405.371(a)(2). The carrier must, "Notify the provider or
13 supplier of its intention to offset or recoup payment in whole
14 or in part and the reasons for making the offset or recoupment
15 and give the provider, or supplier, an opportunity for
16 rebuttal."
17 A recoupment remains in effect until the earliest of
18 the following: (1) the overpayment and any assessed interest
19 are liquidated; (2) the intermediary, or carrier, obtains a
20 satisfactory agreement from the provider or supplier for
21 liquidation of the overpayment and, (3) the intermediary or
22 carrier, on the basis of subsequently acquired evidence or
23 otherwise, determines that there is no overpayment. *See*, 42
24 Code of Federal Regulations, § 405.373(e).
25 Additionally if a DMERC, "possesses reliable

information that an overpayment or fraud or willful misrepresentation exists," the regulations allow it to suspend payments to the supplier. *See*, 42 Code of Federal Regulations, § 405.371(a)(1). Suspended payments under 42 C.F.R. § 405.372(e), "are first applied to reduce or eliminate any overpayments determined by the intermediary, carrier or HCFA and then applied to reduce any other obligation to HCFA or to HHS. In the absence of a legal requirement the excess be paid to another entity, the excess is released to the provider or supplier." Suppliers dissatisfied with an overpayment determination may appeal it through the administrative appeal process outlined above.

On January 29, 1998, in a letter addressed to Healthcare Technology, Core Care, Priority and Progress. The DMERC, Adminastar, on behalf of all four DMERCs, advised these providers that pursuant to 42 C.F.R. § 405.371 the DMERCs were immediately suspending payments of all claims submitted to, or to be submitted by them. The letter claimed that the grounds for the suspension of payment was evidence of fraud.

On August 18, 1998, in a separate action in this district against Healthcare Technology, Core Care, Priority and Progress, and against Alan Rose, the United States filed a motion for an *ex parte* temporary restraining order asserting that Healthcare Technology and the other defendants had committed, or were about to commit, fraud against the United

States. *See, United States v. Rose, et al.*, Civil Action No. 98-4345 in the Eastern District of Pennsylvania. By order dated August 20, 1998, the court granted the United States' *ex parte* motion and froze all the assets of Rose, Healthcare Technology, Core Care, Priority and Progress.

At the conclusion of a final hearing on September 16th and 17th, 1998, however, we found that the United States had fallen far short of proving its fraud charges. We dissolved the temporary restraining order and entered judgment in favor of the defendants.

Nonetheless, the DMERCs continued to suspend payments to Healthcare Technology. By letter dated January 22, 1999, the DMERCs advised Healthcare Technology, Core Care, Priority and Progress that the suspension period would expire on January 24, 1999 and that the DMERCs had decided not to extend that period. The letter also informed plaintiff that the monies collected during the suspension period would first be applied to any alleged overpayments and that after any offset the remainder would be released. By letter dated February 10, 1999, Adminastar wrote to plaintiff, on behalf of all the DMERCs, and confirmed that during the suspension period they had withheld $269,078.37 in Medicare payments due Healthcare Technology.

Adminastar also informed Healthcare Technology that it had completed a post-payment review of the claims submitted

1 by Healthcare Technology in 1994 and previously paid to
2 Healthcare Technology. Adminastar apprised Healthcare
3 Technology that it had determined that it had been overpaid
4 $25,608.35 on those claims.
5 The same February 10, 1999 letter informed Core Care,
6 Priority and Progress that claims totaling $179,779, $28,002
7 and $348,141, respectively, had been withheld from them during
8 the suspension period. They were further advised that
9 Adminastar had determined that Core Care had been overpaid by
10 $3,240,698, and that Priority had been overpaid by $56,441 on
11 claims for 1994 services and that Progress had been overpaid by
12 $519 on claims for services dated between January -- or July
13 rather -- and October 1995.
14 In a chart in the February 10, 1999 letter the DMERCs
15 calculated that a total of $825,002.09 in claims of Healthcare
16 Technology, Core Care, Priority and Progress had been withheld
17 during the suspension period. The letter then provided, and I
18 quote, "The money collected during the suspension is first
19 applied to reduce or eliminate any overpayments determined by
20 the DERMCs and then applied to reduce any other obligation to
21 HCFA or HHS. 42 C.F.R. 405.372(e). After applying the
22 suspended funds the net amount of the overpayment is
23 $2,415,695.91."
24 The letter continued, and I quote, "Please remit the
25 entire outstanding amount of $2,415,695.91 to us and no

interest charge will be assessed."

By letter dated March 15, 1999, Healthcare Technology, Core Care, Priority and Progress requested fair hearings to contest the overpayment determinations of which they were informed in the February 10, 1999 letter.

After the commencement of this action on September 7, 1999, one of the DMERCs, Cigna Healthcare, Inc., paid Healthcare Technology all the monies due it. Thereafter, Healthcare Technology moved to dismiss Cigna from this suit and the motion was granted by order dated December 23, 1999. In addition, the defendant Palmetto has paid Healthcare Technology some of the money due it.

After September 7, 1999, additional monies became due Healthcare Technology as a result of various fair hearings and administrative law judge decisions in its favor became final. The defendants now concede that the net amount due Healthcare Technology as of July 31, 2000, is $532,323.11. The total includes $269,078.37 in payments withheld during the suspension plus $419,716.80 and other final monies due Healthcare Technology minus $25,608.35 in alleged overpayments and minus the $130,863.71 that Healthcare Technology was paid by certain DMERCs after suit was filed.

The defendants have only belatedly explained the basis for their withholding from Healthcare Technology more than $25,608.35 which AdminaStar deemed Healthcare Technology

1 had been overpaid. It was not until December 1999, and January
2 2000, nearly a year after they sent notice of the alleged
3 overpayment that the explanation was forthcoming. At that time
4 we held phone conferences and oral argument in connection with
5 defendants' December 15, 1999 motion to dismiss. The
6 defendants took the position that they were entitled to
7 withhold the excess amount from Healthcare Technology in order
8 to offset the overpayment debts of Core Care and Priority.
9 Defendants assert that they may do so because Core Care and
10 Priority are alter egos of Healthcare Technology; like
11 Healthcare Technology, more monies had been withheld from
12 Progress than it had been allegedly overpaid.
13 Section 12015(a)(1) of the Medicare Carriers Manual
14 entitled Healthcare Technology to a fair hearing regarding its
15 appeal of the overpayment and to have a decision by the fair
16 hearing officer within 120 days of its request for a hearing,
17 or by July 13, 1999. Nonetheless, it was not until December
18 10, 1999, three months after Healthcare Technology commenced
19 this action, that it received notice that the hearing had even
20 been scheduled. The hearing did not take place until February
21 2nd through 4th, 2000, more than one and a half years after
22 defendants began withholding Healthcare Technology's monies and
23 well over 300 days after Healthcare Technology requested a
24 hearing.
25 In December 1999, and the January 2000 phone

1 conferences with the Court, and in oral argument, defense
2 counsel took the position that the propriety of defendants'
3 decision to withhold payments due Healthcare Technology in
4 order to offset payments owed by Core Care and Priority would
5 be an issue at the February fair hearing; however, it was not
6 in fact a subject of that hearing. The fair hearing decision
7 was adverse to Healthcare Technology, Core Care, Priority and
8 Progress. By letter dated May 31, 2000, they requested an
9 appeal.
10 It is plaintiff's burden to establish by a
11 preponderance of the evidence that defendants owe it money.
12 Since defendants have now stipulated to the fact that they owe
13 Healthcare Technology $532,323.11 the plaintiff has met its
14 burden of proof in this regard. However, the defendants posit
15 they are entitled to withhold this sum owed Healthcare
16 Technology in order to offset the overpayments to Core Care and
17 Priority. Defendants contend that Healthcare Technology, Core
18 Care, Priority and Progress are alter egos of each other. It
19 is the defendants' burden to prove this contention.
20 While it is disputed that defendants have the right
21 to use payments due Healthcare Technology to offset payments
22 owing from Healthcare Technology as a result of -- while it is
23 not disputed that defendants have the right to use payments due
24 Healthcare Technology to offset payments owing from Healthcare
25 Technology as a result of overpayments, the issue we face here

1 is whether the defendants may use payments due Healthcare
2 Technology in order to offset payments due from related
3 entities.
4 Piercing the corporate veil is not something we do
5 lightly. As our Court of Appeals has explained, and I quote,
6 "A court may not disregard at will the formal differences
7 between affiliated corporations and, in fact, the requirements
8 for corporate veil piercing are demanding ones," end of quote.
9 That comes from America Bell, Inc. v. Federation of Telephone
10 Workers, 736 F.2d 879, 886 (3d Cir. 1984). The defendants cite
11 United States v. Pisani, 646 F.2d 83 (3d Cir. 1981) in support
12 of their position that they may withhold money from Healthcare
13 Technology in order to aid it in collecting the debts of Core
14 Care and Priority.
15 In Pisani the federal government sued a Dr. Pisani,
16 the president and sole owner of a nursing home that had
17 participated in the Medicare program, seeking to recover from
18 him more than $151,000 in overpayments to the nursing home
19 which had gone out of business. Unlike the present situation,
20 the $151,000 overpayment determination apparently was not
21 contested.
22 For cases involving the federal government's ability
23 to recover overpayments in the Medicare program, our Court of
24 Appeals has fashioned a federal alter ego rule. The court
25 announced a number of factors that courts must take into

1 consideration in order to determine whether it is appropriate
2 to pierce the corporate veil so as to hold an individual liable
3 for overpayments to a corporation. Those factors are as
4 follows, and I quote, "First is whether the corporation is
5 grossly undercapitalized for its purposes." Other factors are,
6 "failure to observe corporate formalities; non-payment of
7 dividends; the insolvency of the debtor corporation at the
8 time; siphoning of funds of the corporation by the dominant
9 stockholder; non-functioning of other officers or directors;
10 absence of corporate records; and the fact that the corporation
11 is merely a facade for the operations of the dominant
12 stockholder or stockholders; also, the situation must present
13 an element of injustice or fundamental unfairness, but a number
14 of these factors can be sufficient to show such unfairness."
15 This comes from Pisani at 646 F.2d at 88.
16 In Pisani the government sought to disregard the
17 corporate form of a single company in order to hold an officer,
18 and sole shareholder, liable for the company's debts.
19 Defendants argue, however, that the principal holding of Pisani
20 that in the Medicare context the corporate form may be
21 disregarded under certain circumstances may be extended to
22 apply across sister companies; that is, where Medicare
23 providers are controlled by the same person, or people, are
24 interwoven in their operations and business dealings and are
25 run as essentially one company, the defendants assert that such

1 providers may be held liable for each others debts. Thus,
2 according to defendants, the interrelationship of Healthcare
3 Technology, Core Care, Priority and Progress is key to our
4 analysis.
5 Core Care is a corporation that was formed under the
6 laws of the Commonwealth of Pennsylvania on September 27, 1993.
7 Its shareholders are as follows: Alan Rose, 50%, Marie Savar
8 16.66%, Lois Loevner, L-o-e-v-n-e-r, 16.67% and Dawn Enderle
9 16.67%.
10 Core Care, a subchapter S corporation, has Articles
11 of Incorporation and Bylaws and there is a record of one formal
12 shareholder meeting. Shareholders have received distributions
13 each year. Core Care was initially capitalized with $6,000.
14 Priority is a corporation that was formed under the
15 laws of the Commonwealth of Pennsylvania on November 9, 1992.
16 Its shareholders are as follows: Alan Rose 57.1%, Marie Savar
17 14.3%, Lois Loevner 14.3% and Herbert Langsam, L-a-n-g-s-a-m,
18 14.3%.
19 Priority, a subchapter S corporation, has Articles of
20 Incorporation and Bylaws and there is a record of two formal
21 shareholder meetings. Shareholders from this company have also
22 received distributions each year. Priority was initially
23 capitalized with $20,000.
24 The third company, Progress, is a corporation that
25 was formed under the laws of the Commonwealth of Pennsylvania

1 on November 9, 1992. Its shareholders are as follows: Alan
2 Rose, 57.1%, Marie Savar 14.3%, Lois Loevner 14.3% and Herbert
3 Langsam 14.3%.
4 Progress, a subchapter S corporation, has Articles of
5 Incorporation and Bylaws. There was one formal shareholder
6 meeting at the company's inception but there is no written
7 record of it. Shareholders, again, have received distributions
8 each year. Progress was initially capitalized with $20,000.
9 Finally, Healthcare Technology, as we noted
10 previously is a corporation formed under the laws of the State
11 of Delaware. It was incorporated on May 11, 1992. Its
12 shareholders are: Alan Rose 57.1%, Marie Savar 14.3%, Lois
13 Loevner 14.3% and Herbert Langsam 14.3%.
14 Healthcare Technology, a subchapter S corporation,
15 has Articles of Incorporation and Bylaws and there is a record
16 of one formal shareholder meeting. Shareholders have received
17 distributions each year. Healthcare Technology was initially
18 capitalized with $60,000.
19 Again, as noted above, Alan Rose is the president of
20 all four companies. Healthcare Technology's directors are Alan
21 Rose and Dawn Enderle. They are also the directors of Priority
22 and Progress. There are no written records of any board
23 meetings for any of the four companies. Alan Rose conducted
24 informal shareholder meetings, however, during which he and the
25 attendees frequently discussed the business of all four

1 companies.

2 The United States Government assigned separate

3 supplier numbers to Healthcare Technology, Core Care, Priority

4 and Progress for Medicare purposes. The government has

5 introduced no evidence that assignment of supplier numbers is

6 automatic or that the application of such numbers was anything

7 but legitimate.

8 The primary purpose of all four companies was

9 supplying wound care products under the Medicare program.

10 Healthcare Technology, Core Care, Priority and Progress

11 utilized the same office employees and office space in

12 Bensalem, Pennsylvania. While these employees and the rent and

13 utilities were paid in the first instance by Core Care, these

14 expenses were divided up among and ultimately paid by the four

15 companies as explained below. Each company had separate sales

16 representatives and paid those representatives commission out

17 of its own coffers. The representatives operated in the same

18 geographic regions and competed with one another.

19 Once, for example, a Progress sales representative

20 was not doing a satisfactory job servicing an account and a

21 sales representative from one of the other three companies came

22 in and won over that account.

23 The four companies shared one telephone number. The

24 employee who answered the phone answered generically, quote,

25 "Health Services," end of quote, and then ascertained which of

1 the four companies the person was trying to reach; the call
2 then was directed accordingly.
3 Plaintiff employed an independent contractor as a
4 Certified Public Accountant, a Tom Lorefice, L-o-r-e-f-i-c-e,
5 who prepared and reviewed its books on a monthly basis.
6 Lorefice also received and reviewed the books of Core Care,
7 Priority and Progress on a monthly basis. Although Core Care
8 did all the Medicare billing for Healthcare Technology,
9 Priority and Progress, Core Care was paid commissions by
10 Healthcare Technology, Priority and Progress for the services
11 it performed.
12 Healthcare Technology, Core Care, Priority and
13 Progress used the same wound care product suppliers. They
14 rotated the placement of inventory orders. One company would
15 place an order for supplies, that invoice might be paid by one
16 of the four companies. It would recorded as an expense to be
17 divided up among all four, as we will explain below. The
18 supplies ordered by the companies were maintained in one
19 warehouse and all four companies utilized the same stock.
20 Healthcare Technology, Core Care, Priority and
21 Progress maintained separate bank accounts and separate
22 financial records prepared by their CPA, even though one person
23 prepared all of the checks and Rose, Mr. Rose, Alan Rose,
24 signed all those checks. The companies also filed their own
25 separate tax returns. Occasionally when Core Care needed cash

1 one of the other three companies wrote it a check.

2 At the end of each year the companies reconciled
3 their revenue and expense allocations. The general
4 administrative expenses of all four companies, including staff
5 salaries, officer compensation, rent, utilities, inventory rate
6 and advertising were totaled and then divided up among the
7 companies based on their proportionate share of the year's
8 total revenues. For example, if the total expenses of all four
9 companies in 1994 was $100,000, and Healthcare Technology
10 brought in 40% of the 1994 revenues of all the four companies,
11 then it would be allocated 40% of the $100,000 for expenses in
12 the amount of $40,000.

13 Before the United States applied for and received a
14 temporary restraining order freezing the four companies' assets
15 in August 1998, each company was operating at a profit. When
16 Core Care was founded in September 1993, patients who had been
17 serviced by Healthcare Technology in the past began to be
18 serviced by Core Care. In November 1994, AdminaStar
19 erroneously suspended payments to Core Care. When that
20 occurred Core Care returned its patients to Healthcare
21 Technology.

22 We will assume for present purposes that the
23 defendants must establish the alter ego defense by a
24 preponderance of the evidence. Under <u>Pisani</u> one not need prove
25 fraud per se, but the circumstances of the case must

1 demonstrate something very close to fraud. There must be
2 evidence that a company was involved in manipulation of the
3 Medicare system or circumvention of Medicare rules and
4 regulations or some other kind of quasi fraud that would
5 warrant the extraordinary remedy of disregarding its corporate
6 form. Defendants have not met their burden of proof. Although
7 they produced evidence that Healthcare Technology, Core Care,
8 Priority and Progress are interrelated and share much of their
9 operations, defendants produced no evidence whatsoever that the
10 companies were involved in any attempt to manipulate the
11 Medicare system or circumvent its rules and regulations. The
12 companies operate as special financial -- separate financial
13 entities. They maintain separate financial books and records
14 and file separate tax returns. They also take care to divide
15 their expenses based on a long-standing allocation formula.
16 Defendants' CPA witness testified that when one
17 examined each item of annual expense, and what percentage of
18 that expense was borne by each company compared to its
19 percentage of annual revenues, there was not an exact match.
20 Assuming the testimony is true it is not relevent. Rose
21 testified that the expense allocation formula was based on
22 aggregate expenses, not the individual components.
23 Turning to the factors set forth in Pisani, we note
24 that defendants do not claim that Healthcare Technology was
25 grossly undercapitalized or insolvent. They concede that all

1 four companies annually paid distributions to their respective
2 shareholders. Although the companies did not hold regular
3 formal shareholder or board meetings, the evidence is
4 uncontested that the companies were separately incorporated,
5 had their own Articles of Incorporation and Bylaws, had
6 separate formal shareholder meetings when they occurred and had
7 numerous informal shareholder meetings. It is also significant
8 that the shareholders were not identical; Core Care having a
9 shareholder who is not a shareholder of the other three
10 companies and the other three companies having a shareholder
11 who is not a Core Care shareholder. Rose was the majority
12 shareholder of three of the companies and a 50% shareholder of
13 the fourth, but there's no evidence that he or any other
14 individual siphoned money from any of the four companies, nor
15 was there evidence that the companies siphoned money from each
16 other. There was nothing in the record to suggest that
17 Healthcare Technology is merely a facade for the operations of
18 Alan Rose or any other individual or company.
19 Finally, there was no proof of any injustice or
20 fundamental unfairness on the part of Healthcare Technology
21 that would warrant ignoring Healthcare Technology's corporate
22 form. It was simply not involved in any attempt to prevent the
23 defendants from collecting debts owed to them by Core Care,
24 Priority or Progress.
25 We also point out that it is troubling that

1 defendants did not advise Healthcare Technology for almost a
2 year after February 1999 -- the February 1999 overpayment
3 notification that they were withholding payments to it because
4 they considered it, Core Care, Priority and Progress to be
5 alter egos of one another.
6 It is the basic tenant of due process that a claimant
7 be notified of the reasons for which payment is denied and then
8 given an opportunity to be heard. Healthcare Technology was
9 denied notification for an unreasonably long period of time.
10 We find and conclude that Healthcare Technology is
11 not the alter ego of Core Care, Priority or Progress.
12 The defendants have not established any basis to
13 pierce the corporate veils of these companies so as to prevent
14 Healthcare Technology from receiving monies due under the
15 Medicate program.
16 Since the defendants admit that Healthcare Technology
17 is owed $532,323.11, absent the validity of their alter ego
18 theory, we order defendants immediately to pay Healthcare
19 Technology the $532,323.11 plus appropriate interest in
20 accordance with law.
21 At trial the plaintiff requested the additional
22 relief of immediate fair hearings and decisions on pending
23 claims, administrative law judge hearings and decisions on
24 pending claims and review by the departmental appeals board.
25 Plaintiff's request for additional relief will be denied at

1 this time. Healthcare Technology conceded that this additional
2 relief was not requested in the complaint. The complaint does
3 not set forth a claim entitling plaintiff to such relief.
4 Additionally, we have serious doubts as to whether plaintiff
5 has sued all the proper parties in order to obtain these other
6 remedies.

7 The Court will enter today the following Order:

8 And now, this 17th day of August 2000, for the
9 reasons stated on the record this day in open court, IT IS
10 HEREBY ORDERED that:

11 1. The Motion of Defendants to Dismiss Count I of
12 the complaint is GRANTED because Count I is now moot.

13 2. Judgment is entered in favor of Healthcare
14 Technology Services, Inc. and against the defendants Donna
15 Shalala, as Secretary for the United States Department of
16 Health and Human Services, United HealthCare Insurance Company,
17 AdminaStar Federal, Inc. and Palmetto Government Benefit
18 Administrators, Inc. on Counts III and IV of the complaint.
19 The defendant Donna Shalala, as Secretary for the United States
20 Department of Health and Human Services, through her
21 appropriate agents, United HealthCare Insurance Co., AdminaStar
22 Federal, Inc. and Palmetto Government Benefit Administrators,
23 Inc. shall pay $532,323.11, plus appropriate interest as
24 authorized by law, within 30 days of the date of this Order to
25 plaintiff Healthcare Technology Services, Inc.

1 Thank you very much.

2 MR. BACKSTROM: Thank you, your Honor.

3 MS. ROWLAND: Thank you, your Honor.

4 (This matter concluded at 2:45 p.m.)

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19 C E R T I F I C A T I O N

20 I certify that the foregoing is a correct transcript

21 from the electronic sound recording of the proceedings in the

22 above-entitled matter.

23

24 [signature]

25 Gail Drummond - 8/24/00