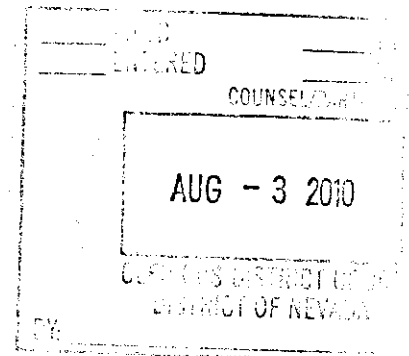


1 Robert L. Brace, Esq., Ca. Bar No. 122240
 2 Michael P. Denver, Esq., Ca. Bar No. 199279
HOLLISTER & BRACE
 3 P.O. Box 630
 Santa Barbara, Ca. 93102
 4 Telephone: (805) 963-6711
Attorneys for Plaintiffs,
 5 *and all others similarly situated*



6 **UNITED STATES DISTRICT COURT**
 7 **FOR THE DISTRICT OF NEVADA**

8 IN RE: SOUTHWEST EXCHANGE,
 9 INC. INTERNAL REVENUE
 SERVICE § 1031 TAX DEFERRED
 10 EXCHANGE LITIGATION

MDL Docket No. 1878
 Case No. 07-cv-01394-RCJ-(LRL)

11 Sorrell, et al. v. Southwest Exchange,
 12 Inc., et al.

**FINAL ORDER AND
 JUDGMENT OF DISMISSAL RE:
 WAVE V SETTLEMENT WITH
 CAROLINA CASUALTY COMPANY
 AND RSUI INDEMNITY COMPANY**

13 On the 19th day of July, 2010, a hearing was held before this Court to determine: (1)
 14 whether the terms and conditions of the Wave V Settlement Agreement between (i) the Sorrell
 15 Plaintiffs, (ii) the Plaintiffs in the related state court action styled *In re Receivership of*
 16 *Southwest Exchange, Inc. and Consolidated Litigation*, Case No. 07-A-535439-B, in the Eighth
 17 Judicial District Court, Clark County, Nevada ("Individual Plaintiffs"), (iii) the Receiver,
 18 Southwest Exchange, Inc. ("SWX"), Qualified Exchange Services, Inc. ("QES") and the other
 19 Receivership Entities, and (iv) Carolina Casualty Company, RSUI Indemnity Company, and
 20 their insureds who to be released by the Settlement Agreement attached hereto as Exhibit A
 21 ("Settlement Agreement") as identified in the Settlement Agreement (collectively the "Settling
 22 Defendants"), is fair, reasonable and adequate for the settlement of all claims released therein by
 23 all releasing persons against all released persons and should be approved; and (2) whether
 24 Judgment should be entered dismissing the above entitled action on the merits and with
 25 prejudice in favor of the Settling Defendants. The Settlement Agreement is incorporated herein
 26 by reference.
 27
 28

1 The Court considered all matters submitted to it at the hearing and otherwise, and
2 determined that a notice of the hearing substantially in the form approved by the Court was
3 timely mailed to all members of the Settlement Class.

4 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND**
5 **DECREED THAT:**

6 1. The Court has jurisdiction over the subject matter of this dispute, all
7 members of the Settlement Class, and the Settling Defendants.

8 2. The Court finds that for purposes of settlement only the prerequisites for
9 a class action under the Federal Rules of Civil Procedure 23(a) and (b)(3) have been satisfied
10 and hereby certifies the Settlement Class as follows:

11 All persons who were customers of SWX or QES, including any subsidiaries or
12 affiliates of SWX or QES engaged in business as Qualified Intermediaries pursuant
13 to 26 U.S.C. § 1031, and who suffered loss or damage or allegedly suffered loss or
14 damages in any way, directly or indirectly, related to or arising out of (a) the failure
15 of SWX or QES, including their subsidiaries or affiliates; or (b) any of the events,
16 acts, or conduct alleged in the Master Complaint and Fourth Amended Complaint in
17 the action entitled "*In re: Receivership of Southwest Exchange, Inc. and*
Consolidated Litigation," Case No.: 07-A-535439-B, pending in the Eighth Judicial
18 District Court, Clark County, Nevada, or in the First Amended Complaint in the
19 action entitled *In Re: Internal Revenue Service § 1031 Tax Deferred Exchange*
Litigation," MDL Docket No. 1878, Case No. 2:07-cv-01394-RCJ-(LRL), pending
20 in the United States District Court for the District of Nevada.

21 3. Notice of the Settlement Agreement was timely given to all persons
22 entitled to notice, including the members of the Settlement Class who could be identified with
23 reasonable effort. The form and method of notifying the members of the Settlement Class of
24 the terms and conditions of the Settlement Agreement met the requirements of Rule 23 of the
25 Federal Rules of Civil Procedure, due process, and any other applicable law, constituted the
26 best notice practicable under the circumstances, and constituted due and sufficient notice to all
27 persons and entities entitled thereto. Notice of the Settlement Agreement was also provided to
28 all necessary parties pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d) *et*
seq.

///

1 4. The Settlement Agreement is approved as fair, reasonable, and adequate,
2 and the parties to the Settlement Agreement (including the Settling Defendants) and the
3 members of the Settlement Class are directed to consummate the Settlement Agreement in
4 accordance with its terms and provisions. The Settling Defendants are hereby directed to make
5 the settlement payment to the Qualified Settlement Fund within the time provided therefor in
6 the Settlement Agreement.

7 5. The above entitled action is hereby dismissed with prejudice as against
8 the Settling Defendants and without any other person's costs, expenses or attorneys fees to be
9 paid by the Settling Defendants. All members of the Settlement Class, the Receiver, SWX,
10 QES, the other Receivership Entities, and the Individual Plaintiffs are hereby permanently
11 barred and enjoined from instituting, commencing, or prosecuting any and all released claims
12 (as set forth in the Settlement Agreement) against the Settling Defendants or any of the other
13 released parties, if any, including unknown claims. The released claims (as set forth in the
14 Settlement Agreement) are hereby compromised, settled, released, discharged and dismissed on
15 the merits and with prejudice by virtue of the proceedings herein and this Final Order and
16 Judgment.

17 6. To the fullest extent permitted by law, no person, whether or not a party
18 to any of the related actions, including, without limitation, *In re: Receivership of Southwest*
19 *Exchange, Inc. and Consolidated Litigation*, Case No.: 07-A-535439-B, pending in the Eighth
20 Judicial District Court, Clark County, Nevada, or in the First Amended Complaint in the action
21 entitled *In Re: Internal Revenue Service § 1031 Tax Deferred Exchange Litigation*, MDL
22 Docket No. 1878, Case No. 2:07-cv-01394-RCJ-(LRL), pending in the United States District
23 Court for the District of Nevada., shall be permitted to bring a claim against the Settling
24 Defendants or other persons released by the Settlement Agreement, if any, in any way, directly
25 or indirectly, based on, arising from, referable to, or related to any alleged damages incurred or
26 allegedly incurred, pertaining to or arising from, in any way, directly or indirectly, (a) the
27 failure of SWX or QES, including their subsidiaries or affiliates, or (b) any of the events, acts,
28 or conduct alleged in the Master Complaint and Fourth Amended Complaint in the action

1 entitled *In re: Receivership of Southwest Exchange, Inc. and Consolidated Litigation*, Case No.:
2 07-A-535439-B, pending in the Eighth Judicial District Court, Clark County, Nevada, or in the
3 First Amended Complaint in the action entitled *In Re: Internal Revenue Service § 1031 Tax*
4 *Deferred Exchange Litigation*, MDL Docket No. 1878, Case No. 2:07-cv-01394-RCJ-(LRL),
5 pending in the United States District Court for the District of Nevada.

6 7. The Court retains jurisdiction over matters relating to the Settlement
7 Agreement, including the administration and enforcement of the Settlement Agreement and this
8 Final Order and Judgment, and including any application for fees and expenses from the
9 Settlement proceeds by Plaintiffs' counsel for securing the Settlement on behalf of members of
10 the Settlement Class and in connection with administering and distributing the Settlement
11 proceeds to the members of the Settlement Class.

12 8. The Court has determined that there is no just reason for delay in entering
13 this Final Order and Judgment and hereby enters this Final Order and Judgment as a final
14 judgment pursuant to Federal Rule of Civil Procedure 54(b).

15
16 DATED: 08/03/2010


HONORABLE ROBERT C. JONES
UNITED STATES DISTRICT JUDGE

EXHIBIT A

WAVE V
Settlement Agreement

1. Parties and Definitions.

A. The Parties to this Settlement Agreement ("Agreement") are:

(i) "SWX" meaning Southwest Exchange, Inc., also known as Southwest Exchange Corporation, together with its subsidiary and affiliate entities, including without limitation, Arrow 1031 Exchange, Inc., Nevada National Exchange LLC, and Nevada Safe Harbor, Inc. and including all of their interests that may currently be the subject of a receivership.

(ii) "QES" meaning Qualified Exchange Services, Inc. together with its subsidiary and affiliate entities, and including all of its interests that may currently be the subject of a receivership.

(iii) "Capital Reef" meaning Capital Reef Management Corp. together with its subsidiary and affiliate entities, and including all of its interests that may currently be the subject of a receivership.

(iv) "Other Receivership Entities" meaning all entities other than SWX, QES and Capital Reef which were the subject of a Receivership in the Nevada State Court Receivership action as defined in paragraph 2.A on or before the date on which the Receiver in that Receivership executes this Agreement. Attached as Schedule A is a complete list of all such entities.

(v) "Settlement Class" meaning:

a. All persons who were customers of SWX or QES, including any subsidiaries or affiliates of SWX or QES engaged in business as Qualified Intermediaries pursuant to 26 U.S.C. § 1031, and who suffered loss or damage or allegedly suffered loss or damages in any way, directly or indirectly, related to or arising out of (a) the failure of SWX or QES, including their subsidiaries or affiliates; or (b) any of the events, acts, or conduct alleged in the Master Complaint and Fourth Amended Complaint in the action entitled "*In re: Receivership of Southwest Exchange, Inc. and Consolidated Litigation*," Case No.: 07-A-535439-B, pending in the Eighth Judicial District Court, Clark County, Nevada, or in the First Amended Complaint in the action entitled *In Re: Internal Revenue Service § 1031 Tax Deferred Exchange Litigation*," MDL Docket No. 1878, Case No. 2:07-cv-01394-RCJ-(LRL), pending in the United States District Court for the District of Nevada.

b. "Settlement Class" does not include the "Individual Plaintiffs" as defined in Paragraph 1.A.vi herein.

EXECUTION COPY

(vi) "Individual Plaintiffs" meaning the individuals and entities identified in Schedule B to this Agreement including any plaintiffs who later sign this Agreement pursuant to Paragraph 13.A.

(vii) "Carolina" meaning Carolina Casualty Company, Inc, its corporate parents and subsidiaries, affiliates, agents, employees, officers, directors, attorneys, managing general underwriters, managing general agents, insurers and reinsurers of each of them, individually and collectively.

(viii) "RSUI" meaning RSUI Indemnity Company, its corporate parents and subsidiaries, affiliates, agents, employees, officers, directors, attorneys, managing general underwriters, managing general agents, insurers and reinsurers of each of them, individually and collectively.

(ix) "Individual Insureds" meaning, collectively, any persons insured, or who could claim to be insured under Carolina Policy Number 1706787/1 ("the Carolina Policy") and RSUI Policy Number HS621925 ("the RSUI Policy"), including but not limited to the following persons:

- a. "D. McGhan" meaning Donald K. McGhan.
- b. "J. McGhan" meaning Jim J. McGhan.
- c. "Sperberg" meaning Marc S. Sperberg.
- d. "Moyes" meaning Thomas R. Moyes.
- e. "Rogers" meaning Samuel Clay Rogers.
- f. "Kimmel" meaning Paul R. Kimmel.
- g. "Davis" meaning Eugene I. Davis.
- h. "Brown" meaning Mark E. Brown.
- i. "Forbuss" meaning Robert Forbuss.
- j. "Hartley" meaning Thomas Y. Hartley.
- k. "Khan" meaning Ikram Khan.
- l. "Maloney" meaning Theodore R. Maloney.

(x) "Additional Settling Parties" meaning the following persons:

- a. Nikki Pomeroy ("Pomeroy").
- b. Shirley McGhan ("S. McGhan").

(xi) "MediCor Unsecured Creditors" meaning the Official Committee (the "Committee") of Unsecured Creditors of MediCor Ltd. and Affiliated Debtors (collectively, the "Debtors") appointed in the MediCor Chapter 11 Proceeding acting in their derivative capacity on behalf of the MediCor Estates (as defined herein) and any successor thereto or any designee thereof and specifically acting for the beneficiaries of the Liquidating Trust (as defined herein).

EXECUTION COPY

B. The Definitions applicable to this Settlement Agreement (“Agreement”) are

(i) “MediCor Estates” meaning the Debtors and their estates created by Section 541 of the Bankruptcy Code upon the commencement of the MediCor Chapter 11 Proceeding.

(ii) “Releasing Parties” meaning SWX, QES, Capital Reef, any of the Other Receivership Entities, RSUI, Carolina, the Individual Insureds, the members of the Settlement Class, the Individual Plaintiffs, the Additional Settling Parties, and the MediCor Unsecured Creditors.

(iii) “Qualified Settlement Fund” meaning the settlement fund established by settlement trustee Larry Bertsch for the actions entitled *In re: Receivership of Southwest Exchange, Inc. and Consolidated Litigation*, Case No.: 07-A-535439-B, pending in the Eighth Judicial District Court, Clark County, Nevada, and *In Re: Internal Revenue Service § 1031 Tax Deferred Exchange Litigation*, MDL Docket No. 1878, Case No. 2:07-cv-01394-RCJ-(LRL), pending in the United States District Court for the District of Nevada.

(iv) “MediCor Secured Creditors” meaning non-settling party comprised of Silver Oak Capital, L.L.C.; HFTP Investments, LLC; Promethean I Master, Ltd. (formerly known as Gaia Offshore Master Fund, Ltd.); Promethean II Master, LP; and Portside Growth and Opportunity Fund in connection with the bankruptcy proceeding captioned *In re MediCor Ltd., et al.*, U.S. Bankruptcy Court for the District of Delaware, Case No. 07-10877 (MFW) (the “MediCor Chapter 11 Proceeding”).

(v) “MediCor Secured Creditors Litigation” meaning the lawsuit captioned *Silver Oak Capital, LLC; HFTP Investments, LLC; Promethean I Master, Ltd., f/k/a GAI Offshore Master Investment Fund, Ltd.; Promethean II Master, L.P.; Portside Opportunity and Growth Fund v. UBS, A.G. d/b/a UBS Investment Bank, UBS Securities, LLC, and UBS Financial Services, Inc.*, pending in the Supreme Court of the State of New York, County of New York, Case No. 603750/08.

(vi) “MediCor Estate Plan” meaning Chapter 11 Plan of Liquidation of the Debtors, dated December 26, 2008, filed in the MediCor Chapter 11 Proceeding.

(vii) “Liquidating Trust” meaning the liquidating trust created by and described in Section 7.6 of the MediCor Estate Plan.

(viii) “Liquidating Trustee” meaning the person or persons appointed by the MediCor Unsecured Creditors as provided in Section 1.64 of the MediCor Estate Plan.

(ix) The term “days” when used in this Agreement shall mean calendar days, including, and not exclusive of, weekends and holidays.

(x) “Litigation Defense Trust” meaning the \$2.0 million portion of the Settlement Payments to be held in trust by the Litigation Defense Trustee for the payment of defense costs of the Individual Insureds incurred in connection with the defense of any of the

EXECUTION COPY

Creditors' Claims (as that term is defined herein). The terms of access to the Litigation Defense Trust by Individual Insureds shall be governed by Paragraph 5.A.iii(b) of this Agreement.

(xi) "Litigation Defense Trustee" meaning Larry Bertsch, who shall administer the Litigation Defense Trust in accordance with Paragraph 5.A.iii(b) of this Agreement.

2. Lawsuits, Settlements and Claims.

This Agreement is entered into with reference to, among other things, the following lawsuits, settlements and claims:

A. Action 07-A-535439-B in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark entitled "*In Re: Receivership of Southwest Exchange, Inc. and Consolidated Litigation*," together with all actions and proceedings joined, consolidated, or coordinated with that action. Those lawsuits are collectively defined as the "Nevada State Court Receivership Action."

B. MDL Docket No. 1878, Case No. 2:07-cv-01394-RCJ-(LRL); pending in the United States District Court for the District of Nevada entitled "*In Re: Internal Revenue Service § 1031 Tax Deferred Exchange Litigation*," together with all actions and proceedings joined, consolidated, or coordinated therein. That lawsuit is defined as the "RICO Class Action."

C. *Carolina Casualty Insurance Company v. Donald K. McGhan, et al. and RSUI Indemnity Company v. Donald K. McGhan, et al.*, pending in United States District Court, District of Nevada, Case No. 2:07-cv-00949PMP-GWF. That lawsuit is defined as the "Carolina and RSUI Coverage Action."

D. The settlements and related consent judgments to which any of the Individual Insureds are a party, including, but not limited to: (1) the settlements and consent judgments in the RICO Class Action between: (a) Maloney on the one hand and the Settlement Class on the other hand; and (b) Hartley on the one hand and the Settlement Class on the other hand, as provided in MDL Docket No. 1878, Case No. 2:07-cv-01394-RCJ-(LRL), pending in the United States District Court for the District of Nevada entitled "*In Re: Internal Revenue Service § 1031 Tax Deferred Exchange Litigation*," and (2) the Stipulated Judgment that is to be provided by D. McGhan to the Settlement Class and the Individual Plaintiffs pursuant to Paragraph 5.H. of this Agreement.

E. Any and all claims and/or potential claims of the MediCor Secured Creditors related to MediCor against the Individual Insureds for which the MediCor Secured Creditors sought to provide notice under the Carolina Policy and/or the RSUI Policy, including, but not limited to matters referenced in the letter dated November 7, 2007 from Paul, Weiss, Rifkind Wharton & Garrison LLP to counsel for certain of the Individual Insureds, a copy of which is attached as Schedule C hereto. Those claims and/or potential claims are defined as the "Creditors' Claims."

F. Any and all derivative claims and/or potential claims of the MediCor Unsecured Creditors brought on behalf of the MediCor Estates pursuant to a grant of derivative standing for which claims the MediCor Unsecured Creditors sought to provide notice under the Carolina

EXECUTION COPY

Policy and/or the RSUI Policy, including, but not limited to matters referenced in the letters dated July 27, 2007 and August 27, 2007 from Blank Rome LLP to counsel for certain Individual Insureds, copies of which are attached as Schedule D hereto. Those derivative claims and/or potential claims are defined as the "Derivative MediCor Estates Claims."

G. *In re: MediCor Ltd., et. al.*, Case No. 07-10877, pending in the United States Bankruptcy Court for the District of Delaware. This lawsuit is defined as the "MediCor Chapter 11 Proceeding."

3. Intent of Agreement.

This Agreement and the Releases provided herein are intended to resolve litigation arising out of the collapse of SWX and QES and all claims for which insureds under the Carolina Policy and the RSUI Policy (the "Policies") have sought or may seek coverage under the Policies, including a full and complete release of any and all obligations that Carolina and RSUI have or are alleged to have to any insured or other party seeking to enforce the rights of an insured under those policies, or in connection with any handling of claims under those policies or settlement negotiations relating to any such claims.

4. Parties Not Being Released.

The Releases being given by this Agreement are expressly limited to the Releases set forth in paragraphs 6, 7, 8, 9, and 10 hereto and as limited by law, and the Releases shall not apply to or inure to the benefit of any person or entity not expressly identified therein. For the avoidance of doubt, the Releases do not in any way operate to release or waive any claims that the MediCor Estates or the MediCor Unsecured Creditors have or may assert against any persons or entities that provided prepetition professional services to any of the Debtors, including but not limited to any of the Debtor's prepetition accountants and auditors. In addition, the Releases do not in any way operate to release or waive any claims against Pat Byrne ("Byrne"), Snell & Wilmer ("Snell") or Silverstate Bank (FDIC) ("Silverstate").

5. Settlement Payments.

A. The following payments shall be issued in accordance with the terms of this Agreement as set forth herein:

- i. Carolina shall pay the total sum of \$2,348,443.57 to be allocated among (1) the MediCor Unsecured Creditors, (2) the Settlement Class and Individual Plaintiffs, and (3) the Litigation Defense Trust as provided in Paragraph 5.A.iii hereof. The \$2,348,443.57 payment reflects Carolina's total settlement contribution of \$3,444,000.00 less \$795,556.43 already paid to the Individual Insureds as and for legal fees and defense costs, less an additional \$200,000.00 in payments to be made to the law firm of Gordon Silver, Ltd. as and for defense costs and legal fees of J. McGhan as described in paragraph 5.B. hereof, less an additional \$100,000.00 in payments to be made to the law firm of Martin & Allison, Ltd. as and for defense costs and legal fees of Moyes, Rogers, Kimmel, Davis, Brown, Hartley, Forbuss and Khan as described in Paragraph 5.B. hereof.

EXECUTION COPY

ii. RSUI shall pay the total sum of \$2,194,500.00 to be allocated among (1) the MediCor Unsecured Creditors, (2) the Settlement Class and Individual Plaintiffs, and (3) the Litigation Defense Trust as provided in Paragraph 5.A.iii hereof.

iii. The aggregate sum to be paid by Carolina and RSUI to (1) the MediCor Unsecured Creditors, (2) the Settlement Class and Individual Plaintiffs, and (3) the Litigation Defense Trust shall total \$4,542,943.57 (the "Distributed Settlement Amounts") and shall be paid by Carolina and RSUI *pro rata*, according to Carolina's and RSUI's percentage contribution to the Distributed Settlement Amounts, as follows:

(a) Carolina shall pay \$142,159.37 and RSUI shall pay \$132,840.63, for a total sum of \$275,000.00 to the MediCor Unsecured Creditors by wire payment directly to: (i) an account designated by the MediCor Estates for distribution to the MediCor Unsecured Creditors (if prior to the Effective Date of the MediCor Estate Plan), or (ii) an account designated by the Liquidating Trustee for distribution to the MediCor Unsecured Creditors (if on or subsequent to the Effective Date of the MediCor Estate Plan). Such amount shall be in addition to the \$700,000.00 of settlement funds negotiated and agreed with the MediCor Unsecured Creditors to be paid to certain Debtor creditors expressly specified in, and in accordance with, the terms of the pending MediCor Estate Plan, and shall not be subject to any deduction or sharing with the MediCor Secured Creditors or any other party.

(b) Carolina shall pay \$1,066,712.19 and RSUI shall pay \$996,787.81, for a total sum of \$ 2,063,500.00 to the Litigation Defense Trust by wire payment to an account designated by the Litigation Defense Trustee. The \$2,063,500.00 constituting the Litigation Defense Trust for the benefit of the Individual Insureds shall be held in the Southwest Exchange Qualified Settlement Fund until forty-five (45) calendar days after the MediCor Secured Creditors Litigation is dismissed, at which point any funds remaining in the Litigation Defense Trust shall be distributed from the Southwest Exchange Qualified Settlement Fund to the Individual Plaintiffs and Settlement Class members. The Individual Insureds shall only have access to the Litigation Defense Fund for the reimbursement of attorneys fees necessarily incurred in the defense of any Creditors Claims filed in the Medicor Secured Creditors Litigation. The Individual Insureds shall have no right to access money in the Litigation Defense Fund for purposes of indemnification against Creditor Claims, or to satisfy any judgment resulting from any Creditor Claims, or for any reason other than reimbursement of attorneys fees as set forth herein. Application for reimbursement of attorneys fees from the Litigation Defense Fund must be made by submitting detailed legal bills to the Litigation Defense Trustee no later than fifteen (15) calendar days after the MediCor Secured Creditors Litigation is dismissed, and such applications must be resolved no later than forty-five (45) calendar days after the MediCor Secured Creditors Litigation is dismissed, and any funds then remaining in the Litigation Defense Fund shall be distributed from the Southwest Exchange Qualified Settlement Fund to the Individual Plaintiffs and Settlement

EXECUTION COPY

Class members. Payments from the Litigation Defense Fund shall be made on a first come, first serve basis and subject to prior approval by the Litigation Defense Trustee and the Honorable Robert C. Jones, presiding district court judge in MDL Docket No. 1878, Case No. 2:07-cv-01394-RCJ-(LRL), United States District Court for the District of Nevada entitled "*In Re: Internal Revenue Service § 1031 Tax Deferred Exchange Litigation.*"

(c) Carolina shall pay \$1,139,572.00 and RSUI shall pay \$1,064,871.57, for a total sum of \$2,204,443.57, directly to the Qualified Settlement Fund per the instructions of Larry Bertsch for distribution *pro rata* to the Individual Plaintiffs and Settlement Class in accordance with the terms of this Agreement.

B. Upon the completion of the payment conditions set forth in Paragraph 12, Carolina shall pay \$200,000.00 to the law firm of Gordon Silver, Ltd. as and for defense costs and legal fees incurred by J. McGhan in connection with the lawsuits set forth in Paragraph 2 of this Agreement. Upon the completion of the payment conditions set forth in Paragraph 12, Carolina shall pay \$100,000.00 payment to the law firm of Martin & Allison, Ltd. as and for defense costs and legal fees of Moyes, Rogers, Kimmel, Davis, Brown, Hartley, Forbuss and Khan in connection with the lawsuits set forth in Paragraph 2 of this Agreement.

C. The Parties to this Agreement agree that the payments described in Paragraph 5.A. and 5.B. shall be deemed to benefit SWX, QES, Capital Reef, the Other Receivership Entities, the Individual Insureds, the Individual Plaintiffs, the Settlement Class, MediCor Estates, and the MediCor Unsecured Creditors, as applicable, regardless of whether or not any portion of the payments described in Paragraph 5.A. and 5.B. is further distributed to any particular member of the Settlement Class, any particular Individual Plaintiff, SWX, QES, Capital Reef, any of the Other Receivership Entities, or any particular member of the constituency represented by the MediCor Unsecured Creditors.

D. Pomeroy hereby assigns, transfers, and conveys to Settlement Class and Individual Plaintiffs any and all right, title, and interest she may have to \$693,680.66 previously surrendered to the Receiver appointed by the Eighth Judicial District Court in and for Clark County Nevada in connection with the Nevada State Court Receivership Action pursuant to a Confidential Term Sheet dated on or about May 31, 2007. Said funds represent Pomeroy's payment of \$411,230.02 in cash and the proceeds from the sale of two properties titled in her name known as the Innisbrook Property and the Veronica Property. In connection with these payments, the Parties to this Agreement agree that the payments described in this Paragraph 5.D. shall be deemed to benefit SWX, QES, Capital Reef, the Other Receivership Entities, Individual Plaintiffs, and the Settlement Class without regard to any future agreements between such persons and entities and/or the orders of any court of competent jurisdiction regarding the distribution or utilization of the funds paid to the Receiver pursuant to the Confidential Term Sheet.

EXECUTION COPY

E. S. McGhan hereby assigns, transfers, and conveys to the Settlement Class and Individual Plaintiffs any and all right, title, and interest she may have to \$195,453.62 previously surrendered to the Receiver appointed by the Eighth Judicial District Court in and for Clark County Nevada in connection with the Nevada State Court Receivership Action pursuant to a Confidential Term Sheet dated on or about May 31, 2007. In connection with these payments, the Parties to this Agreement agree that the payments described in this Paragraph 5.E. shall be deemed to benefit SWX, QES, Capital Reef, the Other Receivership Entities, Individual Plaintiffs, and the Settlement Class without regard to any future agreements between such persons and entities and/or the orders of any court of competent jurisdiction regarding the distribution or utilization of the funds paid to the Receiver pursuant to the Confidential Term Sheet.

F. D. McGhan, J. McGhan, S. McGhan, Pomeroy and entities affiliated with D. McGhan (International Integrated Industries, LLC and MDA Equity Performance, L.P.) currently have a contingent right to receive payments from Arthrocare Corporation pursuant to a Contingent Value Rights Agreement dated as of January 28, 2004. Such distributions, if any, would occur no earlier than January 28, 2010. D. McGhan, J. McGhan, S. McGhan, and Pomeroy are attempting to secure a court order directing that any distributions by Arthrocare pursuant to the Contingent Value Rights Agreement be sent to the Qualified Settlement Fund for further distribution to the Individual Plaintiffs and Settlement Class. Any funds delivered by Arthrocare to the Qualified Settlement Fund shall be deemed partial satisfaction of the judgment to be issued against D. McGhan pursuant to Paragraph 5.H. hereto and shall be allocated pro rata to the Individual Plaintiffs and the Settlement Class. Nothing in this Paragraph, or the releases set forth in Paragraphs 6 and 7, shall limit the rights of the Settlement Class, the Individual Plaintiffs, SWX, QES, Capital Reef, or the Other Receivership Entities to re-file their claims against D. McGhan, J. McGhan, S. McGhan, and/or Pomeroy if, for any reason, the Contingent Value Rights Agreement results in a distribution of Arthrocare funds to D. McGhan, J. McGhan, S. McGhan, and/or Pomeroy and those funds are not turned over to the Qualified Settlement Fund. In this regard, D. McGhan, J. McGhan, S. McGhan, and Pomeroy agree to waive any statute of limitations defense with respect to any claims re-filed pursuant to this Paragraph.

G. J. McGhan, Pomeroy, and S. McGhan agree to: provide financial statements, certified under oath as to truthfulness and accuracy, disclosing all of their assets and liabilities as of May 31, 2009. They shall further certify under oath that they do not have any other non-exempt assets (other than as set forth on the financial statements) or control over such assets that could be used to satisfy any judgments against them. Copies of the financial statements and certifications are attached hereto as Schedule E. In the event that a court of competent jurisdiction determines that the financial statements are materially false or misleading and/or that other undisclosed non-exempt assets of material value exist as of the date of the financial statements, at the request of the Settlement Class and/or any Individual Plaintiffs, this Agreement may be voided or otherwise set aside and the Settlement Class and/or any Individual Plaintiffs may re-file their claims against J. McGhan, Pomeroy, and/or S. McGhan. The Agreement may only be set aside as to a defalcating party who has filed a materially false or misleading financial statement or otherwise failed to disclose non-exempt assets of material value. In this regard, J. McGhan, Pomeroy, and S. McGhan agree to waive any statute of limitations defense with respect to any claims re-filed pursuant to this Paragraph. Further,

EXECUTION COPY

should a court of competent jurisdiction subsequently determine that J. McGhan, Pomeroy, and/or S. McGhan own or control undisclosed non-exempt assets of material value as of May 31, 2009, such assets shall be forfeited to the Qualified Settlement Fund for further pro-rata distribution to the Individual Plaintiffs and Settlement Class.

H. D. McGhan agrees to execute Confessions of Judgment (in the form attached hereto as Schedule F) and consents to the entry of Judgments against him in favor of Individual Plaintiffs and Settlement Class in the total amount of \$97.4 million plus pre-judgment statutory interest, which shall be allocated between the Individual Plaintiffs and the Settlement Class on a pro rata basis in relation to their losses.

6. Releases by SWX, QES, Capital Reef, and the Other Receivership Entities.

A. SWX, QES, Capital Reef, and the Other Receivership Entities each releases Carolina, RSUI, the Individual Insureds, and the Additional Settling Parties from all rights, claims or causes of action for damages, equitable or other relief on any theory whatsoever, including, but not limited to, breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, negligence, fraud, breach of fiduciary duty, violations of state or federal statutes and any and all other claims which arise out of or are in any way related to any of the following Released Matters:

- i. The Carolina Policy.
- ii. The RSUI Policy.
- iii. The actual or alleged theft, taking, conversion, or diversion of property or money from SWX, QES, Capital Reef, the Other Receivership Entities, the Individual Plaintiffs or the Settlement Class by anyone including, but not limited to, D. McGhan, Pomeroy, S. McGhan, J. McGhan, Betty Kincaid, Maloney, Sperberg, Peter J. DeMarigny, and Patrick Byrne occurring at any time, whether before, on, or after July 24, 2008.
- iv. The failure of SWX or QES, including their parents, subsidiaries, or affiliates.
- v. All matters that were or could have been alleged by or on behalf of one or more of the Releasing Parties in the Nevada State Court Receivership Action.
- vi. All matters that were or could have been alleged by or on behalf of one or more of the Releasing Parties in the RICO Class Action.
- vii. All matters that were or could have been alleged by or on behalf of one or more of the Releasing Parties in the Carolina and RSUI Coverage Action.
- viii. Any and all claims for coverage and any and all liabilities and obligations claimed under the Carolina Policy and the RSUI Policy and/or in connection with the

EXECUTION COPY

handling of claims under those Policies, including any rights or claims assigned by any of the Individual Insureds to any other party, including, but not limited to costs, defense, indemnity or any other payments, extra-contractual, or punitive damages under statute or common law in connection with the handling of claims and/or settlement negotiations by Carolina and/or RSUI, services or benefits under the Carolina Policy and the RSUI Policy or which otherwise relate to those Policies for or with respect to, any and all past, present, potential, or future claims, demands, actions, rights, causes of action, defenses, counterclaims, attorney's fees, costs, expenses, judgments, settlements, liabilities, and damages, of whatever nature, whether known or unknown, foreseen or unforeseen (the "Liabilities"). The Liabilities include, but are not limited to, Liabilities in connection with, in any way relating to, arising out of, directly or indirectly resulting from, or in consequence of the Nevada State Court Receivership Action, the RICO Class Action, the Carolina and RSUI Coverage Action, the Derivative MediCor Estates Claims, or the Creditors' Claims.

ix. The acts and omissions of each of the following individuals:

- (1) D. McGhan
- (2) Pomeroy
- (3) J. McGhan
- (4) S. McGhan
- (5) Maloney
- (6) Sperberg
- (7) Peter J. DeMarigny
- (8) Betty Kincaid
- (9) Patrick Byrne
- (10) The other Individual Insureds

x. The investigation, consideration, handling or adjustment of claims made by or on behalf of one or more of the Releasing Parties or any of the customers of SWX or QES to Carolina and/or RSUI in connection with the items set forth in i. through ix. above or of any claims which in any way relate to, arise out of, directly or indirectly result from, or are in consequence of the Nevada State Court Receivership Action, the RICO Class Action, or the Carolina and RSUI Coverage Action. (Items i. through x. shall be referred to herein as the "Released Matters.")

B. In giving the Releases described in Paragraph 6, SWX, QES, Capital Reef, and the Other Receivership Entities each acknowledges that they may hereafter discover facts in addition to or different from those they now believe are true and also that one or more courts may enter orders different from those presently anticipated by SWX, QES, Capital Reef, and the Other Receivership Entities, with respect to the claims being released. SWX, QES, Capital Reef, and the Other Receivership Entities each acknowledges that they have taken these possibilities into account, and each expressly assumes the risk of them in entering this Agreement. Further, this Agreement shall remain in effect notwithstanding the discovery or existence of such additional or different facts. This paragraph does not in any way limit the SWX, QES, Capital Reef, and the Other Receivership Entities' rights under Paragraphs 5.F and 12.

EXECUTION COPY

C. SWX, QES, Capital Reef, and the Other Receivership Entities each waives the benefit and protection of Section 1542 of the Civil Code of the State of California, if applicable, or any similar provision under statute or common law in any other jurisdiction that may be applicable. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

D. SWX, QES, Capital Reef, and the Other Receivership Entities acknowledge that they have agreed to release the MediCor Estates of all claims, liabilities, and rights of any sort, whether known or unknown, contingent or fixed, in accordance with and pursuant to the terms and conditions of the separate, stand-alone settlement agreement-by and among SWX (including Capital Reef), QES, the Other Receivership Entities, the Receiver, the Settlement Class, the Individual Plaintiffs, the MediCor Estates, the MediCor Secured Creditors, and certain non-debtor entities (the "Receivership Settlement Agreement").

E. The Releases by SWX, QES, Capital Reef, and the Other Receivership Entities shall not be effective until all of the payments described in Paragraph 5.A. have been made.

F. Once the Release conditions provided in Paragraph 6.E. above have been met, the Releases shall be effective regardless of whether or not any portion of the Settlement Payments is further distributed to any particular member of the Settlement Class, any particular Individual Plaintiff, SWX, QES, Capital Reef, any of the Other Receivership Entities, or any particular member of the constituency represented by the MediCor Unsecured Creditors.

7. Releases by the Settlement Class and the Individual Plaintiffs.

A. The Individual Plaintiffs and the Settlement Class each releases Carolina, RSUI, the Individual Insureds (except for D. McGhan who shall provide a Confession of Judgment as set forth in Paragraph 5.H. and except for J. McGhan as set forth in Paragraph 5.G.), and the Additional Settling Parties (except for Pomeroy and S. McGhan as provided in Paragraph 5.G.) from all rights, claims or causes of action for damages, equitable or other relief on any theory whatsoever including, but not limited to, breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, negligence, fraud, breach of fiduciary duty, violations of state or federal statutes and any and all other claims which arise out of or are in any way related to the Released Matters.

B. In giving the Releases described in Paragraph 7.A., each of the Individual Plaintiffs and each member of the Settlement Class acknowledges that they may hereafter discover facts in addition to or different from those they now believe are true and also that one or more courts may enter orders different from those presently anticipated by the Individual Plaintiffs and the Settlement Class, with the respect to the claims being released. Each Individual Plaintiff and each member of the Settlement Class acknowledges that they have taken these possibilities into account in entering this Agreement, and each expressly assumes the risk

EXECUTION COPY

of them in entering this Agreement. Further, this Agreement shall remain in effect notwithstanding the discovery or existence of such additional or different facts. This paragraph does not in any way limit the Settlement Class or Individual Plaintiffs' rights under Paragraphs 5.F, 5.G, 5.H, 11 and 12.

C. Those Individual Plaintiffs and the Settlement Class each waive the benefit and protection of Section 1542 of the Civil Code of the State of California, if applicable, or any similar provision under statute or common law in any other jurisdiction that may be applicable. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

D. The Individual Plaintiffs and the Settlement Class each acknowledge that they have agreed to release the MediCor Estates of all claims, liabilities, and rights of any sort, whether known or unknown, contingent or fixed, in accordance with and pursuant to the terms and conditions of the Receivership Settlement Agreement.

E. The Releases by the Individual Plaintiffs and the Settlement Class shall not be effective until all of the payments described in Paragraph 5.A. have been made.

F. Once the Release conditions provided in Paragraph 7.E. above have been met, the Releases shall be effective regardless of whether or not any portion of the Settlement Payments is further distributed to any particular member of the Settlement Class, any particular Individual Plaintiff, SWX, QES, Capital Reef, any of the Other Receivership Entities, or any particular member of the constituency represented by the MediCor Unsecured Creditors.

8. Releases by Carolina and RSUI.

A. Carolina and RSUI each releases one another, SWX, QES, Capital Reef, the Other Receivership Entities, the Individual Insureds, the Settlement Class, the Individual Plaintiffs, Additional Settling Parties, the MediCor Estates, and the MediCor Unsecured Creditors from all rights, claims, or causes of action for damages, equitable or other relief on any theory whatsoever including, but not limited to, breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, negligence, fraud, breach of fiduciary duty, violations of state or federal statutes, and any and all other claims which arise out of or are in any way related to the Released Matters.

B. In giving the Releases described in Paragraph 8, Carolina and RSUI each acknowledges that they may hereafter discover facts in addition to or different from those they now believe are true. Carolina and RSUI each agrees that this Agreement shall remain in effect notwithstanding the discovery or existence of such additional or different facts, as to which Carolina and RSUI expressly assume the risk. This paragraph does not in any way limit Carolina or RSUI's rights under Paragraphs 12 and 13.

EXECUTION COPY

C. Carolina and RSUI each waives the benefit and protection of Section 1542 of the Civil Code of the State of California, if applicable, or any similar provision under statute or common law in any other jurisdiction that may be applicable. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

D. The Releases by Carolina and RSUI shall become effective simultaneously with the releases of Carolina and RSUI by the other Parties to this Agreement, which become effective upon the making of the settlement payments described in Paragraph 5.A (except as provided in Paragraph 10.F. below).

9. Releases by the Individual Insureds and Additional Settling Parties.

A. Each Individual Insured and each individual Additional Settling Party individually releases Carolina, RSUI, SWX, QES, Capital Reef, the Other Receivership Entities, the Settlement Class, the Individual Plaintiffs, the MediCor Estates, the MediCor Unsecured Creditors, and one another from all rights, claims, or causes of action for damages, equitable or other relief on any theory whatsoever including, but not limited to, breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, negligence, fraud, breach of fiduciary duty, indemnification, violations of state and federal statutes, and any and all other claims which arise out of or are in any way related to: (i) the Released Matters listed in Paragraph 6.A.(i) - (x), or (ii) any and all proofs of claim or any other unsecured claims filed or asserted in the MediCor Chapter 11 Proceeding, including but not limited to Proofs of Claim Nos. 46, 350, 359, 360, 361, 362, 363, 364, 365.

B. In giving the Releases described in Paragraph 9, the Individual Insureds and the Additional Settling Parties each acknowledges that they may hereafter discover facts in addition to or different from those they now believe are true and also that one or more courts may enter orders different from those presently anticipated by the Individual Insureds, and the Additional Settling Parties, with respect to the claims being released. The Individual Insureds and the Additional Settling Parties each acknowledges that they have taken these possibilities into account, and each expressly assumes the risk of them in entering this Agreement. Further, this Agreement shall remain in effect notwithstanding the discovery or existence of such additional or different facts. This paragraph does not in any way limit the Individual Insureds or Additional Settling Parties' rights under Paragraph 12.

C. The Individual Insureds and the Additional Settling Parties each waives the benefit and protection of Section 1542 of the Civil Code of the State of California, if applicable, or any similar provision under statute or common law in any other jurisdiction that may be applicable. Section 1542 provides:

EXECUTION COPY

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

D. The Releases by the Individual Insureds and the Additional Settling Parties shall not be effective until all of the payments described in Paragraph 5.A. have been made.

E. Once the Release conditions provided in Paragraph 9.E. above have been met, the Releases shall be effective regardless of whether or not any portion of the Settlement Payments is further distributed to any particular member of the Settlement Class, any particular Individual Plaintiff, SWX, QES, Capital Reef, any of the Other Receivership Entities, or any particular member of the constituency represented by the MediCor Unsecured Creditors.

F. In the event the releases of D. McGhan, J. McGhan, S. McGhan, and/or Pomeroy become null and void pursuant to Paragraph 5.F. or 5.G., the releases in this Paragraph 9 shall remain in full force and effect.

10. Releases by MediCor Unsecured Creditors

A. The MediCor Unsecured Creditors release Carolina, RSUI, and the Individual Insureds from all rights, claims, or causes of action for damages, equitable or other relief on any theory whatsoever including, but not limited to, breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, negligence, fraud, breach of fiduciary duty, violations of state or federal statutes, and any and all other claims which arise out of or are in any way related to the Released Matters.

B. The Releases being given by the MediCor Unsecured Creditors are limited to those claims, causes of action, or potential claims or causes of action for which, and to those parties against whom, the MediCor Unsecured Creditors have been granted derivative standing by the MediCor Estates to bring MediCor Estate claims or causes of action.

C. The MediCor Unsecured Creditors acknowledge that the MediCor Estates have agreed to release the Receivership Parties, the Settlement Class, and the Individual Plaintiffs from any estate claims in accordance with and pursuant to the terms and conditions of the Receivership Settlement Agreement and to release the MediCor Secured Creditors from any estate claims in accordance with and pursuant to the terms and conditions of the MediCor Estate Plan. The MediCor Unsecured Creditors further acknowledge that following entry of an order pursuant to Bankruptcy Rule 9019 by the Bankruptcy Court in the MediCor Chapter 11 Proceeding approving the Receivership Settlement Agreement and confirmation and occurrence of the "Effective Date" in respect of the MediCor Estate Plan, the MediCor Unsecured Creditors will be bound by the MediCor Estates' release of the Receivership Entities therein.

D. In giving the Releases described in Paragraph 10, the MediCor Unsecured Creditors acknowledge that they may hereafter discover facts in addition to or different from those they now believe are true and also that one or more courts may enter orders different from

EXECUTION COPY

those presently anticipated by the MediCor Unsecured Creditors, with the respect to the claims being released. The MediCor Unsecured Creditors acknowledge that they have taken these possibilities into account in entering this Agreement, and each expressly assumes the risk of them in entering this Agreement. Further, this Agreement shall remain in effect notwithstanding the discovery or existence of such additional or different facts. This paragraph does not in any way limit the MediCor Unsecured Creditors' rights under Paragraphs 11 and 12.

E. The MediCor Unsecured Creditors waive the benefit and protection of Section 1542 of the Civil Code of the State of California, if applicable, or any similar provision under statute or common law in any other jurisdiction that may be applicable. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

F. The Releases by the MediCor Unsecured Creditors shall not be effective until: (i) all of the payments described in Paragraph 5.A.iii have been made, and (ii) the MediCor Estate Plan is amended prior to the Effective Date to remove or release any right of the MediCor Secured Creditors to distribution of any portion of the Settlement Payment made to the MediCor Unsecured Creditors pursuant to Paragraph 5.A.iii(a) of this Agreement.

G. Once the Release conditions provided in Paragraph 10.F. above have been met, the Releases shall be effective regardless of whether or not any portion of the Settlement Payments is further distributed to any particular member of the Settlement Class, any particular Individual Plaintiff, SWX, QES, Capital Reef, any of the Other Receivership Entities, or any particular member of the constituency represented by the MediCor Unsecured Creditors.

11. Claims Not Being Released.

This Agreement does not in any way operate to release or waive any claims against Byrne, Snell, or Silverstate. This Agreement does not in any way operate to release or waive any claims that the MediCor Unsecured Creditors or the MediCor Estates have, or may assert, against any persons or entities that provided prepetition professional services to MediCor Ltd. or its affiliates, including but not limited to MediCor Ltd.'s or its affiliates' prepetition accountants and auditors. The MediCor Unsecured Creditors are not releasing or waiving their respective claims as creditors of MediCor against the MediCor Estates, nor is MediCor releasing or waiving its rights or defenses in connection with such claims. Nevertheless, and notwithstanding the foregoing, nothing in this paragraph modifies, limits, or restricts in any way the full and complete releases being provided to Carolina and/or RSUI pursuant to this Agreement.

12. Timing and Manner of Payment.

A. Carolina and RSUI (collectively the "Payors") are not required to make the payments described in Paragraph 5.A. until 30 days after all of the following have occurred:

i. The entry of all of the following in the RICO Class Action:

(1) An Order certifying a Settlement Class the same as defined in Paragraph 1.A.(v). If the court certifies a settlement class using different language, Payors, or any of them, may, within 15 days of receipt of the court's Order, waive this condition. Any such Order(s) certifying a Settlement Class shall be final following appellate review, if any;

(2) An Order approving this Settlement and barring all claims and suits by or on behalf of:

(a) any of the Releasing Parties; (b) any other person(s) or entity(ies) that are, or may be, Insureds under the Carolina Policy and/or the RSUI Policy; and (c) any person and/or entity that is a party to the Nevada State Receivership Action, the Carolina and RSUI Coverage Action, the RICO Class Action, and/or the Insurance Coverage Class Action and that will remain a party to such action(s) following this Settlement

against

(a) Carolina; (b) RSUI; (c) the Individual Insureds; and (d) the Additional Settling Parties,

which arise out of or are related to in any way any of the Released Matters. Any such Order(s) approving this Settlement and barring claims shall be final following appellate review, if any

ii. The entry of both of the following in the Nevada State Court Receivership Action:

(1) An Order authorizing the Receiver in the Nevada State Court Receivership Action to enter into and execute this Agreement and to take such actions as are reasonably necessary to implement it;

(2) An Order finding the settlement reflected in this Agreement to be in good faith pursuant to NRS 17.245. Any such Order(s) shall be final following appellate review, if any.

iii. The entry of all of the following in the MediCor Chapter 11 Proceeding:

(1) An Order approving this Settlement pursuant to Federal Bankruptcy Rule of Procedure 9019;

(2) An Order granting and confirming the Debtors' consent to the MediCor Unsecured Creditors standing to bring the Derivative MediCor Estates Claims;

(3) An Order approving the expenditure of proceeds of the Carolina Policy and the RSUI Policy pursuant to this Settlement.

Any such Order(s) shall be final following appellate review, if any.

B. The parties to this Agreement shall make a good faith effort to submit joint proposed orders with respect to this Settlement. Except where a party has approved the form and content of a proposed order prior to its submission by any other party to a court, each party may file with the applicable court an objection: (i) to any proposed order within 10 days of submission of the proposed order to the court, or (ii) to any order (if materially different from a proposed order) within 10 days after the party receives notice of entry. The sole basis for any such objection to a proposed order shall be that the proposed order is materially inconsistent with the terms of this Agreement or materially affects the legal rights of the objecting party in a manner not contemplated by this Agreement; and the sole basis for any such objection to an order entered by the court shall be that the order is materially different from the proposed order submitted to that court. Any other party to this Agreement shall have no less than 10 days to respond to such objection, after which time all parties shall request a ruling on the objection from the court. In the event that the court upholds the objection or determines that the court cannot resolve the dispute based on the Agreement, then the objecting party may terminate the Agreement upon 10 days notice, during which period all Parties shall negotiate in good faith to resolve the dispute.

C. Notwithstanding Paragraph 12.A., within 30 days of execution of this Agreement by all parties to this Agreement, each Payor shall deposit the funds to be paid pursuant to Paragraph 5.A into a segregated trust account maintained by Payor's counsel pursuant to Nevada Supreme Court Rule 219 with instructions to the escrow agent to distribute the funds in accordance with and pursuant to Paragraph 5.A upon the occurrence of the conditions described in Paragraph 12.A. The account into which each Payor's payment is deposited shall, due to the amount held and the potential duration of time that it will be held, be deemed to be neither holding a "nominal" amount nor being held for a "short period of time" so as to not be subject to Nevada Supreme Court Rule 217. If, in accordance with Paragraph 13.B., any Payor files a Notice of Termination of this Settlement and any other party objects within 10 days of the filing of such Notice of Termination, the funds in those accounts, including interest earned, shall remain in escrow until a resolution is reached by the parties or by an order of the court. If no party objects to such Notice of Termination within 10 days following its filing in accordance with Paragraph 13.B. hereof, the funds in those accounts, including interest earned, shall be returned to the Payors. If an order of the court is required in order to satisfy the bank that the account is subject to Nevada Supreme Court Rule 219 and not Nevada Supreme Court Rule 217, the parties agree to cooperate in seeking such an order. In the event that, following all appellate

proceedings, the conditions listed in Paragraph 12.A. cannot be satisfied, the funds in the segregated trust accounts, including all interest earned on them, shall be returned to Payors. Counsel for each Payor shall provide to counsel for the Receiver, counsel for the Individual Plaintiffs, counsel for the Settlement Class, and counsel for the MediCor Unsecured Creditors copies of the monthly statements for that Payor's account. Any bank charges associated with any account or taxes owed on interest earned shall be paid out of earnings from that account. Notwithstanding the provisions of Paragraph 18.G., any costs incurred by Payors in connection with the establishment or management of this account are the responsibility of Payors. If all of the conditions specified in paragraph 12.A. are satisfied and no Payor has filed a Notice of Termination pursuant to Paragraph 13.B, the funds in the trust account, including interest earned, will be paid pursuant to Paragraph 5.A of this Agreement. If the date on which payment into the attorney trust account pursuant to Paragraph 12 would be due is less than 45 days before the date set in the RICO Class Action for the final hearing, and appellate review has not been sought in connection with any of the orders described in Paragraph 12.A., Payors may choose to wait to make payment directly to the MediCor Unsecured Creditors, the Litigation Defense Trust, and the Settlement Class and Individual Plaintiffs in accordance with Paragraph 5.A.iii following satisfaction of the conditions listed in Paragraph 12.

13. Opt-Outs from Class Action.

A. Any person or entity that opts out of the Settlement Class may elect to execute this Agreement within ten days of opting out of the Settlement Class. Such persons or entities acknowledge that Class Counsel and counsel for the Individual Plaintiffs do not waive their right to claim attorney's fees from, and not in addition to, the amounts to be paid by the Payors pursuant to Paragraph 5.A.iii of this Agreement in connection with the recoveries on behalf of persons or entities who execute this Agreement pursuant to this paragraph.

B. If any member of the Settlement Class opts out of the Settlement Class and has not executed this Agreement, either as a Schedule B Individual Plaintiff or pursuant to paragraph 13.A., Carolina, RSUI, the Individual Insureds and/or the Additional Settling Parties may terminate this Agreement. Any such termination shall be made by the filing of a "Notice of Termination" by the terminator in both the RICO Class Action and the Nevada State Court Receivership Action. The Notice of Termination shall be filed no later than 30 days after the deadline for opt-outs in the RICO Class Action, or within 15 days after notice to the terminator(s) of the last opt-out, whichever is later.

14. Dismissal of Actions.

A. Within fifteen days following the making of the payments described in Paragraph 5.A., the Individual Plaintiffs shall request that the Court dismiss with prejudice as to Carolina, RSUI, the Individual Insureds (except D. McGhan who shall execute a Confession of Judgment as set forth in Paragraph 5.H. hereof), and the Additional Settling Parties with each party to bear its own costs and attorney's fees, the Nevada State Court Receivership Action including but not limited to the Master Complaint and all joinders to that Master Complaint.

B. Within fifteen days following the making of the payments described in Paragraph 5.A., SWX, QES, and Capital Reef shall request that the Court in the Nevada State Court Receivership Action dismiss with prejudice all of their claims as to Carolina, RSUI, the Individual Insureds, and the Additional Settling Parties.

C. Within fifteen days following the making of the payments described in Paragraph 5.A., all parties shall request that the Court dismiss with prejudice as to each and every party, with each party to bear its own costs and attorney's fees, the Carolina and RSUI Coverage Action.

D. Within fifteen days following the making of the payments described in Paragraph 5.A., the Settlement Class shall request that the Court dismiss with prejudice as to Carolina, RSUI, the Individual Insureds (except D. McGhan who shall execute a Confession of Judgment as set forth in Paragraph 5.H. hereof) and the Additional Settling Parties, with each party to bear its own costs and attorney's fees, the RICO Class Action.

E. Within fifteen days following the making of the payments described in Paragraph 5.A., each of the Individual Insureds shall withdraw with prejudice all Proofs of Claim made by him in the MediCor Chapter 11 Proceeding, including but not limited to Proofs of Claim Nos. 46, 350, 359, 360, 361, 362, 363, 364, and 365, and the claimants with respect to each such asserted claim or interest shall not be entitled to receive any payments or distributions on account of any such claims in the MediCor Chapter 11 Proceeding

F. In the event that any party fails to file the necessary papers to achieve a dismissal of any of the lawsuits described above (including all consolidated suits), the Parties agree that a Motion to Dismiss may be brought before the appropriate court on an Order Shortening Time based upon the terms of this Agreement and that all parties will join in that motion and consent to that dismissal.

15. No Admission of Liability.

A. Neither the fact of this Agreement, nor the releases contained herein, nor the payments described in Paragraph 5.A. are an admission of any type by any of the Parties to this Agreement. It is understood that Carolina, RSUI, the Individual Insureds and the Additional Settling Parties expressly deny all liability to the other Releasing Parties and to one another. This Agreement represents a compromise of disputed claims.

B. The parties further agree that none of the motions, correspondence, or argument of any of the parties offered or created in connection with this settlement or motions for any of the Orders described in Paragraph 12.A. shall be used as an admission of fault, responsibility, wrongdoing, or liability on the part of any party in any action or suit. Nothing in this paragraph is intended to affect the right of the parties to this Agreement to enforce this Agreement.

C. Except as otherwise required by law or regulation or pursuant to any certification of the Settlement Class, no party to this Agreement or their counsel shall issue any press release with respect to the settlement reflected in this Agreement without giving all other Parties at least

three business days notice. Any such notice shall be e-mailed to counsel for each of the Parties. No such press release(s) shall name or otherwise identify Carolina and RSUI.

16. Ownership of Claims.

A. The Receiver warrants and represents that SWX, QES, Capital Reef, and the Other Receivership Entities are the sole owners of the rights and claims being released by them and that after February 8, 2007, none of the claims being released by the Receiver on behalf of SWX, QES, Capital Reef, and the Other Receivership Entities has been assigned to any other person or entity.

B. The Receiver warrants and represents that to his knowledge, there was no assignment prior to February 8, 2007 of any of the rights and claims being released by the Receiver on behalf of SWX, QES, Capital Reef, and the Other Receivership Entities.

C. The Individual Plaintiffs represent and warrant that they are the sole owners of the rights and claims being released by them and that they have not assigned to any other persons or entities any of the rights or claims being released by them.

D. The Individual Insureds and Additional Settling Parties represent and warrant that they are the sole owners of the rights and claims being released by them and that they have not assigned to any other persons or entities any of the rights or claims being released by them, with the exception of the assignments of rights and claims against Carolina and RSUI by Hartley and Maloney to the Settlement Class and Individual Plaintiffs, which are to be completely extinguished as to Hartley, Maloney, the Settlement Class and the Individual Plaintiffs by operation of this Agreement.

E. The Jon and Marie Sorrell Trust Dated May 23, 2001 and SCCAA Holdings, LLC, individually and on behalf of the Settlement Class for which they serve as representative parties represent and warrant that they and the members of the Settlement Class are the sole owners of the rights and claims being released by them and the Settlement Class and that neither they nor any member of the Settlement Class has assigned to any persons or entities any of the rights or claims being released by any of them.

F. The MediCor Unsecured Creditors represent and warrant that they, acting on behalf of the MediCor Estates, are the sole owners of the derivative estate rights and claims being released by the MediCor Unsecured Creditors and that they have not assigned to any other persons or entities any of the rights or claims being released by them.

G. If Carolina, RSUI, the Individual Insureds or the Additional Settling Parties learns that any of the Releasing Parties is not the sole owner of the rights and claims being released by such Releasing Party pursuant to this Agreement and/or that any of the Releasing Parties has assigned to any persons or entities any of the rights or claims being released by such Releasing Party pursuant to this Agreement, any of such parties, in their sole discretion may terminate this Settlement by filing a Notice of Termination of Settlement in the manner described in Paragraph 13.B. The deadline for filing of a Notice of Termination pursuant to this paragraph shall be

EXECUTION COPY

seven days prior to the date set in the RICO Class Action for the final hearing regarding approval of this Settlement.

17. Assignment of Claims.

The Individual Insureds and the Additional Settling Parties each individually agrees to assign and hereby assigns to the Settlement Class Plaintiffs and the Individual Plaintiffs any and all claims and/or rights they may have against Snell & Wilmer, Patrick Byrne, Janette Byrne, and each of the Defendants who have been named in but have not reached a settlement in the Nevada State Court Receivership Action, and the RICO Class Action, which arise out of or are in any way related to SWX, QES, or their collapse. Expressly excluded from this assignment are all rights and claims being released by the Individual Insureds and the Additional Settling Parties as part of this Settlement.

18. General Provisions.

A. The use of singular or plural forms and male or female pronouns is not intended by any of the parties to limit the scope of any release or undertaking given to any of the parties to this Agreement.

B. This Agreement shall be governed by Nevada Law without giving effect to its choice of law principles.

C. This Agreement shall not be construed against any party hereto as the drafter and instead shall be construed as if all Parties participated equally in the drafting of the Agreement. Further, the Agreement and its terms shall not be construed against Carolina or RSUI by reason of the fact that they are insurance companies.

D. This Agreement is made and executed by each party hereto of such party's own free will and in accordance with such party's own judgment and upon advice of counsel. No party has been influenced, coerced, or induced to enter into this Agreement by any improper action by any other party.

E. Any dispute regarding this Agreement to which the Settlement Class is not a party shall be resolved before the Eighth Judicial District Court of the State of Nevada in and for the County of Clark.

F. Any dispute regarding this Agreement to which the Settlement Class is a party shall be resolved before the United States District Court for the District of Nevada.

G. All costs of administration of the Settlement Class and distribution of the funds paid pursuant to Paragraph 5.A. and all income tax or other tax liabilities resulting from that settlement payment shall be borne by SWX, QES, Capital Reef, the Other Receivership Entities, the Individual Plaintiffs, and the Settlement Class in such proportions as they may agree or as a court may order in the future.

H. Any attorney's fees or costs of suit to which counsel for the Settlement Class may be entitled shall be paid out of the Settlement funds received by the Settlement Class. Carolina, RSUI, the Individual Insureds, the Additional Settling Parties, the MediCor Estates, and/or the MediCor Unsecured Creditors shall have no obligation to make any payment, beyond the payments described in Paragraph 5.A., for attorney's fees, costs of suit, or administrative expenses related to this settlement, incurred by any party.

I. Any attorney's fees or costs of suit to which counsel for the Individual Plaintiffs may be entitled shall be paid out of the Settlement funds received by the Individual Plaintiffs or pursuant to any agreement between the Individual Plaintiffs and their counsel. Carolina, RSUI, the Individual Insureds, the Additional Settling Parties, the MediCor Estates, and/or the MediCor Unsecured Creditors shall have no obligation to make any payment, beyond the payments described in Paragraph 5.A., for attorney's fees, costs of suit, or administrative expenses related to this settlement.

J. Any attorney's fees or costs of suit to which counsel for SWX, QES, Capital Reef, and the Other Receivership Entities may be entitled shall be paid out of the Settlement funds received by SWX, QES, Capital Reef, and the Other Receivership Entities. Carolina, RSUI, the Individual Insureds, the Additional Settling Parties, the MediCor Estates, and/or the MediCor Unsecured Creditors shall have no obligation to make any payment, beyond the payments described in Paragraph 5.A., for attorney's fees, costs of suit or administrative expenses related to this settlement.

K. This Agreement represents and contains the entire agreement and understanding between and among the parties.

L. This Agreement may only be modified by a written instrument signed by all parties whose rights or obligations are affected by the modification.

M. This Agreement shall be binding upon, and inure to the benefit of, the heirs, successors, and assigns of the Parties.

N. Unless the Parties otherwise agree in writing, following the failure of any of the conditions to payment listed in Paragraph 11, the failure of the condition to the Releases by the MediCor Unsecured Creditors provided in Paragraph 10.F(ii), or a termination pursuant to Paragraph 13.B, upon a notice of termination, the Parties shall be restored to their respective positions prior to their agreement in principle to enter into this Agreement, and this Agreement and the Confessions of Judgment described in Paragraph 5.H. shall be null and void. Further, each party agrees that should this Agreement be nullified, voided, or terminated for any reason, any statute of limitations or repose and any equitable doctrines of timing applicable to the Derivative MediCor Estates Claims, including without limitation under 11 U.S.C. § 108 and 546(a), shall be deemed tolled and suspended as to those claims through and including 60 days following the effective date of the termination, nullification, or voiding of this Agreement.

EXECUTION COPY

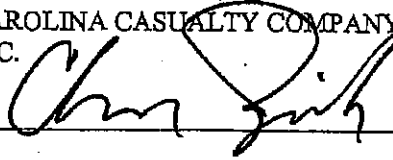
O. Each person signing below on behalf of any of the parties represents and warrants that he or she has full authority to do so. Any party signing pursuant to a Power of Attorney must attach the Power of Attorney to this Agreement.

P. All agreements made and orders entered in any of the lawsuits described in paragraph 2 relating to the confidentiality of information, including Protective Orders, shall be unaffected by and shall survive this Agreement.

Q. This Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Executed counterparts exchanged in email or facsimile form will have the same force and effect as original executed counterparts.

DATED: 6-24-09

CAROLINA CASUALTY COMPANY
INC.

By 
Its SENIOR CLAIMS ATTORNEY

DATED: _____

RSUI INDEMNITY COMPANY

By _____

Its _____

INDIVIDUAL INSUREDS

DATED: _____

Don McGhan, an individual

DATED: _____

Jim McGhan, an individual

DATED: _____

Marc Sperberg, an individual

DATED: _____

Thomas R. Moyes, an individual

DATED: _____

Robert R. Forbuss, an individual

EXECUTION COPY

O. Each person signing below on behalf of any of the parties represents and warrants that he or she has full authority to do so. Any party signing pursuant to a Power of Attorney must attach the Power of Attorney to this Agreement.

P. All agreements made and orders entered in any of the lawsuits described in paragraph 2 relating to the confidentiality of information, including Protective Orders, shall be unaffected by and shall survive this Agreement.

Q. This Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Executed counterparts exchanged in email or facsimile form will have the same force and effect as original executed counterparts.

DATED: _____

CAROLINA CASUALTY COMPANY,
INC.

By _____

Its _____

DATED: 1/13/10

RSUI INDEMNITY COMPANY

By *Peter M. Smith*

Its Assistant Vice President

INDIVIDUAL INSUREDS

DATED: _____

Don McGhan, an individual

DATED: _____

Jim McGhan, an individual.

DATED: _____

Marc Sperberg, an individual

DATED: _____

Thomas R. Moyes, an individual

DATED: _____

Robert R. Forbuss, an individual

EXECUTION COPY

O. Each person signing below on behalf of any of the parties represents and warrants that he or she has full authority to do so. Any party signing pursuant to a Power of Attorney must attach the Power of Attorney to this Agreement.

P. All agreements made and orders entered in any of the lawsuits described in paragraph 2 relating to the confidentiality of information, including Protective Orders, shall be unaffected by and shall survive this Agreement.

Q. This Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Executed counterparts exchanged in email or facsimile form will have the same force and effect as original executed counterparts.

DATED: _____

CAROLINA CASUALTY COMPANY,
INC.

By _____

Its _____

DATED: _____

RSUI INDEMNITY COMPANY

By _____

Its _____

INDIVIDUAL INSURED

DATED: August 29, 2009

 _____

Don McGhan, an individual

DATED: _____

Jim McGhan, an individual

DATED: _____

Marc Sperberg, an individual

DATED: _____

Thomas R. Moyes, an individual

DATED: _____

Robert R. Forbuss, an individual



EXECUTION COPY

O. Each person signing below on behalf of any of the parties represents and warrants that he or she has full authority to do so. Any party signing pursuant to a Power of Attorney must attach the Power of Attorney to this Agreement.

P. All agreements made and orders entered in any of the lawsuits described in paragraph 2 relating to the confidentiality of information, including Protective Orders, shall be unaffected by and shall survive this Agreement.

Q. This Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Executed counterparts exchanged in email or facsimile form will have the same force and effect as original executed counterparts.

DATED: _____

CAROLINA CASUALTY COMPANY,
INC.

By _____

Its _____

DATED: _____

RSUI INDEMNITY COMPANY

By _____

Its _____

INDIVIDUAL INSUREDS

DATED: _____

Don McGhan, an individual

DATED: 7/21/09

Jim McGhan, an individual

DATED: _____

Marc Sperberg, an individual

DATED: _____

Thomas R. Moyes, an individual

DATED: _____

Robert R. Forbuss, an individual

EXECUTION COPY

O. Each person signing below on behalf of any of the parties represents and warrants that he or she has full authority to do so. Any party signing pursuant to a Power of Attorney must attach the Power of Attorney to this Agreement.

P. All agreements made and orders entered in any of the lawsuits described in paragraph 2 relating to the confidentiality of information, including Protective Orders, shall be unaffected by and shall survive this Agreement.

Q. This Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Executed counterparts exchanged in email or facsimile form will have the same force and effect as original executed counterparts.

DATED: _____

CAROLINA CASUALTY COMPANY,
INC.

By _____

Its _____

DATED: _____

RSUI INDEMNITY COMPANY

By _____

Its _____

INDIVIDUAL INSURED

DATED: _____

Don McGhan, an individual

DATED: _____

Jim McGhan, an individual

DATED: _____

Marc Sperberg
Marc Sperberg, an individual

DATED: _____

Thomas R. Moyes, an individual

DATED: _____

Robert R. Forbuss, an individual

EXECUTION COPY

O. Each person signing below on behalf of any of the parties represents and warrants that he or she has full authority to do so. Any party signing pursuant to a Power of Attorney must attach the Power of Attorney to this Agreement.

P. All agreements made and orders entered in any of the lawsuits described in paragraph 2 relating to the confidentiality of information, including Protective Orders, shall be unaffected by and shall survive this Agreement.

Q. This Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Executed counterparts exchanged in email or facsimile form will have the same force and effect as original executed counterparts.

DATED: _____

CAROLINA CASUALTY COMPANY,
INC.

By _____

Its _____

DATED: _____

RSUI INDEMNITY COMPANY

By _____

Its _____

INDIVIDUAL INSURED

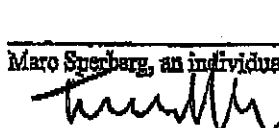
DATED: _____


Don McGhan, an individual

DATED: 7/21/09


Jim McGhan, an individual

DATED: _____


Marc Sperberg, an individual

DATED: 9/14/09


Thomas R. Moyes, an individual

DATED: _____


Robert K. Forbuss, an individual

EXECUTION COPY

O. Each person signing below on behalf of any of the parties represents and warrants that he or she has full authority to do so. Any party signing pursuant to a Power of Attorney must attach the Power of Attorney to this Agreement.

P. All agreements made and orders entered in any of the lawsuits described in paragraph 2 relating to the confidentiality of information, including Protective Orders, shall be unaffected by and shall survive this Agreement.

Q. This Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Executed counterparts exchanged in email or facsimile form will have the same force and effect as original executed counterparts.

DATED: _____

CAROLINA CASUALTY COMPANY,
INC.

By _____

Its _____

DATED: _____

RSUI INDEMNITY COMPANY

By _____

Its _____

INDIVIDUAL INSUREDS

DATED: August 29, 2009

[Signature]
Don McGhan, an individual

DATED: _____

Jim McGhan, an individual

DATED: _____

Marc Sperberg, an individual

DATED: _____

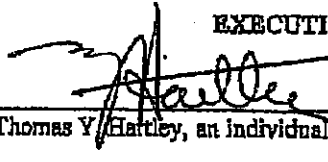
[Signature]
Thomas R. Moyes, an individual

DATED: Sept 18

[Signature]
Robert R. Forbuss, an individual

EXECUTION COPY

DATED: _____



Thomas Y. Hartley, an individual

DATED: _____

Eugene I. Davis, an individual

DATED: _____

Samuel Clay Rogers, an individual

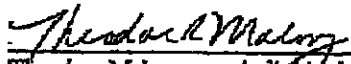
DATED: _____

Paul R. Kimmel, an individual

DATED: _____

Mark E. Brown, an individual

DATED: August 21, 2009



Theodore Maloney, an individual

DATED: _____

Ikram I. Khan, an individual

ADDITIONAL SETTLING PARTIES

DATED: _____

Nikki Pomeroy, an individual

DATED: _____

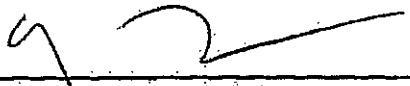
Shirley McGhan, an individual

EXECUTION COPY

DATED: _____

Thomas Y. Hartley, an individual

DATED: _____



Eugene I. Davis, an individual

DATED: _____

Samuel Clay Rogers, an individual

DATED: _____

Paul R. Kimmel, an individual

DATED: _____

Mark E. Brown, an individual

DATED: _____

Theodore Maloney, an individual

DATED: _____

Ikram I. Khan, an individual

ADDITIONAL SETTLING PARTIES

DATED: _____

Nikki Pomeroy, an individual

DATED: _____

Shirley McGhan, an individual

EXECUTION COPY

DATED: _____

Thomas Y. Hartley, an individual

DATED: _____

Eugene I. Davis, an individual

DATED: _____

Samuel Clay Rogers

Samuel Clay Rogers, an individual

DATED: _____

Paul R. Kimmel, an individual

DATED: _____

Mark E. Brown, an individual

DATED: _____

Theodore Maloney, an individual

DATED: _____

Ikram I. Khan, an individual

ADDITIONAL SETTLING PARTIES

DATED: _____

Nikki Pomeroy, an individual

DATED: _____

Shirley McGhan, an individual

DATED: _____

Thomas Y. Hartley, an individual

DATED: _____

Eugene I. Davis, an individual

DATED: _____

Samuel Clay Rogers, an individual

DATED: 11/20/2009

Paul R. Kimmel

Paul R. Kimmel, an individual

DATED: _____

Mark E. Brown, an individual

DATED: _____

Theodore Maloney, an individual

DATED: _____

Ikram I. Khan, an individual

ADDITIONAL SETTLLING PARTIES

DATED: _____

Nikki Pomeroy, an individual

DATED: _____

Shirley McGhan, an individual

EXECUTION COPY

DATED: _____

Thomas Y. Hartley, an individual

DATED: _____

Eugene I. Davis, an individual

DATED: _____

Samuel Clay Rogers, an individual

DATED: _____

Paul R. Kimmel, an individual

DATED: 9/21/09

Mark E. Brown, an individual

DATED: _____

Theodore Maloney, an individual

DATED: _____

Ikram I. Khan, an individual

ADDITIONAL SETTLING PARTIES

DATED: _____

Nikki Pomeroy, an individual

DATED: 8/29/09

Shirley McGhan, an individual

EXECUTION COPY

DATED: _____

Thomas Y. Hartley, an individual

DATED: _____

Eugene I. Davis, an individual

DATED: _____

Samuel Clay Rogers, an individual

DATED: _____

Paul R. Kimmel, an individual

DATED: _____

Mark B. Brown, an individual

DATED: August 21, 2009

Theodore Maloney

Theodore Maloney, an individual

DATED: Sep. 21-2009

Ibrahim Khan

Ibrahim Khan, an individual

ADDITIONAL SETTLING PARTIES

DATED: _____

Nikki Pomeroy, an individual

DATED: _____

Shirley McChen, an individual

EXECUTION COPY

DATED: _____

Thomas Y. Hartley, an individual

DATED: _____

Eugene I. Davis, an individual

DATED: _____

Samuel Clay Rogers, an individual

DATED: _____

Paul R. Kimmel, an individual

DATED: _____

Mark E. Brown, an individual

DATED: _____

Theodore Maloney, an individual

DATED: _____

Ikram I. Khan, an individual

ADDITIONAL SETTLING PARTIES

DATED: 7/17/09

Nikki Pomeroy
Nikki Pomeroy, an individual

DATED: _____

Shirley McGhan, an individual

EXECUTION COPY

DATED: _____

Thomas Y. Hartley, an individual

DATED: _____

Eugene I. Davis, an individual

DATED: _____

Samuel Clay Rogers, an individual

DATED: _____

Paul R. Kimmel, an individual

DATED: _____

Mark E. Brown, an individual

DATED: _____

Theodore Maloney, an individual

DATED: _____

Ikram I. Khan, an individual

ADDITIONAL SETTLING PARTIES

DATED: _____

Nikki Pomeroy, an individual

DATED: 8/29/09

Shirley McGhan

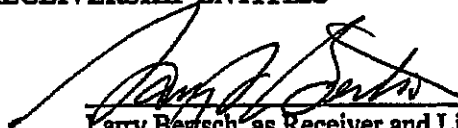
Shirley McGhan, an individual

28

EXECUTION COPY

RECEIVER AND RECEIVERSHIP ENTITIES

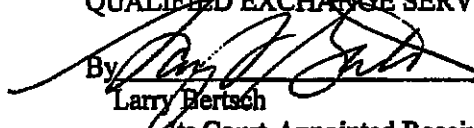
DATED: 10/20/2009


Larry Bertsch, as Receiver and Litigation
Defense Trustee

DATED: 10/20/2009

SOUTHWEST EXCHANGE, INC.
By 
Larry Bertsch
Its Court-Appointed Receiver

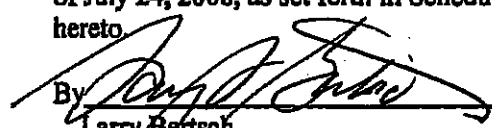
DATED: 10/20/2009

QUALIFIED EXCHANGE SERVICES
By 
Larry Bertsch
Its Court-Appointed Receiver

DATED: 10/20/2009

CAPITAL REEF MANAGEMENT CORP.
By 
Larry Bertsch
Its Court-Appointed Receiver

DATED: 10/20/2009

All Other Receivership Entities in Action
07-A-535439-B and consolidated Actions as
of July 24, 2008, as set forth in Schedule A
hereto.
By 
Larry Bertsch
Court-Appointed Receiver

EXECUTION COPY

INDIVIDUAL PLAINTIFFS

DATED: 8/24/2009

NAPA VALLEY I, LLC

By Judith K. Baulman
Its Member

DATED: 8/21/2009

NAPA VALLEY II, LLC

By Phil M. Baul
Its MEMBER

DATED: _____

P&D KELESIS, LLC

By _____
Its _____

DATED: _____

Randy Char, an individual

DATED: _____

Wayne C. Albritton, an individual

DATED: _____

Greta Albritton, an individual

DATED: _____

Michael A. Micone, an individual

DATED: _____

Kerstan Micone, an individual

DATED: _____

Michael McCormick, an individual

DATED: _____

Deborah McCormick, an individual

DATED: _____

Larry G. Wallace, Jr., an individual

DATED: _____

William K. Reeser, an individual

EXECUTION COPY

INDIVIDUAL PLAINTIFFS

DATED: _____

NAPA VALLEY I, LLC

By _____

Its _____

DATED: 8/21/2009

NAPA VALLEY II, LLC

By [Signature]

Its MEMBER

DATED: _____

P&D KELEBSIS, LLC

By _____

Its _____

DATED: _____

Randy Char, an individual

DATED: _____

Wayne C. Albritton, an individual

DATED: _____

Greta Albritton, an individual

DATED: _____

Michael A. Micone, an individual

DATED: _____

Kerstan Micone, an individual

DATED: _____

Michael McCormick, an individual

DATED: _____

Deborah McCormick, an individual

DATED: _____

Larry G. Wallace, Jr., an individual

DATED: _____

William K. Reeser, an individual

EXECUTION COPY

INDIVIDUAL PLAINTIFFS

DATED: _____

NAPA VALLEY I, LLC

By _____

Its _____

DATED: _____

NAPA VALLEY II, LLC

By _____

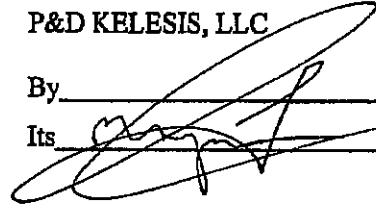
Its _____

DATED: _____

P&D KELESIS, LLC

By _____

Its _____



DATED: _____

Randy Char, an individual

DATED: _____

Wayne C. Albritton, an individual

DATED: _____

Greta Albritton, an individual

DATED: _____

Michael A. Micone, an individual

DATED: _____

Kerstan Micone, an individual

DATED: _____

Michael McCormick, an individual

DATED: _____

Deborah McCormick, an individual

DATED: _____

Larry G. Wallace, Jr., an individual

DATED: _____

William K. Reeser, an individual

EXECUTION COPY

INDIVIDUAL PLAINTIFFS

DATED: _____

NAPA VALLEY I, LLC

By _____

Its _____

DATED: _____

NAPA VALLEY II, LLC

By _____

Its _____

DATED: _____

P&D KELESIS, LLC

By _____

Its _____

DATED: 8/18/09


Randy Char, an individual

DATED: _____

Wayne C. Albritton, an individual

DATED: _____

Greta Albritton, an individual

DATED: _____

Michael A. Micone, an individual

DATED: _____

Kerstan Micone, an individual

DATED: _____

Michael McCormick, an individual

DATED: _____

Deborah McCormick, an individual

DATED: _____

Larry G. Wallace, Jr., an individual

DATED: _____

William K. Reeser, an individual

Jun 19 08 06:11p

Greta Albritton or Wayne 760 327-1163

P.2

EXECUTION COPY

INDIVIDUAL PLAINTIFFS

DATED: _____

NAPA VALLEY I, LLC

By _____
Its _____

DATED: _____

NAPA VALLEY II, LLC

By _____
Its _____

DATED: _____

P&D KELESIS, LLC

By _____
Its _____

DATED: _____

Randy Char, an individual

DATED: 6/19/09

Wayne C. Albritton, an individual

DATED: 6/19/09

Greta Albritton, an individual

DATED: _____

Michael A. Micone, an individual

DATED: _____

Kerston Micone, an individual

DATED: _____

Michael McCormick, an individual

DATED: _____

Deborah McCormick, an individual

DATED: _____

Larry G. Wallace, Jr., an individual

DATED: _____

William K. Resser, an individual

EXECUTION COPY

INDIVIDUAL PLAINTIFFS

DATED: _____

NAPA VALLEY I, LLC

By _____

Its _____

DATED: _____

NAPA VALLEY II, LLC

By _____

Its _____

DATED: _____

P&D KELESIS, LLC

By _____

Its _____

DATED: _____

Randy Char, an individual

DATED: _____

Wayne C. Albritton, an individual

DATED: _____


Greta Albritton, an individual

DATED: _____



Michael A. Micone, an individual

DATED: _____



Kerstan Micone, an individual

DATED: _____

Michael McCormick, an individual

DATED: _____


Deborah McCormick, an individual

DATED: _____



Larry G. Wallace, Jr., an individual

DATED: 7-21-09



William K. Reeser, an individual

EXECUTION COPY

INDIVIDUAL PLAINTIFFS

DATED: _____

NAPA VALLEY I, LLC

By _____

Its _____

DATED: _____

NAPA VALLEY II, LLC

By _____

Its _____

DATED: _____

P&D KELESIS, LLC

By _____

Its _____

DATED: _____

Randy Char, an individual

DATED: _____

Wayne C. Albritton, an individual

DATED: _____

Greta Albritton, an individual

DATED: _____

Michael A. Micone, an individual

DATED: _____

Kerstan Micone, an individual

DATED: 8/26/9



Michael McCormick, an individual

DATED: 8/26/9



Deborah McCormick, an individual

DATED: _____

Larry G. Wallace, Jr., an individual

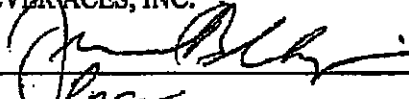
DATED: _____

William K. Reeser, an individual

EXECUTION COPY

DATED: _____

4 EVER ACES, INC.

By 
Its Pres,

DATED: _____

TIC-PRATT 17, LLC

By _____
Its _____

DATED: _____

BRIGITE LAND MANAGEMENT, LLC

By _____
Its _____

DATED: _____

ERIC G. TARR I TRUST DATED MAY 4,
1990

By _____
Eric G. Tarr, Trustee

DATED: _____

D&D INVESTMENT CO.

By _____
Its _____

DATED: _____

HARBOR INVESTMENT GROUP

By _____
Its _____

DATED: _____

MELDRUM FAMILY TRUST

By _____
Its _____

EXECUTION COPY

DATED: _____

4 EVER ACES, INC.

By _____

Its _____

DATED: 6/29/09

TIC-PRATT 17, LLC

By TIC-Pratt 17, LLC / Back D Close Trust #606

Its Josh D. Pratt, Trustee

DATED: _____

BRIGITE LAND MANAGEMENT, LLC

By _____

Its _____

DATED: _____

ERIC G. TARR I TRUST DATED MAY 4, 1990

By _____

Eric G. Tarr, Trustee

DATED: _____

D&D INVESTMENT CO.

By _____

Its _____

DATED: _____

HARBOR INVESTMENT GROUP

By _____

Its _____

DATED: _____

MELDRUM FAMILY TRUST

By _____

Its _____

06/22/2009 18:35 FAX 7025884648

GIGI MANAGEMENT CO. INC

002

EXECUTION COPY

DATED: _____

4 EVER ACES, INC.

By _____

Its _____

DATED: _____

TIC-PRATT 17, LLC

By _____

Its _____

DATED: 6/21/09

BRIGITE LAND MANAGEMENT, LLC

By Eric G. Tarr

Its PRESIDENT

DATED: 6/21/09

ERIC G. TARR I TRUST DATED MAY 4, 1990

By Eric G. Tarr TRUSTEE
Eric G. Tarr, Trustee

DATED: _____

D&D INVESTMENT CO.

By _____

Its _____

DATED: 7-21-09

HARBOR INVESTMENT GROUP

By W.M.O. [Signature]

Its MANAGING MEMBER

DATED: _____

MELDRUM FAMILY TRUST

By _____

Its _____

EXECUTION COPY

DATED: _____

~~EVERETT ALLES, INC.~~ *Thomas B. Shapiro*
By *[Signature]*
Its *MANAGER*

DATED: _____

TIC-PRATT 17, LLC

By _____

Its _____

DATED: _____

BRIGITE LAND MANAGEMENT, LLC

By _____

Its _____

DATED: _____

ERIC G. FARR I TRUST DATED MAY 4, 1990

By _____

Eric G. Farr, Trustee

DATED: 6/26/09

D&D INVESTMENT CO.

By *Wendy Ober*

Its *Gen Partner*

DATED: _____

HARBOR INVESTMENT GROUP

By _____

Its _____

DATED: _____

MELDRUM FAMILY TRUST

By _____

Its _____

EXECUTION COPY

DATED: _____

4 EVER ACES, INC.

By *[Signature]*

Its *[Signature]*

DATED: _____

TIC-PRAATT 17, LLC

By _____

Its _____

DATED: _____

BRIGITE LAND MANAGEMENT, LLC

By _____

Its _____

DATED: _____

ERIC G. TARR I TRUST DATED MAY 4, 1990

By _____

Eric G. Tarr, Trustee

DATED: _____

D&D INVESTMENT CO.

By _____

Its _____

DATED: _____

HARBOR INVESTMENT GROUP

By _____

Its _____

DATED: 8-28-09

MELDRUM FAMILY TRUST

By *[Signature]*

Its Trustee

EXECUTION COPY

DATED: _____

~~4 EVER ALLES, INC~~ *Thomas B. Seppino*
By *[Signature]*
Its *INDIANA*

DATED: _____

TIC-PRATT 17, LLC

By _____
Its _____

DATED: _____

BRIGITE LAND MANAGEMENT, LLC

By _____
Its _____

DATED: _____

ERIC G. FARR I TRUST DATED MAY 4, 1990

By _____
Eric G. Farr, Trustee

DATED: 6/26/09

D&D INVESTMENT CO.

By *Wendy D. D...*
Its *Gen Partner*

DATED: _____

HARBOR INVESTMENT GROUP

By _____
Its _____

DATED: _____

MELDRUM FAMILY TRUST

By _____
Its _____

EXECUTION COPY

DATED: 8/27/2009

CAMPBELL TRUST

By [Signature], trustee of The Gerald B
Its Campbell Trust U/A/D and personal
representative of Gerald B. Campbell

SETTLEMENT CLASS

DATED: _____

**THE JON AND MARIE SORRELL
TRUST DATED MAY 23, 2001,**
individually and on behalf of the Settlement
Class for which it serves as representative
party

By _____

Its Trustee

DATED: _____

SCCAA HOLDINGS, LLC, individually
and on behalf of the Settlement Class for
which it serves as representative party

By _____

Its _____

DATED: 8/14/09

S&V PROPERTIES

By [Signature]

Its Vice President

DATED: 8/14/09

SCARONI PROPERTIES

By [Signature]

Its Vice President

DATED: _____

CAMPBELL TRUST

By _____

Its _____

SETTLEMENT CLASS

DATED: JULY 20, 2009

THE JON AND MARIE SORRELL TRUST DATED MAY 23, 2001, individually and on behalf of the Settlement Class for which it serves as representative party

By  _____
Its Trustee

DATED: _____

SCCAA HOLDINGS, LLC, individually and on behalf of the Settlement Class for which it serves as representative party

By _____

Its _____

DATED: _____

S&V PROPERTIES

By _____

Its _____

DATED: _____

SCARONI PROPERTIES

By _____

Its _____

~~EXHIBITION COPY~~

DATED: _____

CAMPRI.I. TRUST

By _____

Its _____

SETTLEMENT CLASS

DATED: _____

THE JON AND MARIE SORRELL
TRUST DATED MAY 23, 2001,
individually and on behalf of the Settlement
Class for which it serves as representative
party

By _____

Its Trustee

DATED: 8/14/09

SCCAA HOLDINGS, LLC, individually
and on behalf of the Settlement Class for
which it serves as representative party

By Marsha Slatten

Its Managing Member

DATED: _____

S&V PROPERTIES

By _____

Its _____

DATED: _____

SCARONI PROPERTIES

By _____

Its _____

DATED: _____

CAMPBELL TRUST

By _____

Its _____

SETTLEMENT CLASS

DATED: _____

THE JON AND MARIE SORRELL
TRUST DATED MAY 23, 2001,
individually and on behalf of the Settlement
Class for which it serves as representative
party

By _____

Its Trustee

DATED: _____

SCCAA HOLDINGS, LLC, individually
and on behalf of the Settlement Class for
which it serves as representative party

By _____

Its _____

DATED: 8/14/09

S&V PROPERTIES

By [Signature]

Its Vice President

DATED: 8/14/09

SCARONI PROPERTIES

By [Signature]

Its Vice President

DATED: 07/19/09

THE CIERNIA REVOCABLE TRUST
DATED OCTOBER 28, 1983

By *James P. Cerna*
Its Trustee

DATED: _____

C'NC PROPERTIES

By _____
Its _____

DATED: _____

SUZANN MOHR TRUST

By _____
Its Trustee

DATED: _____

Daniel R. Miller, an individual

DATED: _____

Anthony Sakay, an individual

DATED: _____

Becky Sakay, an individual

DATED: _____

Charles Haldeman, an individual

DATED: _____

Sandra Haldeman, an individual

DATED: _____

Michael Tracy Collins, an individual

DATED: _____

Jeffrey Bowen, an individual

DATED: _____

Neil Dutson, an individual

EXECUTION COPY

DATED: _____

THE CIERNIA REVOCABLE TRUST
DATED OCTOBER 28, 1983

By _____

Its Trustee

DATED: 8-1-09

C'NC PROPERTIES

By K. Clegg

Its Managing Member

DATED: _____

SUZANN MOHR TRUST

By _____

Its Trustee

DATED: _____

Daniel R. Miller, an individual

DATED: _____

Anthony Sakay, an individual

DATED: _____

Becky Sakay, an individual

DATED: _____

Charles Haldeman, an individual

DATED: _____

Sandra Haldeman, an individual

DATED: _____

Michael Tracy Collins, an individual

DATED: _____

Jeffrey Bowen, an individual

DATED: _____

Neil Dutson, an individual

DATED: _____

THE CIERNIA REVOCABLE TRUST
DATED OCTOBER 28, 1983

By _____

Its Trustee

DATED: _____


C'NC PROPERTIES

By _____

Its _____

DATED: 8-14-09

SUZANN MOHR TRUST

By 

Its Trustee

DATED: _____

Daniel R. Miller, an individual

DATED: _____

Anthony Sakay, an individual

DATED: _____

Becky Sakay, an individual

DATED: _____

Charles Haldeman, an individual

DATED: _____

Sandra Haldeman, an individual

DATED: _____

Michael Tracy Collins, an individual

DATED: _____

Jeffrey Bowen, an individual

DATED: _____

Neil Dutson, an individual

EXHIBITION COPY

DATED: _____

THE CIERNIA REVOCABLE TRUST
DATED OCTOBER 28, 1983

By _____

Its Trustee

DATED: _____

C'NC PROPERTIES

By _____

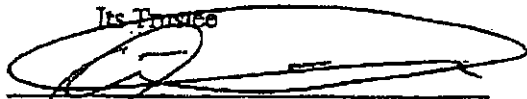
Its _____

DATED: _____

SUZANN MOHR TRUST

By _____

Its Trustee



Daniel R. Miller, an individual

DATED: _____

DATED: _____

Anthony Sakay, an individual

DATED: _____

Becky Sakay, an individual

DATED: _____

Charles Haldeman, an individual

DATED: _____

Sandra Haldeman, an individual

DATED: _____

Michael Tracy Collins, an individual

DATED: _____

Jeffrey Bowen, an individual

DATED: _____

Neil Dutson, an individual

DATED: _____

THE CIERNIA REVOCABLE TRUST
DATED OCTOBER 28, 1983

By _____

Its Trustee

DATED: _____

C'NC PROPERTIES

By _____

Its _____

DATED: _____

SUZANN MOHR TRUST

By _____

Its Trustee

DATED: _____

Daniel R. Miller, an individual

DATED: 8/14/09

Anthony R. Sakay
Anthony Sakay, an individual

DATED: 8/14/09

Becky Sakay
Becky Sakay, an individual

DATED: _____

Charles Haldeman, an individual

DATED: _____

Sandra Haldeman, an individual

DATED: _____

Michael Tracy Collins, an individual

DATED: _____

Jeffrey Bowen, an individual

DATED: _____

Neil Dutson, an individual

EXECUTION COPY

DATED: _____

**THE CIERNIA REVOCABLE TRUST
DATED OCTOBER 28, 1983**

By _____

Its Trustee

DATED: _____

CNC PROPERTIES

By _____

Its _____

DATED: _____

SUZANN MOHR TRUST

By _____

Its Trustee

DATED: _____

Daniel R. Miller, an individual

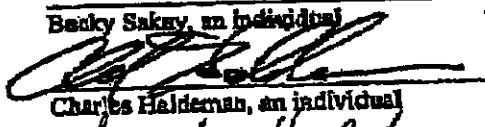
DATED: _____

Anthony Sakay, an individual

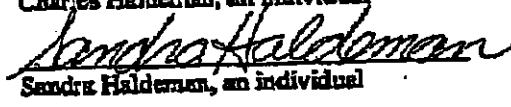
DATED: _____

Becky Sakay, an individual

DATED: 8/18/09


Charles Haldeaman, an individual

DATED: 8/18/09


Sandra Haldeaman, an individual

DATED: _____

Michael Tracy Collins, an individual

DATED: _____

Jeffrey Bowen, an individual

DATED: _____

Neil Dutton, an individual

EXECUTION COPY

DATED: _____

THE CIERNIA REVOCABLE TRUST
DATED OCTOBER 28, 1983

By _____

Its Trustee

DATED: _____

CNC PROPERTIES

By _____

Its _____

DATED: _____

SUZANN MOHR TRUST

By _____

Its Trustee

DATED: _____

Daniel R. Miller, an individual

DATED: _____

Anthony Sakay, an individual

DATED: _____

Becky Sakay, an individual


DATED: _____

Charles Haldeman, an individual

DATED: _____

Sandra Haldeman, an individual

DATED: _____

 _____ *P. 22.08*
Michael Tracy Collins, an individual

DATED: _____

Jeffrey Bowen, an individual

DATED: _____

Neil Dutson, an individual

EXHIBIT COPY

DATED: _____

THE CIERNIA REVOCABLE TRUST
DATED OCTOBER 28, 1983

By _____

Its Trustee

DATED: _____

C'NC PROPERTIES

By _____

Its _____

DATED: _____

SUZANN MOHR TRUST

By _____

Its Trustee

DATED: _____

Daniel R. Miller, an individual

DATED: _____

Anthony Sakay, an individual

DATED: _____

Becky Sakay, an individual

DATED: _____

Charles Haldeman, an individual

DATED: _____

Sandra Haldeman, an individual

DATED: _____

Michael Tracy Collins, an individual

DATED: _____

Jeffrey Bowen, an individual

DATED: _____

Neil Dutson, an individual

DATED: _____

THE CIERNIA REVOCABLE TRUST
DATED OCTOBER 28, 1983

By _____

Its Trustee

DATED: _____

C'NC PROPERTIES

By _____

Its _____

DATED: _____

SUZANN MOHR TRUST

By _____

Its Trustee

DATED: _____

Daniel R. Miller, an individual

DATED: _____

Anthony Sakay, an individual

DATED: _____

Becky Sakay, an individual

DATED: _____

Charles Haldeman, an individual

DATED: _____

Sandra Haldeman, an individual

DATED: _____

Michael Tracy Collins, an individual

DATED: _____

Jeffrey Bowen, an individual

DATED: 8-17-09



Neil Dutson, an individual

Ann Datson, an individual

DATED: _____

Donna Eaton, an individual

MEDICOR UNSECURED CREDITORS

DATED: _____

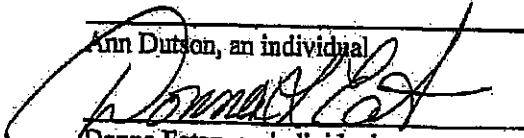
**THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
MEDICOR, LTD. and AFFILIATED
DEBTORS**

By _____

Its Chairman

DATED: _____

DATED: 8/14/09

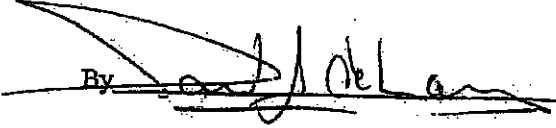
Ann Dutton, an individual


Donna Eaton, an individual

MEDICOR UNSECURED CREDITORS

DATED: 23 Sep 2009

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
MEDICOR, LTD. and AFFILIATED
DEBTORS

By 

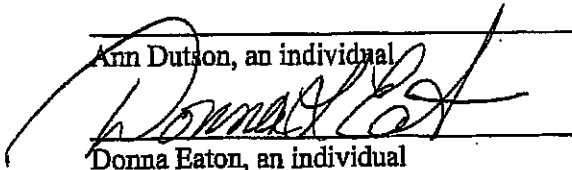
Its Chairman

FD4 805-965-0329

DATED: _____

Ann Dutton, an individual

DATED: 8/14/09


Donna Eaton, an individual

MEDICOR UNSECURED CREDITORS

DATED: _____

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
MEDICOR, LTD. and AFFILIATED
DEBTORS

By _____

Its Chairman

fax 805-965-0329

EXECUTION COPY

OPT-OUT INDIVIDUAL PLAINTIFFS

Additional Plaintiffs Who Have Elected To Execute This Agreement In Order To Opt Out of the Settlement Class and Remain Bound by this Agreement

(Use additional counterpart pages as necessary)

DATED: 8/21/2009

[Signature] Member
NAPA VALLEY #, LLC

DATED: _____

DATED: 9/24/2009

[Signature] Member
NAPA VALLEY I, LLC

DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____

EXECUTION COPY

OPT-OUT INDIVIDUAL PLAINTIFFS

Additional Plaintiffs Who Have Elected To Execute This Agreement In Order To Opt Out of the Settlement Class and Remain Bound by this Agreement

(Use additional counterpart pages as necessary)

DATED: 8/21/2009

Carl M. Earl, Member

DATED: _____

NAPA VALLEY II, LLC

DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____

EXECUTION COPY

OPT-OUT INDIVIDUAL PLAINTIFFS

Additional Plaintiffs Who Have Elected To Execute This Agreement In Order To Opt Out of the Settlement Class and Remain Bound by this Agreement
(Use additional counterpart pages as necessary)

DATED: <u>8/18/09</u>	<u><i>Randy Char</i></u>
DATED: _____	<u>Randy Char</u>
DATED: _____	_____
DATED: _____	_____
DATED: _____	_____
DATED: _____	_____
DATED: _____	_____
DATED: _____	_____
DATED: _____	_____
DATED: _____	_____

57

38

36

35

OPT-OUT INDIVIDUAL PLAINTIFFS

*Additional Plaintiffs Who Have Elected To Execute This Agreement In Order To Opt Out of
the Settlement Class and Remain Bound by this Agreement*
(Use additional counterpart pages as necessary)

DATED: _____

DATED: 1/21/09

DATED: _____

DATED: _____

DATED: _____

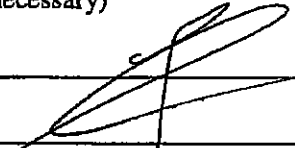
DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____



George Kelesis, for P&D Kelesis

Fax to: 702-669-4650

ATTN: DAVID FREEMAN

V sent 5/25/10 2pm

EXECUTION COPY

OPT-OUT INDIVIDUAL PLAINTIFFS

*Additional Plaintiffs Who Have Elected To Execute This Agreement In Order To Opt Out of the Settlement Class and Remain Bound by this Agreement
(Use additional counterpart pages as necessary)*

DATED: _____

DATED: 1/21/09

DATED: _____

DATED: 5/25/10

DATED: _____

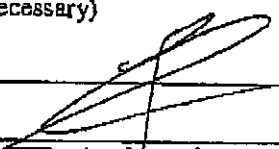
DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____



George Kelesis, for P&D Kelesis

*George Kelesis, trustee of the Gerald B. Campbell Trust
V/A/D and personal representative of
Gerald B. Campbell*

Schedule A

SCHEDULE A
Other Receivership Entities

Nevada Safe Harbor, Inc.

NexGen Management, LLC

International Integrated Industries, LLC

Blackstone Limited, LLC

Sirius Capital, LLC

Americade, LLC

Global Aviation Delaware, LLC

McGhan Management Corp.

Global Asset Management, LP

West Vegas, LP

Bianathar, LLC

Trinity Star Ventures, LLC

Ventana Coast, LLC

Schedule B

SCHEDULE B
Individual Plaintiffs

Napa Valley I, LLC

Napa Valley II, LLC

The Campbell Living Trust, dtd 2/10/03

Gerald B. Campbell declaration of Trust dated August 5, 1999

P&D Kelesis, LLC

Randy Char

Wayne C. Albritton

Greta Albritton

William K. Reeser

Leonard B. Shapiro

Michael Micone

Kerstan Micone

Michael McCormick

Deborah McCormick

Larry G. Wallace, Jr.

4 Ever Aces, Inc.

TIC-Pratt 17, LLC

Brigite Land Management, LLC

Eric G. Tarr I Trust Dated May 4, 1990

D&D Investment Co.

Harbor Investment Group, LLC

Meldrum Family Trust dtd July 21, 1988

Schedule C

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000
FACSIMILE (212) 757-3990

LLOYD H. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1996)
SIMON H. RIFKIND (1950-1995)
LOUIS S. WEISS (1927-1930)
JOHN F. WHARTON (1927-1977)

1813 L STREET, NW
WASHINGTON, DC 20036-5894
TELEPHONE (202) 223-7500
FACSIMILE (202) 223-7420

FUKOKU SEREI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3587-8101
FACSIMILE (81-3) 3587-8120

UNIT 3601, FORTUNE PLAZA OFFICE TOWER A
NO. 7 DONG SANHUAN ZHONGLU
CHAO YANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5928-6300
FACSIMILE (86-10) 6530-6070/6080

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2538-8833
FACSIMILE (852) 2536-8822

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JW, U.K.
TELEPHONE (44 20) 7367 1600
FACSIMILE (44 20) 7367 1650

MATTHEW W. ABBOTT
MARK H. ALCOTT
ALLAN J. ARFFA
ROBERT A. ATKINS
JOHN F. BAUGHMAN
LYNN B. BAYARD
DANIEL L. BELLER
MITCHELL L. BERG
MARK S. BERGMAN
BRUCE B. BERMAN
CHRISTOPHER BOEHNING
ANGELO BONVINO
RICHARD B. BRONSTEIN
LEAH F. BRONSTEIN
JOHN A. BRESLICH
JAMES L. BROCHIN
RICHARD J. BRONSTEIN
PATRICK E. CAMPBELL
JANETTE K. CHAN
YICHAO Y. CHAN
DOUGLAS A. CIFU
LEWIS S. CLAYTON
JAY COHEN
KELLEY A. CORNISH
CHARLES S. DAVIDOW
DOUGLAS R. DAVIS
THOMAS W. DE LA SASTIDE III
ARIEL J. DEKRELBAUM
JAMES M. DUBIN
LESLIE GORDON FAGEN
MARC FALCONI
PETER L. FELCHER
PETER F. FISCH
ROBERT C. FLEDER
MARTIN FLORENBAUM
ANDREW J. FOLEY
HARRIS S. FREDUS
KENNETH A. GALLER
MICHAEL E. GERTZMAN
PAUL D. GINBERG
ERIC S. GOLDSTEIN
ERIC GOODISON
CHARLES H. GOODE, JR.
ANDREW S. GORDON
BRUCE A. GUTENPLAN
GAINES GWATHMEY III
ALAN S. HALPERIN
CLAUDIA HAMMERMAN
GERARD E. HARPER
BRIAN S. HERMANN
JOYCE S. HUANG
ROBERT M. HIRSH
MICHELE HIRSHMAN
JOYCE S. HUANG
JEN CHARLES JOHNSON
MEREDITH J. KANE
ROBERTA A. KAPLAN
BRAD S. KARP

JOHN C. KENNEDY
ALAN W. KORNBERG
DANIEL J. KRASER
DAVID E. LAMBERT
JOHN C. LANGE
DANIEL T. LEFFELL
JULIA TRAVER NABSON
MARC V. NATHAN
EDWIN S. NAYNARD
DAVID W. NAYO
TOM S. NYERSON
JOHN E. NATHAN
CATHERINE NYARADY
ALEX YOUNG H. OH
JOHN D'NEI
KELLEY D. PARKER
ROBERT F. PARKER
MARC F. PERLMUTTER
MARK F. POMERANTZ
VALERIE E. RADWANER
CAREY R. RAMOS
CARL L. REISNER
WALTER REISMAN
RICHARD A. ROSEN
ANDREW N. ROSENBERG
STEVEN B. ROSENFIELD
PETER S. ROTHENBERG
RAPHAEL H. RUBSO
JEFFREY D. SAFERSTEIN
JEFFREY B. SAMUELS
DALE M. SARRO
TERRY E. SCHIRER
KENNETH B. SCHNEIDER
ROBERT B. SCHUMER
JAMES H. SCHWAB
STEPHEN J. SHIRSHAK
DAVID R. SICULAR
ROBERT SILVERMAN
STEVEN SIMKIN
JOSEPH J. SIMONS
MARILYN SOBEL
TARUN M. STEWART
ERIC ALAN STONE
ALDAN SWINGOTT
ROBYN F. TARNOWSKY
JUDITH R. THAYER
DANIEL J. TOAL
MARK A. UNDERBERG
LIZA M. VELLAZQUEZ
MARIA T. VILLO
LAWRENCE G. WEX
THEODORE V. WELLS, JR.
JORDAN E. YARETT
KAYE N. YOSHINO
ALFRED D. YOUNGWOOD
TONG YU
T. ROBERT ZOCNOWSKI, JR.

NOT ADMITTED TO NEW YORK BAR

WRITER'S DIRECT DIAL NUMBER
(212) 373-3493

WRITER'S DIRECT FACSIMILE
(212) 492-0493

WRITER'S DIRECT E-MAIL ADDRESS
kcomish@paulweiss.com

November 7, 2007

VIA FIRST CLASS MAIL

Mark S. Dzarnoski, Esq.
GENTILE DEPALMA LTD.
3960 Howard Hughes Parkway, Suite 850
Las Vegas, Nevada 89169

Craig S. Bloomgarden, Esq.
Robert A. Zeavin, Esq.
Alison H. Mijares, Esq.
STEFFEL LEVITT & WEISS
550 South Hope Street, No. 2350
Los Angeles, California 90071

Erik A. Christiansen, Esq.
Rew R. Goodenow, Esq.
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter that is contained in this document.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

GENTILE DEPALMA LTD..
STEFFEL LEVITT & WEISS
PARSONS BEHLE & LATIMER
November 7, 2007

2

Claim Notice of Silver Oak Capital L.L.C., as Agent, and the Purchasers (as defined below) in respect of the Directors' and Officers' Corporate Liability Insurance Policy No. 1706787/1 issued by Carolina Casualty Company, Inc. (the "Primary Policy") and the Excess Directors and Officers Liability Insurance Policy No. NHS621925 issued by RSUI Indemnity Company (the "Excess Policy;" together with the Primary Policy, the "Policies"), in each case, for MediCor Ltd. and its Subsidiaries

Dear Counsel:

This letter is being sent to you in your capacity as counsel to one or more of the current or former directors and/or officers (the "MediCor Officers and Directors") of MediCor Ltd. ("MediCor"), including, but not limited to, Donald McGhan and James McGhan, by us as counsel to and on behalf of Silver Oak Capital L.L.C., as agent (the "Agent"), and the holders (the "Purchasers") of those certain notes (the "MediCor Notes") issued by MediCor pursuant to that certain Securities Purchase Agreement (the "Securities Purchase Agreement"), dated as of April 26, 2006, among MediCor, the Agent and the Purchasers.

Reference is hereby made to (i) the letters addressed to you dated July 27, 2007 and August 27, 2007 (the "Committee Notices") from Blank Rome LLP, as counsel to the Official Committee of Unsecured Creditors (the "Official Committee") in the chapter 11 bankruptcy cases (the "Bankruptcy Cases")¹ of MediCor and certain of its domestic subsidiaries (the "Debtors")² and (ii) the various lawsuits filed against one or more of the MediCor Officers and Directors in the courts of California and Nevada (the "Litigations"). This Claims Notice supplements the notices and claims as set forth in the Committee Notices, the Litigations and any other relevant notices previously provided in connection with the Policies (the "Notices").

Pursuant to the Securities Purchase Agreement and certain related transaction documents, the Purchasers made loans and other extensions of credit to MediCor and certain of its subsidiaries (collectively, the "Company") prior to the commencement of the Bankruptcy Cases in an aggregate principal amount in excess of \$55 million, plus interest, fees and other amounts due and owing with respect thereto (collectively, the "Prepetition Loans"). As of the filing of the Bankruptcy Cases and as

¹ The Bankruptcy Cases were commenced on June 29, 2007.

² Although the MediCor Notes are secured, the Purchasers are unsecured creditors of the Debtors to the extent of any unsecured deficiency claims, among other claims.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
GENTILE DEPALMA LTD..
STEFFEL LEVITT & WEISS
PARSONS BEHLE & LATIMER
November 7, 2007

3

of the date hereof, none of the Prepetition Loans have been repaid. Moreover, the Purchasers have had to continue funding the Debtors during the Bankruptcy Cases.

As set forth in the Notices, certain MediCor Officers and Directors engaged in Wrongful Acts (as defined in the Primary Policy) and other wrongful conduct for which claims have and may be asserted against them, including by reason of damages suffered by the Agent and the Purchasers as a result of thereof. In fact, the damages suffered by the Agent and the Purchasers in connection with the making of the Prepetition Loans and the failure of such Prepetition Loans to be repaid are the direct result of the wrongful actions, neglect, errors, omissions, misstatements, misleading statements, breaches of fiduciary and other duties of the MediCor Officers and Directors as described in the Notices and for which certain of the MediCor Officers and Directors are liable. Moreover, as noted in the Committee's Claim Notice dated July 27, 2007, this wrongful conduct of the MediCor Officers and Directors "contributed to and caused the insolvency of ... MediCor and its estates" resulting in damage to, among others, the Purchasers. The Agent and the Purchasers may also have Securities Claims (as defined in the Policies) arising from the purchase and sale of the MediCor Notes as a result of such breaches of duty, neglect, error, misstatements, misleading statements, omissions or actions by, among others, the Company and/or the MediCor Officers and Directors, including the *negligent, reckless and/or deliberate exchange of inaccurate information about the nature and extent of the assets of the Company.* (See Committee's Claim Notice dated July 27, 2007).

As with the Official Committee, we are continuing to investigate the events and circumstances described above, and we reserve the right to supplement this notice. Nothing in this notice is with prejudice to or waives or impairs any rights or claims that the Agent or the Purchasers may have under the Policies or as against the Company, the MediCor Officers and Directors or any third parties.

Kindly furnish a copy of this letter to MediCor's insurers at the following addresses:

newclaim@monitorliability.com
Christopher J. Ziembra, Esq.
Senior Claims Attorney Monitor Liability
Managers, Inc.
2850 West Golf Road, Suite 800
Rolling Meadows, Illinois 60008-4039
Fax No. (847) 806-4017 / (847) 806-6262

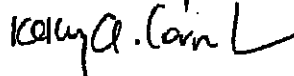
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
GENTILE DEPALMA LTD..
STEFFEL LEVITT & WEISS
PARSONS BEHLE & LATIMER
November 7, 2007

4

info@rsui.com
Peter M. Christel
Assistant Vice President D&O
Claims RSUI Group Inc.
Resurgens Plaza, Suite 1800 945
East Paces Ferry Road
Atlanta, Georgia 30326
Fax No. (404) 264-7239 / (404) 260-3997

Please be advised that we are sending a copy of this letter to Dennis E. Stogsdill, Chief Restructuring Officer of the Debtors, as well as to the Debtors' counsel and counsel to the Official Committee. Please do not hesitate to call if you have any questions.

Very truly yours,



Kelley A. Cornish

cc: VIA E-MAIL
Robert Chesler (rchesler@lowenstein.com)
Jeffrey Prol (jprol@lowenstein.com)
Robert L. Brace (rbrace@hbsb.com)
Joanne J. Matousek (jimatousek@duanemorris.com)
Dennis E. Stogsdill (dstogsdill@alvarezandmarsal.com)
Michael B. Schaedle, Esq. (Schaedle@blankrome.com)
Michael Z. Brownstein, Esq. (Brownstein@blankrome.com)
Gary Wolf (gwolf@angelogordon.com)

Schedule D

BLANK  **ROME** LLP
COUNSELORS AT LAW

Phone: (215) 569-5762
Fax: (215) 837-5762
Email: Schaedle@BlankRome.com

July 27, 2007

Mark S. Dzarnoski, Esquire
GENTILE DEPALMA LTD.
3960 Howard Hughes Parkway, Suite 850
Las Vegas, NV 89169

Craig S. Bloomgarden
Robert A. Zeavin
Alison H. Mijares
STEEFEL LEVITT & WEISS
550 S. Hope St #2350
Los Angeles, CA 90071

Erik A. Christiansen
Rew R. Goodenow
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, UT 84111

Re: First Supplement to Claim Notice of Official Committee of Unsecured Creditors for MediCor Ltd., International Integrated Incorporated, International Integrated USA Incorporated, MediCor Management, Inc., MediCor Development Company, MediCor Aesthetics, III Acquisition Corporation, d/b/a PIP. America, and Intellectual Property International, Inc. in respect of Directors' and Officers' and Corporate Liability Insurance Policy No. 1706787/1 issued by Carolina Casualty Company, Inc.

Dear Counsel:

This letter is sent on behalf of the Official Committee of Unsecured Creditors ("the Committee") for MediCor Ltd., International Integrated Incorporated, International Integrated USA Incorporated, MediCor Management, Inc., MediCor Development Company, MediCor Aesthetics, III Acquisition Corporation, d/b/a PIP. America, and Intellectual Property International, Inc. et al. (as debtors in possession, "the Debtors" or "MediCor"). The Committee

One Logan Square 130 North 18th Street Philadelphia, PA 19103-6998
www.BlankRome.com

127951.01600/21612953v.1

Blank Rome LLP • Philadelphia • Pennsylvania • Washington DC • Honolulu



July 27, 2007

Page 2

asserts claims on behalf of the Debtors as debtors in possession, their estates, and their unsecured creditors. This letter is sent to you in your capacity as counsel to one or more of the following current or former directors and/or officers of the Debtors: Donald McGhan, James McGhan, Marc Sperberg, Theodore Maloney, Thomas Moyes, Samuel Clay Rogers, Paul Kimmell, Eugene Davis, Mark Brown, Thomas Hartley, Robert Forbuss, Bradley Scher and Ikram Khan ("MediCor Directors"). The matters set forth in this letter are matters of which the Committee is presently aware; however, the Committee's investigation of the Debtors, their estates, the MediCor Directors, the MediCor Officers (as that term is defined hereafter), and their affairs is continuing.

The Committee has become aware of certain facts, circumstances and situations involving the MediCor Directors and MediCor Officers that contributed to and caused the insolvency of and caused MediCor and its estates and unsecured creditors to suffer damages for which the Committee intends to seek money damages and in which related claims the Committee, the Debtors, the Debtors' estates have or may have an interest. These events involved wrongful acts, errors, omissions, misstatements and misleading statements, as well as breaches of fiduciary and other duties owed to the Debtors by the MediCor Directors, and other executive officers of MediCor (the "MediCor Officers"). These events include, but are not limited to, the following:

1. Beginning some time in or around April 2006, the MediCor Directors and the MediCor Officers breached their fiduciary duties to the Debtors by causing the Debtors to enter into a series of lending transactions with Silver Oak Capital, L.L.C., HFTP Investment L.L.C., GAIA Offshore Master Fund, Ltd. and Portside Growth and Opportunity Fund whereby MediCor borrowed an original aggregate principal amount of \$50 million (later purportedly increased to more than \$60 million for apparently inadequate consideration) (the "Secured Debt"). On information and belief, these lending transaction and certain related acquisitions of the equity in Biosil, Ltd. and Nagor, Ltd. were accomplished in part through the negligent, reckless and/or deliberate exchange of inaccurate information about the nature and extent of the assets of the company. On information and belief, the Secured Debt and related transactions were also the result of negligent and/or reckless misrepresentations as to the future business prospects of the Debtors. The Debtors suffered damages by borrowing more than they were equipped to repay, and their estates and unsecured creditors were damaged both by the diminution of assets available to repay debts and creditors and to otherwise meet MediCor obligations, and the encumbrance of assets otherwise available to repay debts and creditors and to otherwise meet MediCor obligations.



July 27, 2007
Page 3

2. In addition, in or around January 2007, the MediCor Directors and MediCor Officers breached their fiduciary duties to the Debtors by recklessly saddling the Debtor with additional Secured Debt and other obligations with no reasonable prospect of repayment, recklessly and/or deliberately causing the Debtors and their unsecured creditors to have little if any assets to look to for repayment of ongoing, future and pre-existing unsecured debts. The Debtors suffered damages by borrowing more than they were equipped to repay, and their estates and unsecured creditors were damaged both by the diminution of assets available to repay debts and creditors and to otherwise meet MediCor obligations, and the encumbrance of assets otherwise available to repay debts and creditors and to otherwise meet MediCor obligations.
3. In the period from April 2006 through March 2007, the MediCor Directors and MediCor officers breached their fiduciary duties to the Debtors by negligently, recklessly and/or deliberately conspiring with non Debtor entities also controlled by Donald McGhan, including but not limited to Sirius Capital LLC and International Integrated Industries, LLC ("International Integrated"), to the detriment of Debtors and Debtors' unsecured creditors, to replace unsecured debt owed by MediCor to International Integrated with two notes, one to Sirius Capital LLC and one to International Integrated, which action, without limitation, facilitated the placement of the Secured Debt and deepened MediCor obligations to McGahn and certain other insiders. The Debtors suffered damages by borrowing more than they were equipped to repay, and their estates and unsecured creditors were damaged both by the diminution of assets available to repay debts and creditors and to otherwise meet MediCor obligations, and the encumbrance of assets otherwise available to repay debts and creditors and to otherwise meet MediCor obligations.
4. In the period from April 2006, through June 2007, the MediCor Directors and MediCor Officers breached their fiduciary duties to the Debtors by negligently, recklessly and/or deliberately permitting the dissipation of funds provided from the various MediCor funding sources and for failing to carry out their duty of care reasonably to supervise, monitor and oversee management and the financial affairs of the Debtors' business, and recklessly and negligently and/or deliberately permitting the assets of the Debtors to be used for ultra vires purposes or for the personal benefit of one or more MediCor Directors. The Debtors and their estates were damaged by the diminution of value of the business and the Debtors' unsecured creditors were damaged by an inappropriate increase in liabilities



July 27, 2007

Page 4

and/or the dissipation of assets that might otherwise have been available for payments of the debts owed to them.

5. Beginning in or about July 2004, to the extent that the MediCor Directors and MediCor officers participated in a racketeering enterprise and breached their fiduciary duties to the Debtors by negligently, recklessly and/or deliberately permitting the Debtors to use improper funding sources to purchase Eurosilicone SAS, the MediCor Directors and MediCor Officers then caused the equity of Eurosilicone SAS to be included in MediCor/MediCor affiliate financial statements, wrongfully inflating the value of the MediCor business and assisting in causing the Debtors to incur the Secured Debt and engage in related transactions. The Debtors suffered damages by borrowing more than they were equipped to repay, and their estates and unsecured creditors were damaged both by the diminution of assets available to repay debts and creditors and to otherwise meet MediCor obligations, and the encumbrance of assets otherwise available to repay debts and creditors and to otherwise meet MediCor obligations.
6. Upon information and belief, at times otherwise relevant to this claim notice. MediCor Directors and MediCor Officers may have negligently and recklessly transferred MediCor or MediCor affiliate property to MediCor affiliates overseas, including, without limitation, in South America, which property was dissipated for no corresponding value to the Debtors; thereby, damaging the Debtors in an amount related to the value of the property so dissipated.

The Committee is continuing to investigate the above transactions and events, and others, to determine the extent of the monetary and non-monetary losses suffered by the Debtors and their unsecured creditors as a result of the wrongful acts and breaches of fiduciary duty committed by the MediCor Directors and MediCor Officers. It may supplement this notice under applicable law, including, without limitation, applicable bankruptcy law hereafter. Nothing in this notice claim is with prejudice to or waives or impairs any rights or claims of the Committee, the Debtors' estates or unsecured creditors in connection with any third parties or otherwise.

Kindly immediately furnish a copy of this letter to MediCor's insurers at the following addresses:

newclaim@monitorliability.com
Christopher J. Ziemba, Esq.
Senior Claims Attorney
Monitor Liability Managers, Inc.

BLANK  ROME LLP
COUNSELORS AT LAW

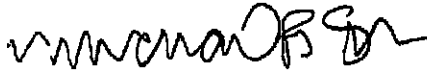
July 27, 2007
Page 5

2850 West Golf Road, Suite 800
Rolling Meadows, IL 60008-4039

Fax 404-264-7239
info@rsui.com
Peter M. Christel
Assistant Vice President
D&O Claims
RSUI Group Inc.
Resurgens Plaza, Suite 1800
945 East Paces Ferry Road
Atlanta, GA 30326

We are sending a copy of this letter to Dennis E. Stogsdill, Chief Restructuring Officer of the Debtors, as well as to Debtors' counsel. Please do not hesitate to call if you have any questions.

Very truly yours,



MICHAEL B. SCHAEDEL

cc: Robert Chesler (by email rchesler@lowenstein.com)
Robert L. Brace (by email rbrace@hbsb.com)
Joanne J. Matousek (by email jjmatousek@duanemorris.com)

Dennis E. Stogsdill (by email dstogsdill@alvarezandmarsal.com)
Ann Blair Laupheimer, Esquire
Michael Z. Brownstein, Esquire

BLANK  ROME LLP
COUNSELORS AT LAW

Phone: (215) 569-5758
Fax: (215) 832-5758
Email: Lauphelmer@BlankRome.com

August 27, 2007

Mark S. Dzarnoski, Esquire
GENTILE DEPALMA LTD.
3960 Howard Hughes Parkway, Suite 850
Las Vegas, NV 89169

Craig S. Bloomgarden
Robert A. Zeavin
Alison H. Mijares
STEEFEL LEVITT & WEISS
550 S. Hope St #2350
Los Angeles, CA 90071

Erik A. Christiansen
Rew R. Goodenow
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, UT 84111

Re: **Second Supplement To Claim Notice of Official Committee of Unsecured Creditors for MediCor Ltd., International Integrated Incorporated, International Integrated USA Incorporated, MediCor Management, Inc., MediCor Development Company, MediCor Aesthetics, III Acquisition Corporation, d/b/a PIP. America, and Intellectual Property International, Inc. in respect of Directors' and Officers' and Corporate Liability Insurance Policy No. 1706787/1 issued by Carolina Casualty Company, Inc.**

Dear Counsel:

This letter is sent on behalf of the Official Committee of Unsecured Creditors ("the Committee") for MediCor Ltd., International Integrated Incorporated, International Integrated USA Incorporated, MediCor Management, Inc., MediCor Development Company, MediCor Aesthetics, III Acquisition Corporation, d/b/a PIP. America, and Intellectual Property International, Inc. et al. (as debtors in possession, "the Debtors" or "MediCor"). The Committee

One Logan Square 130 North 18th Street Philadelphia, PA 19103-6998
www.BlankRome.com

127951.01600/21620813v.1

Delaware • Florida • New Jersey • New York • Ohio • Pennsylvania • Washington, DC • Hong Kong



August 27, 2007
Page 2

asserts claims on behalf of the Debtors as debtors in possession, their estates, and their unsecured creditors. This letter is sent to you in your capacity as counsel to one or more of the following current or former directors and/or officers of the Debtors: Donald McGhan, James McGhan, Marc Sperberg, Theodore Maloney, Thomas Moyes, Samuel Clay Rogers, Paul Kimmell, Eugene Davis, Mark Brown, Thomas Hartley, Robert Forbuss, Bradley Scher and Ikram Khan ("MediCor Directors").

On July 27, 2007, the Committee sent its original claim notice letter, setting forth those matters of which it was presently aware; however, the Committee's investigation of the Debtors, their estates, the MediCor Directors, the MediCor Officers (as that term is defined hereafter), and their affairs is continuing, and this supplemental letter provides notice of additional matters, as follows, of which the Committee has become aware involving the MediCor Directors and MediCor Officers that contributed to and caused the insolvency of and caused MediCor and its estates and unsecured creditors to suffer damages for which the Committee intends to seek money damages and in which related claims the Committee, the Debtors, the Debtors' estates have or may have an interest. These events involved wrongful acts, errors, omissions, misstatements and misleading statements, as well as breaches of fiduciary and other duties owed to the Debtors by the MediCor Directors, and other executive officers of MediCor (the "MediCor Officers"):

By means of a Sale and Purchase Agreement dated September 13, 2005, as amended by subsequent amendment deeds on January 16, 2006 and April 14, 2006, the Medicor Officers and Medicor Directors breached their fiduciary duties by acting negligently, recklessly and/or intentionally to cause Medicor to acquire the shares of Nagor and Biosil for a cash consideration far in excess of their fair market value. In addition to the unfair and inflated purchase price, the Medicor Officers and Medicor Directors caused Medicor to agree to onerous terms and conditions for the sale, including conferring onerous ongoing obligations upon Medicor, and rights upon the Sellers, John Gordon Evans, Jessie Anne Evans, John Alsop and Joseph Gallagher, all to the financial detriment of Medicor.

The Committee is continuing to investigate the above transactions and events, and others, to determine the extent of the monetary and non-monetary losses suffered by the Debtors and their unsecured creditors as a result of the wrongful acts and breaches of fiduciary duty committed by the MediCor Directors and MediCor Officers. It may supplement this notice under applicable law, including, without limitation, applicable bankruptcy law hereafter. Nothing in this notice claim is with prejudice to or waives or impairs any rights or claims of the Committee, the Debtors' estates or unsecured creditors in connection with any third parties or otherwise.

BLANK  ROME LLP
COUNSELORS AT LAW

August 27, 2007
Page 3

Kindly immediately furnish a copy of this letter to MediCor's insurers at the following addresses:

newclaim@monitorliability.com
Christopher J. Ziemba, Esq.
Senior Claims Attorney
Monitor Liability Managers, Inc.
2850 West Golf Road, Suite 800
Rolling Meadows, IL 60008-4039

Fax 404-264-7239
info@rsui.com
Peter M. Christel
Assistant Vice President
D&O Claims
RSUI Group Inc.
Resurgens Plaza, Suite 1800
945 East Paces Ferry Road
Atlanta, GA 30326

We are sending a copy of this letter to Dennis E. Stogsdill, Chief Restructuring Officer of the Debtors, as well as to Debtors' counsel. Please do not hesitate to call if you have any questions.

Very truly yours,


ANN BLAIR LAUPHEIMER

cc: Robert Chesler (by email rchesler@lowenstein.com)
Robert L. Brace (by email rbrace@hbsb.com)
Joanne J. Matousek (by email jimatousek@duanemorris.com)

Dennis E. Stogsdill
Michael B. Schaedle, Esquire
Michael Z. Brownstein, Esquire

Schedule E

1 GORDON SILVER
MARK S. DZARNOSKI
2 Nevada Bar No. 3398
3960 Howard Hughes Pkwy., 9th Floor
3 Las Vegas, Nevada 89169
(702) 796-5555
4 Attorneys for Donald K. McGhan, Jim J. McGhan,
Shirley M. McGhan and Nikki M. Pomeroy
5
6

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9
10 CASE NO. 07-A-535439-B
DEPT. XI

11 IN RE: RECEIVERSHIP OF SOUTHWEST
EXCHANGE, INC. AND CONSOLIDATED
12 LITIGATION,

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
**DECLARATION OF JIM J. MCGHAN
REGARDING STATEMENT OF
FINANCIAL CONDITION**

16 I, Jim J. McGhan, under penalty of perjury pursuant to the laws of the State of Nevada
17 and of the United States of America, do hereby depose and say:

18 1. I am a defendant in Action 07-A-535439-B in the Eighth Judicial District Court of
19 the State of Nevada in and for the County of Clark entitled "*In Re: Receivership of Southwest*
20 *Exchange, Inc. and Consolidated Litigation* and MDL Docket No. 1878, Case No. 2:07-cv-
21 01394-RCJ-(LRL), pending in the United States District Court for the District of Nevada entitled
22 "*In Re: Internal Revenue Service § 1031 Tax Deferred Exchange Litigation (collectively "SWX*
23 *Customer Litigation.*")
24

25 2. I am informed and believe that the SWX Customer Litigation as well as other
26 matters which arise out of or are in some way related to the operation and subsequent failure of
27 Southwest Exchange or Qualified Exchange Services, including their parents, subsidiaries, or
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

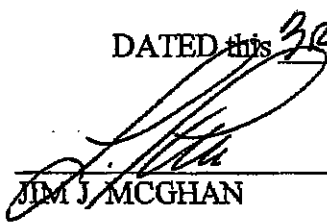
affiliates are being settled by multiple remaining parties. It is my understanding that the formal terms of settlement are being reduced to writing in a document entitled *Wave V Settlement Agreement*.

3. On information and belief, pursuant to paragraph 5(B) of the current draft of the *Wave V Settlement Agreement*, I am required to provide financial statements disclosing all of my assets and liabilities, which reflect that all non-exempt assets that could be used to satisfy judgments against me have been turned over to the State Court Receiver in compliance with the *Term Sheet I entered into with the Receiver on or about May 31, 2007*.

4. Attached hereto as Exhibit A is a statement of financial condition as of May 31, 2009 which truthfully and accurately sets forth my financial condition as of that date. Other than as set forth therein, I have no knowledge of any other non-exempt assets nor do I have access to such assets that could be used to satisfy any judgments against me.

5. I understand and agree that if the representations made herein and in my financial disclosure statement are materially false that the Releases I am obtaining in the *Wave V Settlement Agreement* may be voided and the Settlement Class and Individual Plaintiffs may refile their claims against me and that any assets not disclosed herein are subject to forfeiture.

DATED this 30th day of July, 2009.



JIM J. MCGHAN

A. Assets:

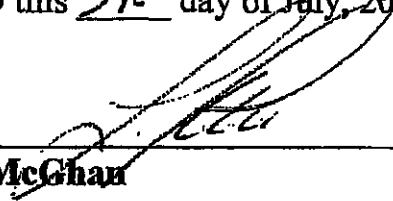
1.	Cash	<u><\$500</u>
2.	Loans or Notes Receivable	<u>0</u>
3.	Real Estate: _____ _____ _____	<u>0</u> _____ _____
4.	Household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment in excess of \$12,000 in value	<u>0</u>
5.	Private libraries, works of art, musical instruments and jewelry in excess of \$5,000 in value	<u>0</u>
6.	Automobiles <u>2006 Cadillac Escalade</u> _____ _____	<u>21,915</u> _____ _____
7.	Securities <u>2,762,427 shares MediCor Ltd.</u> _____ _____	<u>0</u> _____ _____
8.	Partnership Interests	<u>0</u>
10.	Individual Retirement Accounts (IRAs)	<u>0</u>
11.	Keogh Accounts or Plans	<u>0</u>
12.	401(k) Accounts or Plans	<u>0</u>
13.	Simplified Employee Pension Plans	<u>0</u>
14.	Other Pension Assets	<u>0</u>
15.	Annuities	<u>0</u>



(NOTE: interest in contingent distribution by Arthrocare believed to be <\$20,000 to be delivered to Qualified Settlement Fund)

	_____	_____
	_____	_____
B. Liabilities:		
1. Mortgages	_____	<u>0</u>
	_____	<u>0</u>
	_____	<u>0</u>
2. Auto Loans	<u>2006 Cadillac Escalade</u>	<u>25,064</u>
	_____	_____
	_____	_____
3. Credit Card Debt	(approx)	<u>27,000</u>
4. Other Loans or Notes Payable	(approx)	<u>190,000</u>
5. Accrued Real Estate Taxes (in impound account)		<u>0</u>
6. Judgments/Settlements Owed		<u>0</u>
7. Other (Itemize):		
	<u>Federal Income Tax</u> (approx)	<u>275,000</u>
	<u>CA State Income Tax</u> (approx)	<u>15,000</u>
	_____	_____
	_____	_____
	_____	_____

DATED this 31st day of July, 2009.



Jim J. McGhan

1 GORDON SILVER
2 MARK S. DZARNOSKI
3 Nevada Bar No. 3398
4 3960 Howard Hughes Pkwy., 9th Floor
5 Las Vegas, Nevada 89169
6 (702) 796-5555
7 Attorneys for Donald K. McGhan, Jim J. McGhan,
8 Shirley M. McGhan and Nikki M. Pomeroy
9

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

CASE NO. 07-A-535439-B
DEPT. XI

10 IN RE: RECEIVERSHIP OF SOUTHWEST
11 EXCHANGE, INC. AND CONSOLIDATED
12 LITIGATION,

DECLARATION OF SHIRLEY MCGHAN
REGARDING STATEMENT OF
FINANCIAL CONDITION

13
14
15
16 I, Shirley M. McGhan, under penalty of perjury pursuant to the laws of the State of
17 Nevada and of the United States of America, do hereby depose and say:

18 1. I am a defendant in Action 07-A-535439-B in the Eighth Judicial District Court of
19 the State of Nevada in and for the County of Clark entitled "*In Re: Receivership of Southwest*
20 *Exchange, Inc. and Consolidated Litigation* and MDL Docket No. 1878, Case No. 2:07-cv-
21 01394-RCJ-(LRL), pending in the United States District Court for the District of Nevada entitled
22 "*In Re: Internal Revenue Service § 1031 Tax Deferred Exchange Litigation (collectively "SWX*
23 *Customer Litigation.*"
24

25 2. I am informed and believe that the SWX Customer Litigation as well as other
26 matters which arise out of or are in some way related to the operation and subsequent failure of
27 Southwest Exchange or Qualified Exchange Services, including their parents, subsidiaries, or
28

1 affiliates are being settled by multiple remaining parties. It is my understanding that the formal
2 terms of settlement are being reduced to writing in a document entitled *Wave V Settlement*
3 *Agreement*.

4 3. On information and belief, pursuant to paragraph 5(B) of the current draft of the
5 *Wave V Settlement Agreement*, I am required to provide financial statements disclosing all of my
6 assets and liabilities, which reflect that all non-exempt assets that could be used to satisfy
7 judgments against me have been turned over to the State Court Receiver in compliance with the
8 Term Sheet I entered into with the Receiver on or about May 31, 2007.

9 4. Attached hereto as Exhibit A is a statement of financial condition as of May 31,
10 2009 which truthfully and accurately sets forth my financial condition as of that date. Other than
11 as set forth therein, I have no knowledge of any other non-exempt assets nor do I have access to
12 such assets that could be used to satisfy any judgments against me.

13 5. I understand and agree that if the representations made herein and in my financial
14 disclosure statement are materially false that the Releases I am obtaining in the *Wave V*
15 *Settlement Agreement* may be voided and the Settlement Class and Individual Plaintiffs may re-
16 file their claims against me and that any assets not disclosed herein are subject to forfeiture.
17

18 DATED this 30 day of June, 2009.

19
20
21 
22 SHIRLEY M. MCCHEAN
23
24
25
26
27
28

STATEMENT OF FINANCIAL CONDITION OF
Shirley M. McGhan as of May 31, 2009

A. Assets:

1.	Cash	_<\$1,000_
2.	Loans or Notes Receivable	_ 0 _
3.	Real Estate: _____ _____ _____	_ 0 _ _____ _____
4.	Household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment in excess of \$12,000 in value	_ 0 _
5.	Private libraries, works of art, musical instruments and jewelry in excess of \$5,000 in value	_ 0 _
6.	Automobiles _____ _____ _____	_ 0 _ _____ _____
7.	Securities <u>marital interest in shares of Medicor Ltd.</u> <u>owned by Donald K. McGhan</u> _____ _____	_ 0 _ _____ _____ _____
8.	Partnership Interests	_ 0 _
10.	Individual Retirement Accounts (IRAs)	_ 0 _
11.	Keogh Accounts or Plans	_ 0 _
12.	401(k) Accounts or Plans	_ 0 _
13.	Simplified Employee Pension Plans	_ 0 _
14.	Other Pension Assets	_ 0 _
15.	Annuities	_ 0 _

16. Other Items in excess of \$10,000 in value _____ 0

(NOTE: interest in contingent distribution by Arthrocare believed to be <\$30,000 to be delivered to Qualified Settlement Fund)

B. Liabilities:

1. Mortgages _____ 0
_____ 0
_____ 0

2. Auto Loans _____ 0

3. Credit Card Debt _____ 0

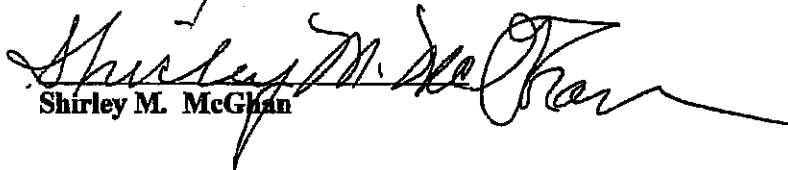
4. Other Loans or Notes Payable _____ 0

5. Accrued Real Estate Taxes (in impound account) _____ 0

6. Judgments/Settlements Owed _____ 0

7. Other (Itemize): _____
Federal Income Tax _____ undetermined

DATED this 7 day of June, 2009.


Shirley M. McGhan

1 GORDON SILVER
 2 MARK S. DZARNOSKI
 Nevada Bar No. 3398
 3 3960 Howard Hughes Pkwy., 9th Floor
 Las Vegas, Nevada 89169
 (702) 796-5555
 4 Attorneys for Donald K. McGhan, Jim J. McGhan,
 Shirley M. McGhan and Nikki M. Pomeroy
 5
 6

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

CASE NO. 07-A-535439-B
 DEPT. XI

10 IN RE: RECEIVERSHIP OF SOUTHWEST
 11 EXCHANGE, INC. AND CONSOLIDATED
 12 LITIGATION.

DECLARATION OF NIKKI POMEROY
 REGARDING STATEMENT OF
 FINANCIAL CONDITION

13
 14
 15
 16 I, Nikki Pomeroy, under penalty of perjury pursuant to the laws of the State of Nevada
 17 and of the United States of America, do hereby depose and say:

18 1. I am a defendant in Action 07-A-535439-B in the Eighth Judicial District Court of
 19 the State of Nevada in and for the County of Clark entitled "*In Re: Receivership of Southwest*
 20 *Exchange, Inc. and Consolidated Litigation* and MDL Docket No. 1878, Case No. 2:07-cv-
 21 01394-RCJ-(LRL), pending in the United States District Court for the District of Nevada entitled
 22 "*In Re: Internal Revenue Service § 1031 Tax Deferred Exchange Litigation (collectively "SWX*
 23 *Customer Litigation."*)
 24

25 2. I am informed and believe that the SWX Customer Litigation as well as other
 26 matters which arise out of or are in some way related to the operation and subsequent failure of
 27 Southwest Exchange or Qualified Exchange Services, including their parents, subsidiaries, or
 28

1 affiliates are being settled by multiple remaining parties. It is my understanding that the formal
2 terms of settlement are being reduced to writing in a document entitled *Wave V Settlement*
3 *Agreement*.

4 3. On information and belief, pursuant to paragraph 5(B) of the current draft of the
5 *Wave V Settlement Agreement*, I am required to provide financial statements disclosing all of my
6 assets and liabilities, which reflect that all non-exempt assets that could be used to satisfy
7 judgments against me have been turned over to the State Court Receiver in compliance with the
8 Term Sheet I entered into with the Receiver on or about May 31, 2007.

9 4. Attached hereto as Exhibit A is a statement of financial condition as of May 31,
10 2009 which truthfully and accurately sets forth my financial condition as of that date. Other than
11 as set forth therein, I have no knowledge of any other non-exempt assets nor do I have access to
12 such assets that could be used to satisfy any judgments against me.

13 5. I understand and agree that if the representations made herein and in my financial
14 disclosure statement are materially false that the Releases I am obtaining in the *Wave V*
15 *Settlement Agreement* may be voided and the Settlement Class and Individual Plaintiffs may re-
16 file their claims against me and that any assets not disclosed herein are subject to forfeiture.
17
18
19

20 DATED this 30th day of June, 2009.

21 
22 NIKKI POMEROY

STATEMENT OF FINANCIAL CONDITION OF
NIKKI POMEROY as of May 31, 2009

A. Assets:

1.	Cash		<u><\$1,000</u>
2.	Loans or Notes Receivable		<u>0</u>
3.	Real Estate:	<u>8625 Titleist Circle, Las Vegas, NV</u>	<u>700,000</u>
		<u>(listed for approx 1 year at \$999,999</u>	<u></u>
		<u></u>	<u></u>
4.	Household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment in excess of \$12,000 in value		<u>0</u>
5.	Private libraries, works of art, musical instruments and jewelry in excess of \$5,000 in value		<u>0</u>
6.	Automobiles <u>(driving borrowed car)</u>		<u>0</u>
		<u></u>	<u></u>
		<u></u>	<u></u>
7.	Securities	<u>2,093,563 shares Medicor Ltd.</u>	<u>0</u>
		<u>167,435 shares Medicor, Ltd in SEPP</u>	<u>0</u>
		<u></u>	<u></u>
		<u></u>	<u></u>
8.	Partnership Interests		<u>0</u>
10.	Individual Retirement Accounts (IRAs)		<u>0</u>
11.	Keogh Accounts or Plans		<u>0</u>
12.	401(k) Accounts or Plans		<u>0</u>
13.	Simplified Employee Pension Plans	(approx value)	<u>190,000</u>
14.	Other Pension Asscts		<u>0</u>
15.	Annuities		<u>0</u>

16. Other Items in excess of \$10,000 in value

_____ 0

(NOTE: interest in contingent distribution by Arthrocare believed to be <\$20,000 to be delivered to Qualified Settlement Fund)

B. Liabilities:

1. Mortgages	Charles Schwab Bank (in default)	555,000
	Charles Schwab Impound Account	20,000
	2 nd Trust Deed Loan	25,000

2. Auto Loans	_____	0

3. Credit Card Debt 35,000

4. Other Loans or Notes Payable 0

5. Accrued Real Estate Taxes (in impound account) 15,000

6. Judgments/Settlements Owed 0

7. Other (Itemize):	_____	0
	Federal Income Tax	undetermined

DATED this 30th day of June, 2009.

Nikki Pomroy
Nikki Pomroy

Schedule F

1 Robert L. Brace, Ca. Bar No. 122240
Michael P. Denver, Ca. Bar No. 199279

**EXEMPLAR
FOR THE CLASS**

2 **HOLLISTER & BRACE**
P.O Box 630
3 Santa Barbara, Ca. 93102
Telephone: (805) 963-6711
4 *Attorneys for Plaintiffs*
And all others similarly situated

5
6
7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF NEVADA**

9 IN RE: INTERNAL REVENUE) MDL Docket No. 1878
10 SERVICE § 1031 TAX DEFERRED) Case No. 07-cv-01394-RCJ-LRL
11 EXCHANGE LITIGATION)
12 Sorrell, et al. v. Southwest Exchange,) **CONFESSION OF JUDGMENT BY**
Inc., et al.) **DEFENDANT DONALD K. MCGHAN**
13)

14 The Sorrell Plaintiffs, on behalf of themselves and the Settlement Class (defined
15 below), on the one hand, and Defendant Donald K. McGhan ("McGhan"), on the other, through
16 their respective counsel of record, having negotiated in good faith and in order to avoid the
17 expense of further litigation and to resolve the claims in the above-captioned matter, state as
18 follows:

19 McGhan hereby confesses to a Judgment in the amount of \$41,341,028 (the
20 "Judgment") and authorizes the Judgment to be entered against McGhan in favor of the
21 Settlement Class, defined as follows:¹

22 All persons who were customers of SWX or QES, including any subsidiaries or
23 affiliates of SWX or QES engaged in business as Qualified Intermediaries

24
25 ¹ Excluded from the Settlement Class are the "Individual Plaintiffs" in the related State Court Action pending
26 before Judge Gonzalez, Lead Case No. 07-A-535439-B, each of whom have opted-out of the Settlement Class and
27 are receiving individual Judgments against McGhan pursuant to separate Confessions of Judgment. The Individual
28 Plaintiffs are: 4 Ever Acres, Inc.; Wayne and Greta Albritton; Brigitte Land Management, LLC; D&D Investment
Co; Eric G. Tarr Trust; Harbor Investment Group, LLC; Michael and Kersten Micone; Leonard Shapiro; TIC Pratt
17, LLC; Larry C. Wallace, Jr.; Michael and Deborah McCormick; William K. Reeser; Napa Valley I, LLC; Napa
Valley II, LLC; Gerald B. Campbell Trust; Meldrum Family Trust; P&D Kelesis, LLC; and Randy Char.

Case 2:07-cv-01394-RCJ-LRL Document 258-1 Filed 06/23/10 Page 111 of 120
pursuant to 26 U.S.C. § 1031, and who suffered loss or damages or allegedly
suffered loss or damages in any way, directly or indirectly, related to or arising
out of: (a) the failure of SWX or QES, including their subsidiaries and affiliates;
or (b) any of the events, acts or conduct alleged in the Master Complaint and
Fourth Amended Complaint in the action entitled *In re: Receivership of
Southwest Exchange, Inc. and Consolidated Litigation*, Case No.: 07-A-535439-
B, pending in the Eighth Judicial District Court, Clark County, Nevada, or in the
class action litigation pending in the action entitled *In Re: Southwest Exchange,
Inc. Internal Revenue Service Section 1031 Tax Deferred Exchange Litigation*,
U.S. District Court for the Dist. of Nevada Case No. 2:07-CV-01394-RCJ-LRL,
pending in the United States District Court for the District of Nevada.

The amount of the Judgment (\$41,341,028) is the combined total of the Settlement
Class Members' lost exchange funds.²

In exchange for McGhan's agreement that the Settlement Class is entitled to the entry
of the \$41,341,028 Judgment, the Settlement Class Members agree to forego claims against
McGhan for additional damages, including consequential, punitive and exemplary damages;

The Judgment shall accrue interest at the legal rate from the day of entry until all
amounts owed under the Judgment have been paid in full. As part of the Judgment, the
Settlement Class shall also be entitled to recover pre-judgment interest from the date of filing
their Complaint at the statutory rate and reasonable attorneys' fees and costs incurred in
satisfying the Judgment;

McGhan expressly agrees that this Confession of Judgment is for a debt justly due and
owing to the Settlement Class and this Confession of Judgment shall constitute and be accepted
as the written statement authorizing confession of judgment as provided in 28 USC § 1874,
Nevada Revised Statute 17.090 et. seq., and similar statutes;

The circumstances giving rise to this Confession of Judgment are as follows:

1. In order to effectuate Internal Revenue Code Section 1031 exchanges, the
Settlement Class Members deposited exchange funds with SWX (Southwest Exchange, Inc.

² Exchange funds are the funds deposited at SWX and/or its affiliates which have been lost, as determined by the
Receiver.

1 and its affiliates, including QES, are collectively referred to herein as "SWX"), a Qualified
2 Intermediary owned or controlled by McGhan;

3 2. From in or about July 2004, until the collapse of SWX in January 2007, McGhan
4 knowingly, intentionally, and fraudulently withheld from SWX clients and potential clients
5 information regarding his lending SWX money to entities to purchase Eurosilocone. McGhan
6 knew that the clients and potential clients would consider such practice too risky and would not
7 use the services of SWX;

8 3. From, at least, August 30, 2006, until the collapse of SWX in January 2007,
9 McGhan knew that SWX was insolvent and did not have sufficient liquid assets or sources of
10 capital to satisfy its contractual obligations to purchase Replacement Properties for new clients.
11 Yet, at McGhan's direction, SWX continued to aggressively market itself and seek new
12 customers under the false premise that SWX was financially secure and stable;

13 4. As a result of the above and foregoing, from at least August 30, 2006 to January
14 30, 2007, McGhan falsely and fraudulently deceived clients, including Settlement Class
15 Members, into believing he was operating SWX consistently with the terms of the SWX
16 contracts with its customers, had invested the trust funds in such a manner so as to meet the
17 customer's needs, and that SWX would be able to fund its clients' purchases of Replacement
18 Properties to complete their 1031 exchanges. Between on or about August 30, 2006, and
19 January 30, 2007, McGhan falsely and fraudulently caused customers, including Settlement
20 Class Members, to deposit approximately \$95 million dollars with SWX;

21 5. The representative Plaintiffs, on behalf of the Class, sued McGhan for, among
22 other things, RICO violations based upon the above and foregoing;

23 6. For his actions at SWX, McGhan was indicted by the Federal Government and
24 has entered a plea of guilty to wire fraud in the criminal proceeding styled *USA v. McGhan*,
25 USDC NV Case No. 2:09-CR-00199-PMP-PAL. The plea agreement executed in that action
26 (Docket No. 8) is incorporated herein by reference thereto. Pursuant to his plea, McGhan has
27 admitted that he devised and intended to devise a scheme and artifice to defraud and obtain
28 money and property by means of false and fraudulent pretenses, representations and promises;

1 7. In order to avoid the cost of continued litigation, McGhan has entered into a
2 “Wave V Settlement Agreement” with the Class, pursuant to which: (i) McGhan has agreed to
3 the entry of the Judgment against him in the amount of the Settlement Class Members’ lost
4 exchange funds; and (ii) the Class has agreed to forego all other claims against McGhan.

5 In lieu of immediately paying the Settlement Class the amount McGhan admits he
6 owes, McGhan has agreed to confess judgment as set forth herein thereby granting to the
7 Settlement Class rights as judgment creditors;

8 McGhan expressly agrees that the confessed Judgment is for money obtained by means
9 of false and fraudulent pretenses, representations and promises. As such, McGhan expressly
10 agrees that the Judgment is non-dischargeable pursuant to 11 USC § 523(a)(2)(A), 11 USC §
11 523(a)(4) and 11 USC § 523 (a)(6);

12 McGhan expressly agrees that, there is no just reason for the delay in entering the
13 Judgment and the Judgment, in the form attached hereto as Exhibit 1, shall be entered forthwith
14 pursuant to Federal Rule of Civil Procedure 54(b);

15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

1 Robert L. Brace, Ca. Bar No. 122240
2 Michael P. Denver, Ca. Bar No.199279
3 **HOLLISTER & BRACE**
4 P.O Box 630
5 Santa Barbara, CA 93102
6 Telephone: (805) 963-6711
7 Facsimile: (805) 965-0329
8 *Attorneys for Plaintiffs and the Class*

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

IN RE: SOUTHWEST EXCHANGE
INC. INTERNAL REVENUE
SERVICE § 1031 TAX DEFERRED
EXCHANGE LITIGATION

MDL Docket No. 1878
Case No. 07-cv-01394-RCJ-LRL

Sorrell, et al. v. Southwest Exchange,
Inc., et al.

JUDGMENT AGAINST DEFENDANT
DONALD K. MCGHAN FOR
\$41,341,028

Pursuant to the Confession of Judgment executed by Defendant Donald K. McGhan ("McGhan") dated June __, 2009, which is incorporated herein by reference, a Judgment in the amount of \$41,341,028 is hereby entered against McGhan, in favor of the Plaintiffs. Interest on the Judgment shall accrue at the statutory rate from the date of entry. THIS COURT FINDS and expressly determines that there is no just reason for delay and pursuant to F.R.C.P. 54(b) hereby directs entry of the Judgment. THIS COURT ORDERS that entry of this Judgment disposes of the entire above-captioned matter as to McGhan. Without affecting the finality of this Judgment, this Court shall retain exclusive and continuing jurisdiction over the above-referenced action and McGhan, for purposes of implementing, enforcing, and interpreting the Judgment.

IT IS SO ORDERED.

Dated: June __, 2009

By: _____
The Hon. Robert C. Jones
United States District Court Judge

GORDON SILVER
MARK S. DZARNOSKI
Nevada Bar No. 3398
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
(702) 796-5555
Attorneys for Donald K. McGhan,

**EXEMPLAR FOR
INDIVIDUAL PLAINTIFFS**

DISTRICT COURT

CLARK COUNTY, NEVADA

CASE NO. 07-A-535439-B
DEPT. XI

IN RE: RECEIVERSHIP OF SOUTHWEST
EXCHANGE, INC. AND CONSOLIDATED
LITIGATION,

CONFESSION OF JUDGMENT

Defendant Donald McGhan, by and through his counsel of record, Mark S. Dzarnoski of the law firm of Gordon Silver, Ltd., and Plaintiff _____ ("Plaintiff"), by and through his/her/its counsel of record, J. Steven Peek, Esq. and Brad M. Johnston, Esq. of Holland & Hart having negotiated in good faith and in order to avoid the expense of further litigation and to resolve the claims in the above-captioned matter, state as follows:

McGhan hereby confesses to a Judgment in the amount of Twenty One Million One Hundred Eighty One Thousand Six Hundred Ninety and 38/100 Dollars (\$21,181,690.38) (the "Judgment") and authorizes the Judgment to be entered against McGhan in favor of the Plaintiff.

In exchange for McGhan's agreement that Plaintiff is entitled to the entry of the Judgment, Plaintiff has agreed to forego claims against McGhan for additional damages, including consequential, punitive and exemplary damages all as set forth in a definitive Settlement Agreement commonly known as Wave V Settlement Agreement;

The Judgment shall accrue interest at the legal rate from the day of entry until all

1 amounts owed under the Judgment have been paid in full. As part of the Judgment, the Plaintiff
2 shall also be entitled to recover pre-judgment interest from the date of filing their Complaint at
3 the statutory rate and reasonable attorneys' fees and costs incurred in satisfying the Judgment;

4 McGhan expressly agrees that this Confession of Judgment is for a debt justly due and
5 owing to Plaintiff and this Confession of Judgment shall constitute and be accepted as the
6 written statement authorizing confession of judgment as provided in 28 USC § 1874, Nevada
7 Revised Statute 17.090 et. seq., and similar statutes;

8 The circumstances giving rise to this Confession of Judgment are as follows:

9 1. In order to effectuate Internal Revenue Code Section 1031 exchanges, the
10 Plaintiff deposited exchange funds with SWX (Southwest Exchange, Inc. and its affiliates,
11 including QES, are collectively referred to herein as "SWX"), a Qualified Intermediary owned
12 or controlled by McGhan;

13 2. From in or about July 2004, until the collapse of SWX in January 2007, McGhan
14 knowingly, intentionally, and fraudulently withheld from SWX clients and potential clients,
15 including Plaintiff, information regarding his lending SWX money to entities to purchase
16 Eurosilococone. McGhan knew that the clients and potential clients would consider such practice
17 too risky and would not use the services of SWX

18 3. From, at least, August 30, 2006, until the collapse of SWX in January 2007,
19 McGhan knew that SWX was insolvent and did not have sufficient liquid assets or sources of
20 capital to satisfy its contractual obligations to purchase Replacement Properties for new clients.
21 Yet, at McGhan's direction, SWX continued to aggressively market itself and seek new
22 customers under the false premise that SWX was financially secure and stable.

23 4. As a result of the above and foregoing, from at least August 30, 2006 to January 30,
24 2007, McGhan falsely and fraudulently deceived clients, including Plaintiff, into believing he
25 was operating SWX consistently with the terms of the SWX contracts with its customers, had
26 invested the trust funds in such a manner so as to meet the customer's needs, and that SWX
27 would be able to fund its clients' purchases of Replacement Properties to complete their 1031
28 exchanges. Between on or about August 30, 2006, and January 30, 2007, McGhan falsely and

with SWX.

5. The Plaintiff sued McGhan for, among other things, RICO violations based upon the above and foregoing;

6. For his actions at SWX, McGhan was indicted by the Federal Government and has entered a plea of guilty to wire fraud in the criminal proceeding styled *USA v. McGhan*, USDC NV Case No. 2:09-CR-00199-PMP-PAL. The plea agreement executed in that action (Docket No. 8) is incorporated herein by reference thereto. Pursuant to his plea, McGhan has admitted that he devised and intended to devise a scheme and artifice to defraud and obtain money and property by means of false and fraudulent pretenses, representations and promises.

7. In order to avoid the cost of continued litigation, McGhan has entered into a "Wave V Settlement Agreement" with, among others, the Plaintiff, pursuant to which: (i) McGhan has agreed to the entry of the Judgment against him in the amount of Plaintiff's lost exchange funds; and (ii) the Plaintiff has agreed to forego all other claims against McGhan.

In lieu of immediately paying Plaintiff the amount McGhan admits he owes, McGhan has agreed to confess judgment as set forth herein thereby granting to Plaintiff rights as a judgment creditor;

McGhan expressly agrees that the confessed Judgment is for money obtained by means of false and fraudulent pretenses, representations and promises. As such, McGhan expressly agrees that the Judgment is non-dischargeable pursuant to 11 USC § 523(a)(2)(A), 11 USC § 523(a)(4) and 11 USC § 523 (a)(6);

McGhan expressly agrees that, there is no just reason for the delay in entering the Judgment and the Judgment, in the form attached hereto as Exhibit 1, shall be entered forthwith pursuant to Federal Rule of Civil Procedure 54(b);

...

...

...

...

...

...

2 **VERIFICATION**

3 STATE OF NEVADA)
4 COUNTY OF CLARK)ss.

5 Donald K. ,McGhan, being sworn, deposes and says:

6 That he is the Defendant in the above matter; he has read the foregoing Confession of
7 Judgment, knows the contents herein, and the same is true of his own knowledge, except as to
8 those matters therein stated on information and belief, as to those matters, he believes them to be
9 true.

10 Dated this _____ day of _____, 2009.

11
12 _____
13 Donald K. McGhan

14
15
16 SUBSCRIBED and SWORN to before me
17 this _____ day of _____, 2009.

18 _____
19 NOTARY PUBLIC