

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

6 Attorneys for Receiver  
THOMAS SEAMAN  
7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 SOUTHERN DIVISION  
11

12 SECURITIES AND EXCHANGE  
13 COMMISSION,

14 Plaintiff,

15 v.

16 MEDICAL CAPITAL HOLDINGS,  
INC.; MEDICAL CAPITAL  
17 CORPORATION; MEDICAL  
PROVIDER FUNDING  
18 CORPORATION VI; SIDNEY M.  
FIELD; and JOSEPH J.  
19 LAMPARIELLO,

20 Defendants.  
21

Case No. SACV 09-818 DOC (RNBx)

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

Date: May 7, 2012  
Time: 8:30 a.m.  
Judge: Hon. David O. Carter  
Court Room: 9D

22 Shartsis Friese LLP (“Shartsis Friese”), conflicts counsel for Thomas A.  
23 Seaman (the “Receiver”), the court-appointed Permanent Receiver for Medical  
24 Capital Holdings, Medical Capital Corporation, Medical Provider Funding  
25 Corporation VI, and their subsidiaries and affiliates (collectively, the “Receivership  
26 Entities”) submits this Amended Third Interim Fee Application for approval and  
27 payment of fees and reimbursement of expenses. This application covers the eight-  
28

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1 month period from May 1, 2011 through December 31, 2011 (the “Third Interim  
2 Period”).

3 By this Application, Shartsis Friese seeks compensation for \$340,313.10 in  
4 fees and \$13,665.42 in costs incurred during the Third Interim Period. Shartsis  
5 Friese requests that the Receiver be authorized to pay out of the assets of the  
6 receivership estate 80% of the requested fees (\$272,250.48), and 100% of the  
7 requested costs (\$13,665.42).

8 The Court has previously approved fees to Shartsis Friese in the amount of  
9 \$520,607.75 and costs in the amount of \$18,648.33, and authorized the Receiver to  
10 pay 80% of the fees and 100% of the costs. *See* Doc. Nos. 549, 595. With the  
11 instant Application, the total amount of fees for which Shartsis Friese has sought  
12 approval is \$860,920.85, and the total amount of costs is \$32,313.75. Those  
13 amounts cover services provided by Shartsis Friese on all matters (including claims  
14 against the Trustees and discovery in other litigation) for the 22-month period from  
15 March 2010 through December 2011.

16 The SEC has reviewed this Third Interim Fee Application and did not have  
17 any comments regarding the Fee Application. The SEC does not intend to oppose  
18 the Fee Application. The Receiver also supports approval of Shartsis Friese’s  
19 application.

20 As detailed below, the Receiver and Shartsis Friese respectfully request that  
21 the Court allow Shartsis Friese to be compensated for its fees and costs incurred in  
22 the Third Interim Period.

23 **I. INTRODUCTION**

24 On August 18, 2009, the Court entered the Preliminary Injunction and Order  
25 Appointing a Permanent Receiver and authorizing him to engage and employ  
26 attorneys to (1) assist in investigation and discovery as may be necessary to locate  
27 and account for assets of or managed by the Receivership Entities, and (2)  
28 investigate and, where appropriate, to institute, pursue, and prosecute all claims and

1 causes of action of whatever kind and nature as a result of the activities of the  
2 employees or agents of the Receivership Entities. The Receiver immediately  
3 engaged Allen Matkins.

4 In February 2010, the Receiver engaged Shartsis Friese as conflicts counsel  
5 to investigate potential claims against the indenture trustees for the Receivership  
6 Entities, Wells Fargo Bank (“Wells Fargo”) and Bank of New York-Mellon  
7 (“BONY”) (collectively, Wells Fargo and BONY are referred to as the “Trustees”).  
8 The Receiver engaged conflicts counsel because Allen Matkins represents Wells  
9 Fargo in unrelated matters. Shartsis Friese’s engagement also included  
10 investigating potential claims against BONY because the legal and factual issues  
11 surrounding those potential claims were similar. Shartsis Friese’s engagement  
12 subsequently expanded to include representing the Receiver in discovery  
13 proceedings initiated in the *Masonek* litigation, to which Wells Fargo and BONY  
14 are parties. On May 21, 2010, this Court confirmed the Receiver’s appointment of  
15 Shartsis Friese as conflicts counsel [Doc. No. 260] and on October 12, 2010, the  
16 Court authorized the Receiver, through conflicts counsel, to bring such claims  
17 against the Trustees as the Receiver deems proper [Doc. No. 428].

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

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1 discussions with counsel for the Trustees concerning the Receiver's investigation  
2 and his potential claims against the Trustees; and 5) direct discussions involving the  
3 Receiver, his counsel, and counsel for and representatives of the Trustees, aimed at  
4 settling claims without the expense of full litigation proceedings.

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

7 For work performed during the eight-month Third Interim Period, Shartsis  
8 Friese respectfully requests the Court's approval of \$340,313.10 in fees and  
9 \$13,665.42 in costs. Nearly all of those fees and costs were for work related to the  
10 Receiver's potential claims against the Trustees. Some additional fees were  
11 incurred in preparing objections to claims submitted by the Trustees.

12 During the time period covered by this Application, Shartsis Friese's efforts  
13 were focused on continuing the settlement discussions that had been initiated with  
14 the Trustees, with the goal of obtaining a recovery for the Receivership Estate  
15 without incurring the costs, risks, and delay of formal litigation. The Receiver and  
16 the Trustees have had numerous meetings, substantive telephone discussions, and  
17 exchanges of written information and documentation. Shartsis Friese also prepared  
18 objections to the claims filed against the Receivership Estate by the Trustees.

19 Shartsis Friese's invoices reflect a total of 1084.80 hours of work performed  
20 during the Third Interim Period. That work has included a detailed review and  
21 analysis of extensive documentation (including documentation provided by the  
22 Trustees to facilitate further discussions), review of documents and information in  
23 the Receiver's possession in order to respond to contentions by the Trustees, legal  
24 research regarding defenses raised by the Trustees, review of the relevant portions  
25 of the Receiver's Reports to the Court and the pleadings and motions in the  
26 *Masonek* litigation; and review concerning transactions by the Medical Capital  
27 entities that give rise to the Receiver's potential claims. Shartsis Friese has worked  
28 closely with the Receiver's staff in order to maximize efficiency in performing

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1 these tasks. Shartsis Friese has also sought and obtained voluntary production of  
2 documents from the Trustees so as to avoid the costs of litigation over discovery  
3 issues.

4 Shartsis Friese has also applied a 10% discount to all non-partner time,  
5 representing a discount of \$20,670.90, and has billed partners (Ronald Hayes  
6 Malone and Frank Cialone) at a blended rate of \$550 that results in a further  
7 substantial discounting.

8 In March 2012, Shartsis Friese will adjust its billing rates. Shartsis Friese  
9 requests authority to apply current non-partner billing rates for all fees incurred  
10 from March 2012 forward (subject to the 10% discount for non-partner time that is  
11 already in place). This would result in hourly rate increases for associates Simone  
12 Katz-O'Neill (from \$320 to \$350, prior to the application of the 10% discount),  
13 Joseph Mauch (from \$310 to \$340, prior to the application of the 10% discount),  
14 and Roni Pomerantz (from \$290 to \$320, prior to the discount), and paralegal  
15 Shepherd Smith (from \$180 to \$195, prior to the discount). Shartsis Friese believes  
16 that the undiscounted rates for these timekeepers are comparable to or less than  
17 rates for professionals at similar levels doing legal work of this kind.

18 Shartsis Friese also requests that the Court approve \$13,665.42 in costs. The  
19 majority of these costs are travel-related (Shartsis Friese is not billing for travel  
20 time to Southern California on this matter), primarily for travel to meetings with  
21 counsel for the Trustees and/or with the Receiver and his staff. Shartsis Friese  
22 charges costs at actual or estimated cost, including charges of \$.08 per page for in-  
23 house copying.

### 24 **III. CONCLUSION**

25 During the eight months of the Third 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

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enter an order:

1. Approving and allowing fees to Shartsis Friese totaling \$340,313.10 for the Third Interim Period;

2. Approving and awarding Shartsis Friese reimbursement of costs totaling \$13,665.42 for the Third Interim Period;

3. Authorizing Shartsis Friese to apply current rates for non-partner timekeepers, subject to a 10% discount, beginning in March 2012;

4. Authorizing the Receiver to pay 80 percent of the allowed fees to Shartsis Friese, which amount is \$272,250.48, out of the assets of the Receivership Estate;

5. Authorizing the Receiver to pay 100 percent of the allowed amount of Shartsis Friese's costs, which amount is \$13,665.42; and

6. For other and further relief as is appropriate.

DATED: March 27, 2012

SHARTSIS FRIESE LLP

By: /s/Frank A. Cialone  
FRANK A. CIALONE

Attorneys for Receiver  
THOMAS SEAMAN

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