

1 SHARTSIS FRIESE LLP  
2 RONALD HAYES MALONE (Bar #51087)  
3 rmalone@sflaw.com  
4 FRANK A. CIALONE (Bar #172816)  
5 fcialone@sflaw.com  
6 One Maritime Plaza, Eighteenth Floor  
7 San Francisco, CA 94111  
8 Telephone: (415) 421-6500  
9 Facsimile: (415) 421-2922

10 Attorneys for Receiver  
11 THOMAS SEAMAN

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 SOUTHERN DIVISION

15 SECURITIES AND EXCHANGE  
16 COMMISSION,

17 Plaintiff,

18 v.

19 MEDICAL CAPITAL HOLDINGS,  
20 INC.; MEDICAL CAPITAL  
21 CORPORATION; MEDICAL  
22 PROVIDER FUNDING  
23 CORPORATION VI; SIDNEY M.  
24 FIELD; and JOSEPH J.  
25 LAMPARIELLO,

26 Defendants.

Case No. SACV 09-818 DOC (RNBx)

**FIRST INTERIM FEE  
APPLICATION OF SHARTSIS  
FRIESE LLP, CONFLICTS  
COUNSEL TO THE RECEIVER**

Date: June 13, 2011  
Time: 8:30 a.m.  
Judge: Hon. David O. Carter  
Court Room: 9D

27 Shartsis Friese LLP ("Shartsis Friese"), conflicts counsel for Thomas A.  
28 Seaman (the "Receiver"), the court-appointed Permanent Receiver for Medical  
Capital Holdings, Medical Capital Corporation, Medical Provider Funding  
Corporation VI, and their subsidiaries and affiliates (collectively, the "Receivership  
Entities") submits this First Interim Fee Application for approval and payment of  
fees and reimbursement of expenses. This application covers the seven-month  
period from March 1, 2010 through September 30, 2010 (the "First Interim

SHARTSIS FRIESE LLP  
ONE MARITIME PLAZA  
EIGHTEENTH FLOOR  
SAN FRANCISCO, CA 94111

1 Period”).

2 By this Application, Shartsis Friese seeks compensation for \$270,065.75<sup>1</sup> in  
3 fees and \$11,036.93<sup>2</sup> in costs incurred during the First Interim Period. In addition,  
4 Shartsis Friese requests that the Court award \$12,157.75 in fees to its local counsel,  
5 Sander Ingebretsen & Wake, P.C. (“Sander Ingebretsen”) of Denver, Colorado, for  
6 completed discovery matters in the District of Colorado. Shartsis Friese requests  
7 that the Receiver be authorized to pay out of the assets of the receivership estate  
8 80% of the requested fees (\$216,052.60), and 100% of the requested costs and local  
9 counsel’s fees (\$23,194.68).

10 The SEC has reviewed this First Interim Fee Application and provided  
11 comments, which have been addressed. The SEC does not intend to oppose this  
12 Fee Application. In addition, the Receiver has requested that Shartsis Friese  
13 eliminate certain charges and Shartsis Friese has done so. The Receiver supports  
14 approval of Shartsis Friese’s application.

15 As detailed below, the Receiver and Shartsis Friese respectfully request that  
16 the Court allow Shartsis Friese to be compensated for its fees and costs incurred in  
17 the First Interim Period.

18 **I. INTRODUCTION**

19 On August 18, 2009, the Court entered the Preliminary Injunction and Order  
20 Appointing a Permanent Receiver and authorizing him to engage and employ  
21 attorneys to (1) assist in investigation and discovery as may be necessary to locate  
22 and account for assets of or managed by the Receivership Entities, and (2)  
23 investigate and, where appropriate, to institute, pursue, and prosecute all claims and  
24 causes of action of whatever kind and nature as a result of the activities of the

25 <sup>1</sup> As noted *infra*, this consists of \$208,790.60 in fees relating to potential  
26 claims against the Trustees and \$61,275.15 in fees relating to discovery  
requests in the *Masonek* litigation.

27 <sup>2</sup> As noted *infra*, this consists of \$10,198.87 in costs relating to potential  
28 claims against the Trustees and \$838.06 in costs relating to the discovery  
matters.

SHARTSIS FRIESE LLP  
ONE MARITIME PLAZA  
EIGHTEENTH FLOOR  
SAN FRANCISCO, CA 94111

1 employees or agents of the Receivership Entities. The Receiver immediately  
2 engaged Allen Matkins.

3 In February 2010, the Receiver engaged Shartsis Friese as conflicts counsel  
4 to investigate potential claims against the indenture trustees for the Receivership  
5 Entities, Wells Fargo Bank ("Wells Fargo") and Bank of New York-Mellon  
6 ("BONY") (collectively, Wells Fargo and BONY are referred to as the "Trustees").  
7 The Receiver engaged conflicts counsel because Allen Matkins represents Wells  
8 Fargo in unrelated matters. Shartsis Friese's engagement also included  
9 investigating potential claims against BONY because the legal and factual issues  
10 surrounding those potential claims were similar. Shartsis Friese's engagement  
11 subsequently expanded to include representing the Receiver in discovery  
12 proceedings initiated in the *Masonek* litigation, to which Wells Fargo and BONY  
13 are parties. On May 21, 2010, this Court confirmed the Receiver's appointment of  
14 Shartsis Friese as conflicts counsel [Document 260] and on October 12, 2010, the  
15 Court authorized the Receiver, through conflicts counsel, to bring such claims  
16 against the Trustees as the Receiver deems proper [Document 428].

17 Being mindful of the Receiver's mission to maximize the value of the  
18 receivership estate, net of all costs including attorneys fees, the Receiver and  
19 Shartsis Friese have worked closely to reduce the amount of attorneys fees. The  
20 Receiver has implemented a number of strategies to achieve this goal, including: 1)  
21 effective use of junior attorneys and paralegals where appropriate; 2) the use of the  
22 Receiver's expertise and work product, as well as his staff, for gathering and  
23 analyzing evidence; 3) the negotiation of a discounted fee arrangement wherein  
24 associate attorneys and paralegals are billed at a ten percent discount and partners at  
25 an approximate twelve percent discount, and travel time to Southern California is  
26 not charged; 4) the use of local counsel for discovery disputes pending in the  
27 District of Colorado; and 5) the negotiation and execution of tolling agreements  
28 with the Trustees to facilitate the cost effective exchange of documents and to

1 engage in discussions with counsel for the Trustees concerning the Receiver's  
2 investigation and his potential claims against the Trustees. In addition, during the  
3 First Interim Period Shartsis Friese has voluntarily written off 70.2 hours  
4 representing \$20,258 in time charges. (See footnotes 3 and 7 below for details).

5 **II. FEE APPLICATION AND SUMMARY OF TASKS PERFORMED BY**  
6 **SHARTSIS FRIESE DURING THE FIRST INTERIM PERIOD**

7 During the seven-month First Interim Period, Shartsis Friese respectfully  
8 requests the Court's approval of \$270,065.75 in fees, \$11,036.93 in costs, and  
9 \$12,157.75 in fees for local counsel in Colorado. For the Court's review, Shartsis  
10 Friese has categorized the time billed by its professionals as follows: 1) work  
11 relating to the Receiver's potential claims against the Trustees (\$270,065.75 in fees  
12 and \$11,036.93 in costs); and 2) protection of the Receiver's and the Receivership  
13 Estate's interests in connection with discovery requests and disputes in the  
14 *Masonek* litigation (\$61,275.15 in Shartsis Friese fees, \$838.06 in costs, and  
15 \$12,157.75 in fees for local counsel in Colorado).

16 **A. Receiver's Potential Claims Against Trustees (562.9 hours)**

17 Shartsis Friese has incurred \$208,790.60 in fees<sup>3</sup> and \$10,198.87 in costs<sup>4</sup>  
18 relating to the investigation of potential claims against the Trustees during the  
19 seven months comprising the First Interim Period. That work has included legal  
20 research on the potential claims against the Trustees, the Receiver's standing to  
21 bring such claims, and on the legal and equitable defenses the Trustees might raise.<sup>5</sup>

22 <sup>3</sup> As noted above, this does not include 60.2 hours (\$17,529) in time charges  
23 voluntarily written off by Shartsis Friese. See Exhibit A to Cialone  
Declaration, pages 19-20 ("non-chargeable amount").

24 <sup>4</sup> Due to an early error in tracking costs, Shartsis Friese has billed all costs  
25 incurred in the period covered by this application to investigating claims.  
Shartsis Friese believes that a small portion of these costs (*i.e.*, less than  
10%) actually relate to work done in connection with discovery proceedings.

26 <sup>5</sup> Between February and May 2010, attorney Gary Fontana, who has  
27 experience with indenture trustee liability law, guided these initial research  
28 efforts. After the Court determined that Shartsis Friese should not assign  
three partner-level attorneys to the matter [Document 252], Mr. Fontana  
stopped working on the case. Shartsis Friese requests that the Court approve

SHARTSIS FRIESE LLP  
ONE MARITIME PLAZA  
EIGHTH FLOOR  
SAN FRANCISCO, CA 94111

1 Shartsis Friese reviewed the relevant portions of the receiver's Reports to the Court  
2 and the pleadings and motions in the *Masonek* litigation and attended the hearing<sup>6</sup>  
3 on the motions to dismiss. It has also included detailed factual investigation,  
4 including review and analysis of the relevant provisions of the Note Issuance and  
5 Security Agreement ("NISA") for each of the Special Purpose Corporations formed  
6 by the Receivership Entities, review and analysis of documents and financial data,  
7 and interviews of the Receiver and members of the Receiver's staff (including  
8 members who previously worked for the Receivership Entities). Shartsis Friese has  
9 worked closely with the Receiver's staff in order to maximize efficiency in  
10 performing these tasks.

11 Following the investigation of potential claims against the Trustees, Shartsis  
12 Friese consulted with the Receiver regarding the factual and legal bases of claims  
13 against the Trustees and made a recommendation regarding those claims to the  
14 Receiver. Shartsis Friese also prepared a draft Complaint against the Trustees.  
15 Subsequently, in October 2010, the Receiver sought and obtained Court approval to  
16 pursue claims against the Trustees for acts and omissions in their capacities as  
17 indenture trustees of various Receivership Entities [Document 428]. Following the  
18 Court's Order authorizing the Receiver to pursue claims against the Trustees,  
19 Shartsis Friese reviewed material developments in the relevant law and held  
20 numerous discussions with the Receiver, his staff, and other interested parties  
21 concerning the pros and cons of filing a complaint against the Trustees and  
22 identified and developed areas for further factual inquiry. In addition, Shartsis  
23 Friese communicated with counsel for the Trustees in an effort to minimize

24  
25 fees incurred for Mr. Fontana's time on this matter, because that time was of  
26 significant value due to Mr. Fontana's prior experience with and expertise in  
27 many of the legal issues present in this matter. His work was not duplicative  
28 of the work done by others, including partners Ronald Hayes Malone and  
Frank Cialone.

<sup>6</sup> Pursuant to the Receiver's fee agreement with Shartsis Friese, travel time to  
Southern California is not charged.

1 litigation expenses and entered into tolling agreements with the Trustees as of  
2 December 10, 2010 to enable the parties to exchange documents and engage in  
3 discussions with the Trustees' counsel concerning the Receiver's investigation and  
4 his potential claims against the Trustees.

5 **B. Protection Of The Receivership Estate's Interests In Connection**  
6 **With Discovery Requests And Disputes In The *Masonek***  
7 **Litigation (193.6 hours)**

8 Shartsis Friese has also incurred \$61,275.15<sup>7</sup> in fees and \$838.06 in costs for  
9 work relating to discovery proceedings in the *Masonek* action. Most of that work  
10 related to a subpoena issued to Waverton Group ("Waverton"), which called for  
11 production of documents received from the Receivership Entities. In order to ensure  
12 that confidential documents of the Receivership Entities, and of third parties to  
13 which the Receivership Entities have confidentiality obligations, Shartsis Friese  
14 sought to negotiate appropriate protective orders and other arrangements with the  
15 parties to the *Masonek* litigation and with Waverton; engaged in protracted  
16 negotiations with Waverton to comport with the parties' agreement and ultimately  
17 brought a motion (with the assistance of local counsel in Colorado, Sander  
18 Ingebretsen) in the District Court of Colorado for a protective order to so require;  
19 responded to motions by Waverton to vacate the previously entered order; reviewed  
20 documents to be produced by Waverton before they were produced to the *Masonek*  
21 parties in accordance with the order of the District Court for Colorado; and  
22 consulted with third parties in order to ensure that the Receiver did not breach any  
23 confidentiality obligations of the Receivership Entities. Shartsis Friese ultimately  
24 reviewed more than 7300 documents provided by Waverton, and contacted three  
25 third parties regarding potential confidentiality issues.

26 Shartsis Friese also did similar, though less time-consuming, work in

27 <sup>7</sup> This does not include 10 hours (\$2,729) in time charges voluntarily written  
28 off by Shartsis Friese. See Exhibit B to Cialone Declaration, page 10 ("non-chargeable amount").

1 connection with a subpoena issued to Signature Advisors.

2 **C. Expenses Requested (\$11,036.93 In Costs, Plus \$12,157.75 For**  
3 **Local Counsel Fees)**

4 Shartsis Friese also requests that the Court approve \$11,036.93 in costs, plus  
5 \$12,157.75 for the fees of Colorado counsel, Sander Ingebretsen. The costs were  
6 all incurred in connection with investigating potential claims against the Trustees  
7 (except as noted above) and handling the discovery issues surrounding the  
8 Waverton and Signature subpoenas. Shartsis Friese charges costs at actual or  
9 estimated cost, including charges of \$.08 per page for in-house copying. The bulk  
10 of the costs are attributable to travel (to meet with the Receiver and his staff, to  
11 attend the hearings on the Motions to Dismiss in the *Masonek* case, and on the  
12 Receiver's application for approval to bring claims against the Trustees), and to  
13 legal research costs.

14 As noted above, Shartsis Friese, with the advance approval of the Receiver,  
15 retained Sander Ingebretsen as local counsel in Colorado in order to cost-effectively  
16 assist in bringing motions and responding to motions by Waverton regarding the  
17 Waverton production and the Receiver's rights and obligations in connection with  
18 that production. Sander Ingebretsen has incurred fees of \$12,157.75. The work  
19 related to the Waverton and Signature document production issues was completed  
20 in September 2010 and Shartsis Friese believes that the Waverton and Signature  
21 subpoena issues have been resolved. Since Shartsis Friese does not anticipate any  
22 future need for the assistance of local counsel in the District of Colorado, we  
23 respectfully request that the fees of local counsel be approved and paid in full.

24 **III. CONCLUSION**

25 During the seven months of the First Interim Period, Shartsis Friese has  
26 worked diligently to assist the Receiver in fulfilling his responsibilities in a cost  
27 efficient manner. Therefore, pursuant to this Court's power to approve the  
28 requested interim fees and costs, Shartsis Friese respectfully requests that the Court

1 enter an order:

2 1. Approving and allowing fees to Shartsis Friese totaling \$270,065.75  
3 for the First Interim Period;

4 2. Approving and awarding Shartsis Friese reimbursement of costs  
5 totaling \$11,036.93 for the First Interim Period;

6 3. Approving and awarding fees totaling \$12,157.75 to Colorado counsel,  
7 Sander Ingebretsen;

8 4. Authorizing the Receiver to pay 80 percent of the allowed fees to  
9 Shartsis Friese, which amount is \$216,052.60, out of the assets of the Receivership  
10 Estate;

11 5. Authorizing the Receiver to pay 100 percent of the allowed amount of  
12 Shartsis Friese's costs, which amount is \$11,036.93, out of the assets of the  
13 Receivership Estate;

14 6. Authoring the Receiver to pay 100 percent of the awarded fees to  
15 Sander Ingebretsen, which amount is \$12,157.75, out of the assets of the  
16 Receivership Estate; and

17 7. For other and further relief as is appropriate.

18 DATED: May 4, 2011

SHARTSIS FRIESE LLP

19  
20 By: /s/  
FRANK A. CIALONE

21  
22 Attorneys for Receiver  
THOMAS SEAMAN

23 8054\001\FCIALONE\1668500.3  
24  
25  
26  
27  
28

SHARTSIS FRIESE LLP  
ONE MARITIME PLAZA  
EIGHTEENTH FLOOR  
SAN FRANCISCO, CA 94111