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Case No. 2513-VCN

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OF THE
STATE OF DELAWARE

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May 25, 2007

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Re: Matria Healthcare, Inc. v. Coral SR LLC
C.A. No. 2513-VCN
Date Submitted: May 11, 2007

Dear Counsel:

I write briefly to address the parties' debate over the form of order to implement the Memorandum Opinion of March 1, 2007. My function is limited to developing an order for that purpose; it is not to address or to consider subsequent events in the various dispute resolution fora. Also, I decline to delve into the disagreement among counsel as to the delay in submitting their positions with respect to the form of order.

Matria's proposed form of order would divide the "Customer" claim between the Settlement Accountant and the American Arbitration Association. That would be inconsistent with both its position before the Court and the Memorandum Opinion. This possibility was precisely the Court's concern, expressed during oral argument and reviewed with counsel for Matria. Matria's counsel unambiguously argued that the "Customer" claim (without right to subdivide or otherwise limit) had to be submitted to the Settlement Accountant, and not to the American Arbitration Association, in accordance with the parties' contractual relationship:

> Due to Coral's delay in submitting this to the settlement accountant, the issuance date still has not arrived. We are talking about the final determination, the final balance sheet, *so we can include any information up until the time the settlement accountant makes a ruling*. And again, remember, that fits hand and glove with the exclusivity clause, which says that it excludes from Article VII matters that could have been known other than matters not known prior to final resolution of the final working capital. So it all fits together very nice and neat, in a succinct way.[1]

If the "Customer" claim could have been submitted to the Settlement Accountant (based on information available before issuance of the financial statements), that matter is to be resolved by the Settlement Accountant as the contractually preferred

[1] Transcript of Oral Arg. at 74-75 (emphasis added).

arbitrator of such dispute.[2] One can readily be skeptical of that policy choice; that, however, is what the parties agreed to. Also, that is what Matria argued in this Court. Also, the parties did not agree to any limit on the value of claims to be submitted to the Settlement Accountant.

The parties have agreed to treat the Court's dismissal of Counts IV and V of the Complaint as based on a lack of subject matter jurisdiction as opposed to failure to state a claim. That would be the better approach.[3] The analysis is not changed: simply the final reason for the disposition. However, all the Court can conclude is that arbitration in some forum is appropriate and that, therefore, there is no fraud claim for it to consider. The question of the proper forum to consider those claims need not be resolved in order to dismiss Counts IV and V.

An implementing order is being filed. In that order, the "Customer" is not identified by name. If any party believes that specific identification is necessary, an order will be filed under seal with the Customer's name, along with a redacted

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[2] The claim was resolved with the Customer; the critical information must have been known by that time.

[3] *See NAMA Holdings, LLC v. Related World Market Ctr., LLC*, 2007 WL 1310183, at *6 n.15 (Del. Ch. Apr. 27, 2007) ("A motion to dismiss based on an arbitration clause goes to the Court's subject matter jurisdiction over the dispute and is properly reviewed under Court of Chancery Rule 12(b)(1).").

public records version that would not disclose the name. I do not understand the parties to have any doubt as to the identity of the "Customer."

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K