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13 Attorneys for Receiver
14 THOMAS A. SEAMAN

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 SOUTHERN DIVISION

18 SECURITIES AND EXCHANGE
19 COMMISSION,

20 Plaintiff,

21 v.

22 MEDICAL CAPITAL HOLDINGS,
23 INC.; MEDICAL CAPITAL
24 CORPORATION; MEDICAL
25 PROVIDER FUNDING
26 CORPORATION VI; SIDNEY M.
27 FIELD; and JOSEPH J.
28 LAMPARIELLO,

Defendants.

Case No. SA CV09-0818 DOC (RNBx)

DECLARATION OF FRANK A.
CIALONE IN SUPPORT OF
RENEWED APPLICATION FOR
APPROVAL OF RECEIVER'S
APPOINTMENT OF CONFLICTS
COUNSEL

Date: June 7, 2010
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

I, FRANK A. CIALONE, declare:

1. I am an attorney licensed to practice law in the State of California and in all federal courts therein. I am a partner at the law firm of Shartsis Friese LLP. I make this declaration on my own personal knowledge and, if called to testify to the facts set forth herein, could and would testify truthfully and competently thereto.

1 2. The Receiver in this matter, Thomas Seaman, initially retained Shartsis
2 Friese for the purpose of investigating potential claims against Wells Fargo Bank
3 and Bank of New York Mellon. Shortly after the firm was retained, and while the
4 Receiver's motion for approval of the retention of conflicts was pending, we were
5 asked to handle certain discovery issues that were arising in litigation in which
6 Wells Fargo was a party. The discovery included subpoenas that were issued in the
7 *Masonek* litigation to The Waverton Group, LLC ("Waverton") and to an affiliated
8 entity, Signature Financial. We were informed by those entities that the documents
9 to be produced in response to those subpoenas might be subject to claims of
10 confidentiality and/or the attorney-client privilege by the Receiver. I reviewed the
11 relatively small number of documents to be produced by Signature Financial and,
12 after conferring with the Receiver, approved their release to the parties in the
13 *Masonek* litigation.

14 3. The subpoena to Waverton presented much more significant issues,
15 including the following: The documents to be produced were far more voluminous
16 and, unlike the documents produced by Signature Financial, were not limited to
17 mostly public materials; Waverton was subject to an order from the District Court in
18 Colorado requiring production by certain deadlines; the defendants in the *Masonek*
19 litigation indicated that they did not believe the Receiver had any right to assert
20 confidentiality or privilege over any documents in Waverton's possession; and there
21 were a number of disputes between Waverton and the parties regarding the
22 appropriate form and manner of production. For these and other reasons, it was very
23 difficult to negotiate a compromise, and we were forced to prepare a motion to seek
24 a protective order in the District of Colorado in order to preserve the Receiver's
25 rights. Ultimately, however, we were able to negotiate a resolution whereby counsel
26 for the Receiver could review any documents before Waverton produced them to the
27 parties. I devoted substantial time to these negotiations, which involved Waverton,

1 Waverton's counsel, and counsel for all parties to the *Masonek* litigation. I have
2 also devoted substantial time to reviewing the documents provided by Waverton, in
3 order to assess whether any are subject to claims of confidentiality or privilege; that
4 task is not complete, as we stopped work when the Court denied the Receiver's
5 motion for approval of his retention of Shartsis Friese.

6 4. More recently, we received a letter from counsel in the mass action
7 pending in the Southern District of Florida regarding discovery that those counsel
8 intend to seek from the Receiver. Wells Fargo is a party in that action. A true and
9 correct copy of that letter is attached hereto as Exhibit 1.

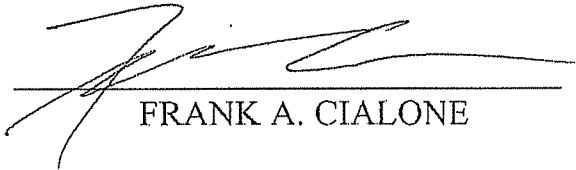
10 5. Shartsis Friese estimates that the total fees for work entailed in making
11 a recommendation to the Receiver about whether to pursue claims against the
12 Trustees will be between \$100,000 and \$125,000. This is in addition to work the
13 firm may do in connection with other matters that are already pending, such as the
14 discovery-related work discussed above. The work involved in determining whether
15 to recommend that the Receiver bring claims -- claims that could be worth hundreds
16 of millions of dollars -- includes legal research on issues such as the standing of the
17 Receiver to pursue claims against the Trustees, whether the conduct of principals in
18 Medical Capital will be imputed to the Receiver for purposes of equitable defenses
19 such as *in pari delicto*, governing statutes of limitations and applicable tolling rules,
20 and the potential grounds for liability of an indenture trustee. Where the legal issues
21 are controlled by state law, this task has required researching the law in three
22 jurisdictions (California, Colorado, and New York) due to the choice of law
23 provisions in the governing agreements, as well as research regarding the
24 interpretation of the unusual choice of law provisions present in some of those
25 agreements. The work entailed in making a recommendation to the Receiver also
26 includes factual investigation and analysis, including detailed analysis of the
27 Trustees' obligations under the governing agreements and working with the

1 Receiver's staff to assess the existence, scope, and materiality of breaches of those
2 agreements.

3 I declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct of my own personal knowledge.

5 Executed in San Francisco County, California, on May 6, 2010.

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FRANK A. CIALONE

Case No. SA CV09-0818

CIALONE DECLARATION IN SUPPORT OF RENEWED APPL.
FOR APPROVAL OF RECEIVER'S APPT. OF CONFLICTS COUNSEL

EXHIBIT A



GREENSPOON MARDER, P.A.
ATTORNEYS AT LAW

From the desk of:

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May 3, 2010

Via Email & Federal Express

Mr. Thomas A. Seaman
Court Appointed Permanent Receiver
Medical Capital Holdings, Inc.
c/o Frank Cialone, Esq.
Ronald Malone, Esq.
Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111

RE: *James L. Abbate, et al. v. Wells Fargo Bank, et al.*, Case No.: 09-62047

Dear Messrs. Cialone and Malone:

As you know, we represent the Plaintiffs in the above-referenced mass action pending in federal court in the Southern District of Florida. We write in furtherance of our several teleconferences concerning the discovery obligations which we anticipate the Medical Capital Receiver will be confronting as discovery progresses in our case and the several class actions pending in the Central District of California. We write as a courtesy and to preview the discovery the *Abbate* Plaintiffs propose to propound in the form of non-party Rule 45 subpoenas for documents and Rule 30(b)(6) corporate designee depositions for each of the Medical Capital entities and special purpose corporations. Drafts of templates for the schedules detailing the categories of documents being sought in the Rule 45 subpoenas and the areas of inquiry for the Rule 30(b)(6) designee deposition(s) are attached for your convenience.

We are aware and mindful of the significant demands upon the Receiver's time; we also believe you already have been or will shortly be subjected to a significant amount of discovery in the other cases, including, potentially, hundreds of FINRA arbitration cases of which we have become aware. We, therefore, propose to work with you and, to greatest extent feasible, with

Frank Cialone, Esq.
Ronald Malone, Esq.
Shartsis Friese LLP
May 3, 2010
Page 2

counsel for other litigants to minimize the disruption our discovery requests, in particular, may pose to the Receiver and the Medical Capital operations he oversees.


In this regard we prefer to reduce the amount of "paper" involved and so propose to confer on and to consider any recommendation you may make regarding a workable joint protocol to search for and retrieve ESI and whatever hard-copy documents there may be. In particular, once you've ascertained the methods and manner by which ESI was created and stored by the Medical Capital companies and by the Receiver since his appointment (*e.g.*, software used, format of ESI, search and retrieval protocols available, *etc.*), we'd like to agree on how to, for example, handle access to the database(s), describe search and information retrieval instructions, and define keyword/phrase search terms.

We also need to agree on dates for each phase of the anticipated discovery. We intend to serve the subpoenas for production (and authentication if that will be required and cannot be otherwise accomplished) of documents by the end of this week. We expect to afford the Receiver whatever reasonable time is requested and would prefer to start with an agreed target date recited in the subpoenas, subject, of course, to reasonable adjustment as may be warranted. Please let us know within the next several days how long an initial return date we should provide.

We look forward to working with you and await your response.

Very truly yours,

GREENSPOON MARDER, P.A.


Richard W. Epstein
For the Firm

RWE/mcs
Enclosures

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SCHEDULE A

A. FED. R. CIV. P. 45 INSTRUCTIONS

1. Duties in Responding to a Subpoena, and Producing Documents or Electronically Stored Information.¹ These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

2. Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

¹ The term "document" as it pertains to ESI, electronically stored materials and/or computer records includes, but is not limited to, responsive documents on hard storage disks, CD-ROMs, optical discs, backup drives, printer buffers, smart cards, memory calculators, pagers, personal digital assistants such as Palm Pilot and/or Blackberry devices as well as electronic appointment books, cellular phones, instant and/or SMS text messages, telephone conference call recordings, answering machine records, fax machine data and logs, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. In response to this request, ESI/electronic data should be produced in CD-Rom optically readable format, clearly labeled as to the kind of software used to prepare, organize, and manipulate the data contained.

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(i) Make the claim expressly; and

(ii) Describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

B. DEFINITIONS

1. The terms "you" or "your" or "[INSERT FULL NAME OF SPC]" means in addition to you in this litigation, all agents, attorneys, accountants, consultants, representatives, private investigators, successors, heirs, assigns, assignors, trustees and all others who are in possession of or who have obtained discoverable information for or on behalf of you.

2. The term Trustee means "[INSERT FULL NAME OF BANK]" and all its agents, attorneys, accountants, consultants, representatives, private investigators, successors, heirs, assigns, assignors, trustees and all others who are in possession of or who have obtained discoverable information for or on behalf of you..

3. The acronym "NISA" means that NOTE ISSUANCE AND SECURITY AGREEMENT, dated as of [INSERT DATE OF NISA] by and between the Debtor and you.

4. The terms defined in Article I of the NISA have the same meaning herein.

5. The term "Plaintiff" or "Noteholder" means the Person in whose name a Note is registered on the Note Register for the NISA.

6. The singular shall include the plural and vice versa; the terms "and" or "or" shall be both conjunctive and disjunctive; and the term "including" mean "including without limitation".

7. When production of any document in your possession is requested, such request includes documents subject to your possession, custody or control, including ESI. In the event that you are able to provide only part of the document(s) called for in any particular item of this Request for Production, provide all document(s) that you are able to provide and state the reason, if any, for the inability to provide the remainder

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8. The words “pertain to” or “pertaining to” mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts.

C. DOCUMENTS TO BE PRODUCED

1. A complete account statement for each account where NISA, Noteholder funds were deposited and/or from which such Noteholder funds were withdrawn and/or from which payments were made to anyone, from the date the account was opened and up through and including the date of your response to this Subpoena.

2. All subscription agreements and drafts of subscription agreements you prepared and/or received and/or that were sent to the TRUSTEE and/or Noteholders for the NISA.

3. All communications relating to subscription agreements and drafts of subscription agreements you received and/or that were sent to the Trustee and/or Noteholders for the NISA.

4. All private placement memorandum and/or supplemental private placement memorandum, including drafts of private placement memoranda and drafts of supplemental private placement memoranda that were sent to the TRUSTEE and/or Noteholders for the NISA.

5. All communications relating to all private placement memorandum and/or supplemental private placement memorandum, including drafts of private placement memoranda and drafts of supplemental private placement memoranda, that were sent to the Trustee and/or Noteholders for the NISA.

6. All Subscription Account documents, including, but not limited to, documents that reflect the gross proceeds from the initial sale of any beneficial interest in a Note and all bank drafts, personal checks, and/or wire transfer records reflecting Subscription Account activity.

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7. All Trust Account documents including, but not limited to, documents that reflect Noteholder account activity, including, but not limited to all bank drafts, personal checks, and/or wire transfer records reflecting Trust Account activity.

8. The record of each payment of any kind (including, but not limited to fees, expenses, wire transfer and other banking fees, and/or indemnity) you or your parent companies and/or subsidiaries received from any source in connection with the NISA.

9. All electronic documents/correspondence (including e-mail), in native format [e.g., .pst (format)] and all documents you sent to and/or received from the TRUSTEE, the Administrator, and/or the Servicer that pertains to the NISA.

10. All electronic documents/correspondence (including e-mail), in native format [e.g., .pst (format)] and all documents you sent to and received from any BROKER DEALER pertaining to the NISA.

11. All electronic documents/correspondence (including e-mail), in native format [e.g., .pst (format)] and all documents you sent to and received from FITCH.

12. All electronic documents/correspondence (including e-mail), in native format [e.g., .pst (format)] and all documents you sent to and received from MOODY'S.

13. All electronic documents/correspondence (including e-mail), in native format [e.g., .pst (format)] and all documents you sent to and received from any QUALIFIED INSTITUTIONAL BUYER.

14. All electronic documents/correspondence (including e-mail), in native format [e.g., .pst (format)] and all documents you sent to and received from any RECEIVABLE SELLER.

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15. All electronic documents/correspondence (including e-mail), in native format [e.g., .pst (format)] and all documents you sent to and received from any GOVERNMENT PAYOR and/or from any NON-GOVERNMENTAL PAYOR.

16. All documents that reflect payment(s) you made to any BROKER DEALER in connection with the NISA.

17. Produce each certified "Note Register" for the Notes under the NISA.

18. All documents that reflect your election to redeem all or part of any Note and each notice of redemption you asked the Trustee to send and or sent yourself, including, but not limited to documents that reflect the Redemption Price of all Notes or portion of Notes.

19. All documents that reflect the loans and/or investments made and the collateral received therefore.

20. All documents reflecting ELIGIBLE RECEIVABLES.

21. All documents that reflect loans and/or investments considered but not made.

22. All documents identifying and/or describing any COLLATERAL, including all UCC-1 security agreements and/or financing statements.

23. All documents that reflect the inquiry, investigation and/or due diligence for each loan and/or investment made.

24. All documents reflecting the sale and/or release of any Collateral.

25. The record of every payment of any kind you made to the Administrator, any BROKER DEALER, any affiliate and/or related company and/or SERVICER regardless of the designation of the account from which any such payment was made.

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26. All records, documents and/or statements that reflect money held and income and/or earnings on money held for the credit of the TRUST ACCOUNT, subaccount and/or any other account identified in the NISA.

27. All documents that reflect the liquidation of any funds in the TRUST ACCOUNT and/or liquidation of any Collateral related to the NISA, the Applicable Notes (and all related funds deposited) and the Permitted Investments related to the Applicable Notes.

28. All documents that reflect a termination and/or a satisfaction and discharge of the NISA.

29. All documents that reflect an EVENT OF DEFAULT.

30. All documents that reflect any EXPECTED NET RECEIVABLE AMOUNT.

31. All documents that reflect any certificate and/or opinion you had prepared stating that all conditions precedent provided for in the NISA relating to any act by anyone under the NISA have been complied with.

32. All documents that reflect any assignment or transfer of the NISA or any part of the security and/or Collateral under the NISA.

33. All documents that reflect any default in any of the Special Purpose Companies including defaults by borrowers or other obligors with obligations to any of the Special Purpose Companies, and defaults by the Special Purpose Companies in meeting their obligations.

34. All documents that reflect notice of any of the defaults within any of the Special Purpose Companies to Noteholders, Broker-Dealers, Trustees, and anyone else.

35. All documents that reflect redemption by a Noteholder in any Special Purpose Company including Noteholders who redeemed at maturity, before maturity, and after maturity.

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36. All documents that reflect the reason a Noteholder in any Special Purpose Company redeemed before maturity or after maturity.

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ATTACHMENT A

The person or persons so designated shall testify about matters known or reasonably available to [INSERT FULL NAME OF SPC] (the “Company”) concerning:

1. The Company’s responsibilities under the Note Issuance and Security Agreement (“NISA”) dated [INSERT SERIES AND DATE] where [INSERT NAME OF BANK] accepted specific “Trustee” duties and responsibilities “as trustee for the benefit of the Noteholders.”¹

2. The Trustee’s responsibilities under the Note Issuance and Security Agreement (“NISA”) [INSERT SERIES AND DATE] where [INSERT NAME OF BANK] accepted specific “Trustee” duties and responsibilities “as trustee for the benefit of the Noteholders.”

3. The Company’s representations and warranties to Noteholders under the NISA.

4. The Company’s representations and warranties to the Trustee under the NISA.

5. The Trustee’s representations and warranties to Noteholders under the NISA.

6. The Trustee’s representations and warranties to the Company under the NISA.

7. The negotiations between any of the Medical Capital entities and the Trustee that led to the final NISAs.

8. The negotiations between the Trustee and the previous Trustee whereby the Trustee substituted for the previous Trustee under the NISAs [This relates to the substitution of the Bank of New York for Zions Bank in MPI and MPII, only.]

¹ The terms defined in Article I of the NOTE ISSUANCE AND SECURITY AGREEMENT (“NISA”) have the same meaning herein.

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9. The Company's issuance of Notes, and each series of Notes, and the terms of each particular series.

10. The Company's communications with and reports made to the Trustee under the NISA.

11. The Trustee's communications with and reports made to the Company under the NISA.

12. The Trustee's communications with and reports made to the Noteholders under the NISA.

13. The Company's communications with Noteholders.

14. The Company's communications with its attorneys relating to the Private Placement Memoranda and the NISAs.

15. The Company's communications with its accountants relating to the Private Placement Memoranda and the NISA.

16. The Company's communications with its accountants relating to the preparation of the Company's financial statements.

17. The Company's accounting and accounting records as well as the Company's record of receipts and disbursements for each account established in connection with the NISA.

18. The Company's accounting records relating to the testing done in connection with the reviews prepared by the Company's accountants. [Richard: What I was trying to get at here is that the SPCs and Medical Capital's financial statements were reviews, not just compilations. As such there was not as much testing required of the accounts as there is for an audit, but a

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significant amount of testing was required. If 99% of the receivables are missing, there is something wrong with the reviews. These reviews had to be given to the Trustees.]

19. The Company's agreements with each of the following: ADMINISTRATOR, SERVICER and TRUSTEE.
20. The Company's relationship with and payments to the ADMINISTRATOR, SERVICER and/or TRUSTEE with respect to the NISA.
21. The calculation and payment of any ADMINISTRATIVE FEE.
22. Any default under the NISA.
23. The Company's Private Placement Memorandum.
24. The Company's documents relating to the preparation of the Company's Private Placement Memorandum or Memoranda, including without limitation, all of the Company's communications with the Trustee for that purpose.
25. The Company's relationship with BROKER DEALERS.
26. The Company's deposit of payments under the NISA.
27. The Company's application of funds under the NISA.
28. The Company's certifications made to anyone under the NISA.
29. The notices the Company gave to Noteholders and the Trustee.
30. The documents produced in response to the Subpoena *duces tecum* served on the Company.
31. Any amendments and/or supplements to the NISA.

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