THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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SC Court of Appeals

Jean H. Toal, Circuit Court Judge
DeAndrea G. Benjamin, Circuit Court Judge
James P. Kelly, Arbitrator

Appellate Case No. 2017-000994
Case No. 2014-CP-40-06017

Rajinder Parmar, ... Respondent,

v.

Balbir S. Minhas, Midlands Gastroenterology, PC,
and Midlands Endoscopy Center, LLC, ... Appellants.

RECORD ON APPEAL
VOLUME I

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4006017

Rajinder Parmar
PLAINTIFF(S)

Balbir S Minhas
Midlands Gastroenterology PC
DEFENDANT(S)

Submitted by: _____ | Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.
Additional Information for the Clerk : order confirming Arbitration Award and denying Respondents' Motion to Vacate. See attached order

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** 2758 **Date** 2-27-17

For Clerk of Court Office Use Only order signed 2-16-17

This judgment was entered on the 2 day of Mar, 20 17 and a copy mailed first class or placed in the appropriate attorney's box on this 2 day of Mar, 20 17 to attorneys of record or to parties (when appearing pro se) as follows:

Eric Steven Bland
Scott Michael Mongillo
Ronald L. Richter Jr.
Caitlin Creswick Heyward
Joel W. Collins Jr.
Christian Stegmaier
James Emerson Smith Jr.
Meghan Hazelwood Hall
John S. Nichols

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Rajinder Parmar ,	)	Civil Action No.: 2014-CP-40-6017
Applicant,	)	
vs.	)	**ORDER CONFIRMING ARBITRATION AWARD AND DENYING RESPONDENTS' MOTION TO VACATE, OR IN THE ALTERNATIVE, MODIFY OR CORRECT ARBITRATION AWARD**
Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC,	)	
Respondents.	)	

This matter came before this Court for a hearing on November 29, 2016 pursuant to Applicant Rajinder Parmar's ("Parmar") Motion to Confirm the Arbitration Award and Respondents Balbir S. Minhas, Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC's (hereinafter collectively referred to as "Minhas") Motion to Vacate, or in the Alternative, Modify or Correct the Arbitration Award. Appearing on behalf of Minhas were Christian Stegmaier, Jr., John S. Nichols, and James E. Smith, Jr. Appearing on behalf of Parmar were E. Wade Mullins, III and Caitlin C. Heyward. Based on the record and arguments presented along with the briefs submitted by counsel, I make the following findings and conclusions.

#1

RICHLAND COUNTY FILED 2016 MAR -2 PM 2:10 JANETTE W. McCRADY C.C.P. & G.S.

BACKGROUND AND PROCEDURAL HISTORY

Dr. Parmar and Dr. Minhas each were 50% shareholders of Midlands Gastroenterology, PC (hereinafter referred to as "MG") and 50% members of Midlands Endoscopy Center, LLC (hereinafter referred to as "MEC"), as well as employees of each entity. Minhas was also managing shareholder and managing member of both entities. Parmar acquired his interests in MG and MEC on or about June 30, 2011. Parmar's purchase price was $50,000 for MG and

$300,000 for MEC. The purchase price did not include A/R or the cash on hand in the operating accounts existing at the time of Parmar's purchase.

After working together for just under three years, the parties' relationship dissolved. A dispute arose between Parmar and Minhas regarding their respective rights and obligations in MG and MEC. Both the ME Operating Agreement and the MG Shareholder Agreement ("the governing Agreements") mandate binding arbitration of "any controversy or claim arising out of or relating to" the Agreements. The parties disagreed as to the amount to be paid for Parmar's ownership interests and how much, if any, Parmar would be entitled to receive prior to the purchase date for outstanding accounts receivable for 2011-2014, cash on hand in the bank accounts for both entities, his retirement amounts, a Nissan Murano automobile and other matters ("the Disputes").

The parties agreed that Parmar would sell his shareholder and member interests in the two entities pursuant to the terms and conditions of the governing Agreements at a May 30, 2014 closing. Parmar proceeded with the closing with the understanding that the remaining Disputes would be resolved in either mediation or arbitration.[1]

On September 16, 2014, Parmar filed a Demand for Arbitration with the AHLA, asserting a cause of action for breach of contract and breach of fiduciary duty against Minhas. Parmar alleged that section 3.8(ii) of the MG agreement represented payments of ownership interest only

[1] The parties disagree as to whether they agreed to arbitrate the issues relating to the A/R and accounts receivable prior to the closing. Parmar contends that Minhas and his counsel expressly agreed via email to proceed with the closing and hold open the remaining Disputes, including entitlement to A/R and the operating accounts, to be resolved either at arbitration or mediation after the closing. Minhas contends that he never abandoned or conceded the position that Parmar was not entitled to any of the A/R or the operating accounts under the terms of the Agreements and did not agree to submit that matter to arbitration or mediation. Both parties submitted numerous emails, letters and other correspondence to support their conflicting positions. I find any agreement relating to arbitration prior to the closing is immaterial to my findings and conclusions.

and that upon the sale of his interest in the entities he would be entitled to his share of the accounts receivable, operating accounts and production variance as part of his regular compensation as an employee and performance as a physician for the entities. Parmar specifically plead that failure to pay such amounts gave rise to a breach of contract and breach of fiduciary duties.

Minhas declined to arbitrate the matter or accept service of the Demand. As a result, On September 30, 2014, Parmar filed a Declaratory Judgment Complaint and contemporaneous Motion to Compel Arbitration of the Disputes. On October 24, 2014, Minhas answered the Complaint and asserted various counterclaims against Parmar and filed a contemporaneous Motion to Dismiss the Complaint. In defending against the declaratory judgment action, Minhas argued that the parameters of the May 30, 2014 closing documents dealt with not only the sale of Parmar's interest in the two entities, but also all ancillary compensation matters contained in the Disputes.

#3

On July 22, 2015, this Court issued an Order denying Minhas's Motion to Dismiss and granting Parmar's Motion to Compel Arbitration. The July 22, 2015 Order referred all remaining issues in dispute between the parties after the May 31, 2014 purchase by Minhas of Parmar's interests in MG and MEC to binding arbitration, including Minhas's counterclaims. The Order expressly identified the "remaining issues in dispute currently pending before the American Health Lawyers Association in case number 2648" as the matters to be arbitrated.

The Disputes were arbitrated before a single arbitrator, James P. Kelly, Esquire, on December 8 and December 9, 2015. The issues that were presented to and decided by the arbitrator were limited to those remaining issues that were ordered by the Trial Court to arbitration, which were raised in the Complaint, Demand for Arbitration and Counterclaim.

At the arbitration hearing, Parmar argued that the governing Agreements were ambiguous in that they did not address or define other compensation aspects of the buyout, particularly how the accounts receivables and cash on hand in the operating accounts were to be divided in the event of a buyout. Parmar maintained that he was entitled to at least half of those accounts. Parmar also claimed he was entitled to funds representing the variance in MG production for 2013-14. Parmar's claims for damages were detailed in a Pre-Hearing Brief outlining the basis for the claims and the source for such calculated amount.

After the proceedings concluded, Minhas requested the decision be issued in the form of an unreasoned award. The Arbitrator's Award was issued by Order dated May 17, 2016 in the amount of $339,568.48 in favor of Parmar. The arbitrator awarded Parmar ½ of operating accounts; ½ of trailing accounts receivable and MG production variance for 2013-14 for the total dollar amount sought by Parmar for those particular claims. The arbitrator denied several other claims asserted by Parmer and denied the counterclaims asserted by Minhas.

On June 1, 2016, Minhas filed a Motion to Correct the May 17, 2016 Order on the grounds that the Order contained typographical or computational errors. Parmar opposed the motion, asserting that the Motion to Correct went far beyond the rules (AHLA Rule 7.9) permitting the correction of scriveners errors, clerical errors or inadvertent mistakes and amounted to an attempt to have the arbitrator reconsider the exact arguments, evidence and testimony presented by Minhas in the hearing and rejected by the arbitrator in his award.

A hearing on Minhas's Motion to Correct was held by telephone conference on June 3, 2016. On June 10, 2016, Minhas submitted to the arbitrator a Reply to Parmar's Response to the Motion to Correct in further support of his Motion to Correct. In the Reply, Minhas argued that the arbitrator could modify or correct some or all of the award due to inadvertence if he

determined he misapprehended material facts. Notably, Minhas conceded in his Reply Brief that a denial of the Motion to Correct "demonstrates the arbitrator's calculations and ultimate disposition was the product of intentional decision making and free of computational error".

By Order dated June 21, 2016, Arbitrator Kelly denied Minhas's Motion to Correct. On June 27, 2016, Minhas filed an Objection to entry of the May 17, 2016 Award on the ground that it was untimely. Parmar filed a Response to the Objection on June 27, 2016. Minhas's Objection was denied by Order dated August 30, 2016. Minhas then petitioned the AHLA via email dated July 25, 2016, to void the proceedings and to remove and replace Arbitrator Kelly pursuant to AHLA Rule 4.5 on the basis that the Award was not delivered timely. On August 22, 2016, the AHLA issued a ruling denying Minhas' request to remove Arbitrator Kelly.

On August 12, 2016, Parmar filed a Motion to Confirm the Award and to Render the Arbitration Award to Judgment. On August 15, 2016, Minhas filed an Application to Vacate, or in the Alternative, Modify or Correct the Arbitration Award. On August 16, 2016, Minhas filed an Amended Application seeking to vacate or modify the Award on the identical grounds set forth in Minhas's previous Motion to Correct dated June 1, 2016.

On November 23, 2016, Parmar filed a Memorandum in Opposition to Minhas's Motion to Vacate or Modify the Award. On November 29, 2016, a hearing was held before this Court on Minhas's Motion to Vacate or Modify the Award. Both parties submitted supplemental post-hearing briefs.

For the reasons set forth herein, Minhas's Motion to Vacate or Modify the Award is DENIED and Parmar's Motion to confirm the May 17, 2016 Arbitration Award is hereby GRANTED.

DISCUSSION

I. MOTION TO VACATE

The South Carolina Uniform Arbitration Act sets forth the narrow circumstances in which a party may seek to vacate an arbitration award. The court may vacate the award only upon the establishment of one of the grounds set forth in South Carolina Code § 15-48-130, or the rarely applied non-statutory ground of "manifest disregard of the law."

"South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution, including arbitration." C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359 (2013). "Generally, an arbitration award is conclusive and courts will refuse to review the merits of the award." Id. As such, the standard for vacating an arbitration award is not easily overcome. An award will be vacated only under narrow, limited circumstances "when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law ...[F]or a court to vacate an arbitration award based upon an arbitrator's 'manifest disregard for the law,' the 'governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable.'" Id. (quoting Gissel v. Hart, 382 S.C. 235, 241-42, 676 S.E.2d 320 (2009)).

In addressing the Court's policy of favoring arbitration and limiting judicial review, our Supreme Court has noted:

> [t]he fundamental premise upon which this policy is grounded is the laudable goal of providing 'a relatively quick and inexpensive resolution of contractual disputes by avoiding the expense and delay of extended court proceedings.' (Citations omitted). The primary function of arbitration is to serve as a substitute for and not a prelude to litigation.....The court's function in confirming or vacating an arbitration award is severely limited. If it were otherwise, the ostensible purpose for resort to arbitration, ie avoidance of litigation, would be frustrated....(Citations omitted).

> Indeed, '[b]road judicial review on the merits would render resort to arbitration wasteful and superfluous....' (Citations omitted).

Trident Technical College v. Lucas and Stubb, Ltd., 283 S.C. 98, 333 S.E.2d 781 (1985).[2]

A. Authority to Issue the Award

Minhas argued the Award must be vacated because the arbitrator "exceeded his authority" to issue the Award pursuant to S.C. Code Ann. § 15-48-130(a)(3) because (1) the relief granted by the arbitrator was not authorized and (2) the Award was issued untimely.

The South Carolina Uniform Arbitration Act provides the court shall vacate an award where "the arbitrators exceeded their powers." S.C. Code Ann. §15-48-130. It is well settled in South Carolina that "the question of whether arbitrators have exceeded their powers relates to the arbitrability of the issue they have attempted to resolve. Arbitrators exceed their powers only if the issue resolved by them is not within the scope of the agreement to arbitrate. Conversely, if an issue resolved by arbitrators is within the scope of the arbitration agreement, the statutory language does not require the Court to review the merits of their decision." Batten v. Howell, 300 S.C. 545, 548, 389 S.E.2d 170, 1990 S.C. App. LEXIS 7 (S.C. Ct. App. 1990). A party may not attempt to relitigate the merits of the arbitrator's resolution of the arbitrable issues under the guise of questioning the arbitrators' power. Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 107, 333 S.E.2d 781 (1985).

#7

i. Relief Awarded

Minhas argued the relief awarded, which included one half of the accounts receivable and cash in the operating accounts at the time of separation, was contrary to the authority granted him in the Agreements and in manifest disregard of the contractual requirements as set forth in

[2] Trident Tech considers arbitration in the context of the Federal Arbitration Act, which advances the same theory and policy favoring arbitration and limiting judicial review.

Section 3.8(ii) of the MG Agreement. According to Minhas, the Agreements are clear and unambiguous as to what Parmar is entitled to upon separation and the arbitrator improperly "blue penciled" the Agreements to award relief not contemplated by its terms. Therefore, the arbitrator exceeded his authority when he awarded Parmar those accounts.

In contrast, Parmar argued that his entitlement to the accounts receivable and operating accounts was the very issue to be resolved by the Arbitrator, was squarely within the scope of the arbitration agreement, and was precisely what was referred to arbitration by this Court. Parmar argued the Agreements are ambiguous by omission as to the accounts receivable and operating accounts. Parmar argued section 3.8(ii) addresses payments for the ownership interest only and the parties contemplated Parmar would also be entitled to his share of the accounts receivable and cash on hand upon withdrawal. Because the parties disagreed as to whether the Agreements were clear or ambiguous as to Parmar's ancillary compensation at the time of separation, Parmar argued that issue did in fact "arise out of or relate to" the implied terms of the MG Agreement. Therefore, it was subject to arbitration.

In support of his position, Minhas relied in part on Grover v. Universal Underwriters Ins. Co., 80 N.J. 221, 403 A.2d 448 (1979). Grover involved a dispute over UM coverage and the definition of "uninsured highway vehicle". In that case, an insured motorcyclist was run off the road by a vehicle that was travelling in the wrong direction, causing the insured to lose control and throwing him from his motorcycle. Id. The policy required the award be based on a factual finding corroborated by competent evidence other than the testimony of the insured to trigger coverage where the vehicle causing the accident did not make physical contact with the insured. Id. at 225-226. The arbitrator found in favor of coverage even though the only evidence presented at the arbitration hearing was the insured's own description of how the accident

occurred. The Grover court first determined that the parties agreed to consider the coverage issue and thus it was "arbitrable". Id. The court nevertheless vacated the award because the arbitrator "imperfectly executed his power" and "was not free to disregard the contractual requirements of corroboration and competence." Id. at 231.

Importantly, Grover was decided pursuant to the New Jersey Arbitration Act, which varies significantly from the South Carolina Uniform Arbitration Act in that an award may be vacated "where the arbitrators exceeded *or so imperfectly executed their powers*." N.J.S.A. 2A:24-8(d) (emphasis added). In New Jersey, "imperfect execution" amounts to an arbitrator's mistake of law or fact, which deviates from the clear law in South Carolina. Under South Carolina law, it is well established that where an arbitrator resolves the very issue presented to him, he does not exceed their powers, even assuming factual and legal errors. Pittman Mortg. Co. v. Edwards, 327 S.C. 72, 488 S.E.2d 335 (1997). Moreover, the South Carolina Uniform Arbitration Act goes so far as to explicitly provide that "the fact that the relief was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm the award." S.C. Code Ann. § 15-48-30(a). Therefore, Grover is distinguishable and not applicable to the issue of arbitrability before this Court.

While Minhas disagrees with the arbitrator's interpretation and application of the Agreements, the issue as it relates to S.C. Code Ann. § 15-48-130(a)(3) is limited to whether the matters before the arbitrator were subject to arbitration. I find the arbitrability of the Disputes arises out of the governing Agreements. The parties agreed to arbitrate "any controversy or claim arising out of or relating to" the Agreements. *See* MG Agreement Section 8.11 and MEC Agreement Section 12.6. The parties' dispute as to the interpretation of the buyout terms of the Agreements clearly arises out of and relates to the Agreements themselves.

The arbitrable issues were specifically raised by Parmar in the Demand for Arbitration filed with the AHLA. In the Demand, Parmar asserted a cause of action for breach of contract and breach of fiduciary duties. Parmar alleged that the payments under section 3.8(ii) represented payments for ownership interest only and that upon that sale and separation of the owners, Parmar would be entitled to his distributional share of any surplus cash as well as to be compensated for his outstanding accounts receivable as a part of his regular compensation as an employee and production interests incidental to his performance as a physician in the entities. Parmar specifically plead that failure to pay such amounts gave rise to breach of contract and breach of fiduciary duties.

To further crystalize the issues to be arbitrated, the Declaratory Judgment Complaint[3] and contemporaneous Motion to Compel Arbitration filed by Parmar seeking arbitration of the Disputes clearly relates to Parmar's entitlement to the bank accounts, accounts receivable and production variances. Indeed, Parmar alleged "the parties disagreed as to the amount to be paid for Parmar's ownership interests and how much, if any, Parmar would be entitled to receive prior to the purchase date for outstanding accounts receivable for 2011 and 2014, cash on hand in the bank accounts for both entities, his retirement account amounts, a Nissan Murano automobile and other matters ('the Disputes')." (Compl. ¶12).

By Order dated July 22, 2015, this Court referred to arbitration all claims that relate to and arise out of the parties' Shareholder's Agreement and Operating Agreement. In her Order,

[3] Describing the Disputes in his Complaint, Parmar alleged "there exists a justiciable controversy between the parties regarding the construction, interpretation and enforcement of the written Agreements at issue and written agreements and representations made between counsel on behalf of their clients and judicial determination is necessary to determine whether the parties must arbitrate" and requested this Court "construe, analyze, and determine the enforceability of [the] Agreements' arbitration provisions and their rights and obligations under South Carolina law and to compel the matters which are in dispute into binding arbitration." (Complaint ¶¶26-28).

Judge Benjamin found the arbitration clauses in the MG and MEC Agreements "are both valid and enforceable on the parties, and therefore, *requires that the parties arbitrate all remaining issues in dispute between them after the May 31, 2014 purchase* by Defendant Minhas of Plaintiff Parmar's interests in Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC." (Emphasis added). Significantly, Judge Benjamin ordered "the parties immediately arbitrate *all remaining issues in dispute currently pending before the American Health Lawyers Association in case number 2648*".[4] (Emphasis added). Those issues in dispute that were currently pending before the AHLA undeniably encompassed the issues of entitlement to the accounts receivable and cash on hand.

By order of Judge Benjamin, the Disputes, including the disputes related to the accounts receivable and operating accounts, were subject to arbitration pursuant to the terms of the Agreements. I find Judge Benjamin referred the Disputes and the issues of entitlement to the accounts receivables and operating accounts to arbitration by her Order dated July 22, 2015. I find the arbitrator did not exceed his authority by granting the relief issued in the Award, including ½ of the operating accounts and ½ of the accounts receivable. I further find the arbitrator did not make a determination or issue any relief that was outside the scope of the matters that were compelled to arbitration by this Court. As stated previously, where an arbitrator resolves the very issue presented to him, he has not exceeded his powers, even assuming factual and legal errors. Pittman Mortg. Co. v. Edwards, 327 S.C. 72, 488 S.E.2d 335, 1997 S.C. LEXIS 131 (S.C. 1997). For these reasons, Minhas's Motion to Vacate on the basis that the arbitrator exceed his authority pursuant to S.C. Code Ann. § 15-48-130(a)(3) is DENIED.

#11

ii. Timeliness of Award

[4] AHLA case number 2648 referenced in the Order Compelling Arbitration corresponds with the case number assigned to Parmar's Demand.

Minhas argued the Award must be vacated because it was issued untimely. The AHLA Rules governing the Arbitration Proceedings require a final award be issued within 8 months of the appointment of the Arbitrator (AHLA Rule 4.3) and within 30 days of the arbitration hearing (AHLA Rule 7.1) absent an agreement by the parties for an extension of time. However, South Carolina's Arbitration Act contains the additional requirement that a party must object to the timeliness of the award prior to the delivery of the award or the objection is waived.

> An award shall be made within the time fixed therefor[e] by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. ***A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.***

S.C. Code Ann. §15-48-90(b) (emphasis added).

The arbitrator was appointed on August 20, 2015, and the arbitration hearing was held on December 8-9, 2015. The Arbitration Award was issued on May 17, 2016. Minhas argued the arbitrator was divested of jurisdiction because he did not issue the Award on or before January 21, 2016 (30 days after the arbitration hearing) or April 20, 2016 (8 months after his appointment). However, Minhas did not object to the untimeliness of the Award until June 27, 2016, after it was issued.

#12 8/05

I find the arbitrator did not exceed his powers within the meaning of S.C. Code Ann. § 15-48-130(a)(3) when he failed to issue a timely award. Procedural untimeliness of an award does not relate to the arbitrability of the issues before the arbitrator. The arbitrator had the authority to enter the Award pursuant to the controlling arbitration clause and this Court's Order compelling arbitration. To vacate the award due to a ministerial or administrative error would

unfairly prejudice Parmar, who incurred substantial time and expense to participate in the proceedings with no control over the arbitrator's timing of the Award.

Furthermore, I find Minhas waived any right to contest the timeliness of Award and cannot now assert it as a basis to vacate it. S.C. Code Ann. §15-48-90(b); See e.g. Success Vill. Apts., Inc. v. Amalgamated Local 376, Int'l Union UAW, 380 F. Supp. 2d 95, 2005 U.S. Dist. LEXIS 15896, 177 L.R.R.M. 3148 (D. Conn. 2005) (holding that despite a set of state regulations requiring issuance of arbitration awards on a specific timetable, there was no basis to set aside an arbitration award where "plaintiff has made no showing that it objected to the delay prior to the issuance of the award."); See also Samuel Estreicher & Steven C. Bennett, *Untimely Arbitration Awards*, 235 N. J. L. J. 59 (2006) ("[T]he weight of modern authority is that untimeliness of an award is typically not fatal to enforceability of an award"). While Minhas acknowledged he was "disappointed" with the delay, I find Minhas did not notify the arbitrator of his objection prior to the delivery of the May 17, 2015 Award. It was only after the Award and when Minhas realized he did not prevail on the merits of the arbitration that Minhas first argued the Arbitrator was divested of jurisdiction.[5] For these reasons, Minhas's Motion to Vacate on the basis that the Award was issued untimely is DENIED.

#13 SUT

B. Manifest Disregard of the Law

[5] The Award was issued on May 17, 2016. Minhas filed a Motion to Correct the Award on June 1, 2016, in which he failed to assert the issue regarding the timeliness of the Award. Minhas's Motion to Correct was denied by Order dated June 21, 2016. Six days after Minhas's Motion to Correct was denied and more than one month after the Award was delivered, Minhas filed an Objection to the May 17, 2016 Order on June 27, 2016, raising the timeliness issue for the first time.

While Minhas cited S.C. Code Ann. § 15-48-130(a)(3) as the basis for his arguments to vacate the Award, Minhas suggested the arbitrator misapplied, misunderstood or misread the terms of the MG Agreement and the MEC Agreement regarding the transfer of shares and compensation. Minhas also argued that the arbitrator awarded relief in "manifest disregard" of the express terms of the contract.[6] As noted previously, misapplication and manifest disregard of the terms of the Agreements does not relate to the arbitrator's authority to issue the Award.

However, parties are not without recourse if an arbitrator manifestly disregards the law. "The court may vacate the award only upon the establishment of one of the grounds set forth in section 15-48-130, or the rarely applied non-statutory ground of 'manifest disregard or perverse misconstruction of the law.'" Swentor v. Swentor, 336 S.C. 472, 520 S.E.2d 330 (Ct. App. 1999 (quoting Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 108, 333 S.E.2d 781 (1985)).

#14 8/07

The standard to vacate an award on the basis of manifest disregard is not a *de novo* review of the underlying arbitration proceedings, rather it requires an intentional defiance of a clear and undeniable contract provision or applicable law. Misapplication or misinterpretation of a provision is not sufficient to overturn an award. "[The South Carolina Supreme Court] has held that for a court to vacate an arbitration award based upon an arbitrator's 'manifest disregard for

[6] At the November 29, 2016 hearing on Minhas's Motion to Vacate the Award, counsel for Minhas expressly represented to this Court that Minhas does not seek to vacate the Award on the basis of the common law ground of "manifest disregard of the law." Likewise, Minhas did not cite the common law ground as a basis for his Motion in his Application to Vacate the Award, Amended Application to Vacate the Award or his post-hearing brief. Rather, Minhas clarified for this Court that his arguments referencing manifest disregard of the law or manifest disregard of the express terms of the Agreements related solely to whether the arbitrator exceeded his power pursuant to S.C. Code Ann. §15-48-130(a)(3). Therefore, I find Minhas waived any argument as to whether the Award may be vacated pursuant to the common law ground of "manifest disregard of the law." Nevertheless, for the purpose of completeness and for the reasons stated herein, I find there are insufficient facts and evidence before the Court to justify a finding that the arbitrator manifestly disregarded the law or the terms of the Agreements.

the law,' the 'governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable.' Indeed, 'an arbitrator's manifest disregard of the law,' as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." C-Sculptures v. Brown, 403 S.C. 53, 742 S.E.2d 359 (2013) (quoting Gissel v. Hart, 382 S.C. 235, 241-42, 676 S.E.2d 320 (2009)). "The focus is on the conduct of the arbitrator and presupposes something beyond mere error in construing or applying the law....Factual and legal errors by arbitrators do not constitute an abuse of powers, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers." (Gissel, 382 S.C. at 232, 323-24). "Even a clearly erroneous interpretation of the contract cannot be disturbed." Lauro v. Vinapuu, 351 S.C. 507, 519, 570 S.E.2d 551 (Ct. App. 2002) (quoting Trident Technical College v. Lucas & Stubbs, Ltd., 286, S.C. 98, 108, 333 S.E.2d 781 (1985)).

#15 SBT

The primary issue before the arbitrator was whether Parmar was entitled to a portion of the bank accounts and accounts receivable and the MG production variance under the terms of the MEC and MG Agreements. The parties vigorously debated these issues before the arbitrator at a two-day hearing on the merits and in numerous briefs submitted to the arbitrator. Multiple witnesses testified that while the agreements addressed the sale of the ownership (shares and membership interest), the agreements were silent and ambiguous as to compensation and particularly the issue of accounts receivables and cash on hand. Moreover, there was ample testimony that in connection with a buyout of this nature one would expect to implement some measure of compensation to account for A/R and cash on hand. The arbitrator issued his award based upon the testimony offered by both parties and the evidence before him. In fact, On June 1, 2016, Minhas filed a Motion to Correct the May 17, 2016 Award on the identical grounds for which Minhas now seeks to vacate the Arbitration Award. A hearing was held on Minhas's

Motion to Correct on June 3, 2016, and Minhas's Motion was ultimately denied by Order dated June 21, 2016.

I find the parties' detailed presentation of these complex issues demonstrates the arbitrator did not disregard well-defined, explicit, and clearly applicable law in rendering his decision. Whether the arbitrator manifestly disregarded the law is not an invitation to review the merits of the underlying arbitration. Without parsing the arbitrator's mental pathway, there is no basis to conclude that the arbitrator committed a substantial error. I find there is no evidence before the Court that the arbitrator knew the applicable law and chose to disregard it. Whether the arbitrator correctly or incorrectly applied the law to the facts and evidence before him is not before this Court. Nevertheless, even assuming the arbitrator erroneously applied the law and misinterpreted the Agreements, that alone does not overcome the burden of proof necessary to justify vacating the Award. See Gissel v. Hart, 382 S.C. 235, 676 S.E.2d 320 (2009). I find the arbitrator did not manifestly disregard the law or manifestly disregard the terms of the Agreements when he issued the Award.

#16

C. Corruption, Fraud or Other Undue Means

Finally, Minhas contends the award must be vacated pursuant to S.C. Code Ann. § 15-38-130(a)(1) because "the Arbitrator's decision was procured by undue and unreasoned means."[7] I find there is insufficient evidence of corruption, fraud or undue means to overcome the exceptional burden of proof required to vacate the Award.

An award shall be vacated if it is "procured by corruption, fraud or other undue means." S.C. Code Ann. § 15-38-130(a)(1). "[T]he phrase 'corruption, fraud, or undue means' has been

[7] To the extent Minhas is challenging the award as an unreasoned award, this Court notes Minhas requested that the award **not** be a reasoned award prior to the arbitrator's issuance of the unreasoned arbitration award. Nonetheless, the fact that an award is unreasoned is not applicable to the Court's analysis regarding fraud, corruption and undue means.

construed by the court to proscribe affirmative misconduct by the parties, such as perjury or subornation of perjury.'" Trident Technical College, 286 S.C. at 104, 333 S.E.2d at 787. A party's manifest disregard of the facts and the law is insufficient to constitute "undue means" absent a finding of bad faith, fraud or corruption. Id.; See also General Constr. Co. v. Hering Realty, 201 F. Supp. 487, 491 (D.S.C. 1962) (a party seeking to upset an arbitration award carries heavy burden to make it abundantly clear that award was obtained through undue means).

Minhas argued the Award must be vacated pursuant to S.C. Code Ann. § 15-38-130(a)(1) because:

> [Parmar's] trial counsel misrepresented [the] provisions of Midlands Gastroenterology, P.C. Agreement ("the MG Agreement"), assembled and comingled Midlands Gastroenterology, P.C. and Midlands Gastroenterology Center, LLC bank accounts and accounts receivable, and referenced various cases including a prior MG, LLC dispute during the December 8-9, 2015, arbitration hearing as a basis for an inappropriate argument that Dr. Minhas is a litigious person who is unable to get along with his partners.

#17 SBT

(Amended App. to Vacate, p. 4).

I find the allegations are unsupported by the record before the Court. I further find the allegations do not constitute corruption, fraud or undue means within the meaning of § 15-38-130(a)(1).

As to the first and second allegations, it is clear that Minhas disagreed with Parmar's characterization of the compensation and buy out terms of the MG Agreement as presented at the arbitration hearing, the interpretation of which was the very issue in dispute to be decided by the arbitrator. Moreover, it appears that Minhas is challenging Parmar's method of grouping its damages presentation as support of Parmar pursuing its claims through "undue means." The MG Agreement was admitted into evidence in its entirety at the arbitration hearing, discussed and referred to numerous times in direct and cross examination of many witnesses, and, ultimately,

independently reviewed by the arbitrator. Therefore, the arbitrator did not blindly accept Parmar's characterization of its terms.

Parmar's advocacy of his position does not amount to a "misrepresentation" simply because it did not align with Minhas's interpretation of the MG Agreement. Indeed, the parties' contradicting positions are the very reason this action exists. Both parties argued and briefed their respective positions at length before and after the arbitration hearing. The arbitrator read the MG Agreement, heard testimony of the parties and fact and expert witnesses over the course of a two-day hearing, and considered the evidence presented by both sides as well as the oral and written arguments submitted by both parties. It was only after a thorough presentation of the issues by both parties that the arbitrator issued the Award. In addition, Minhas failed to identify for the Court the provisions of the MG agreement Parmar allegedly "misrepresented" to the arbitrator. Even assuming Parmar "misrepresented" a provision of the MG agreement that was material to the arbitration, there is no evidence before the Court that the arbitrator relied on the alleged misrepresentation simply because he ruled in favor of Parmar.

#18

As to Minhas's third allegation, I find the cross examination of Dr. Minhas by Parmar's counsel relating to Dr. Minhas's background, familiarity with litigation and his history of litigation with former business partners does not constitute perjury, fraud, bad faith or corruption necessary for a finding of undue means. I further find there is no evidence in the record that the questions on cross-examination improperly influenced the arbitrator in this case. An arbitrator's determination in favor of an adverse party alone is not evidence of improper influence.

Solicitation of a party's litigation history on cross-examination is not only proper but to be expected. The scope of the testimony solicited was limited to acknowledgment that such litigation existed, which is a matter of public record, and did not seek to require divulging any

confidential information. Such evidence was appropriately before for the arbitrator pursuant to Rule 401, SCRE and AHLA Rule 4.12, which affords arbitrators wide latitude and deference to consider the evidence offered.[8] The arbitrator acted within his discretion when he allowed that line of questioning.

Based on the foregoing, I find there is insufficient evidence of corruption, fraud or other undue means before the Court to warrant vacating the Arbitration Award pursuant to S.C. Code Ann. § 15-38-130(a)(1). Minhas's Motion to Vacate the Award on the ground of corruption, fraud, or undue means pursuant to S.C. Code Ann. § 15-38-130(a)(1) is DENIED.

II. MOTION TO CORRECT OR MODIFY THE AWARD

In the alternative to his Motion to Vacate, Minhas moved this Court to correct or modify the Award on the basis that:

(1) Section 8.1(A) of the MEC Agreement prohibits distribution of funds to its shareholders without reserving four (4) months of operating expenses in the operating account;

#19 JMT

(2) Section 3.8(ii) of the MG Agreement does not entitle Parmar to ½ of the operating accounts or accounts receivable;

(3) payment of 50% of the operating accounts to Parmar is duplicative of the 4% interest already paid to him at the closing;

(4) the arbitrator inappropriately combined the accounts receivable and operating accounts of MG and MEC because the two entities have different compensation formulas;

[8] AHLA Rule 4.12 provides in relevant part: "The arbitrator shall be the sole judge of the duplicative nature, relevance and materiality of the evidence offered. Conformity to legal rules of evidence shall not be necessary."

(5) the Award does not consider accounts payable;

(6) the shareholder compensation variance awarded did not account for 50% overhead; and,

(7) the arbitrator should have deducted the ½ of accounting fees from the amounts awarded to Parmar.

The South Carolina Uniform Arbitration Act § 15-38-140(a)(1) permits modification of an award where there is an "evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award." While not explicitly defined within the statute or by the courts, "evident miscalculation of figures" is commonly defined as "mathematical errors committed by arbitrators which would be patently clear" in jurisdictions with identical statutes. The use of an incorrect formula to determine the award is not an "evident miscalculation of figures." See e.g. Carolina Virginia Fashion Exhibitors, Inc. v. Gunter, 41 N.C. App. 407, 413, 255 S.E.2d 414 (1979); Dadak v. Commerce Ins. Co., 53 Mass App. Ct. 302, 758 N.E.2d 1083 (2001). Arbitrators need not specify their reasoning or the basis for the award as long as the factual inferences and legal conclusions supporting the award are barely colorable. Mills v. William Clarke Jeep Eagle, 321 S.C. 150, 153, 467 S.E.2d 268 (Ct. App. 1996) (citing Renaissance Enters., Inc. v. Ocean Resorts, Inc., 310 S.C. 395, 426 S.E.2d 821 (Ct. App. 1992). If the grounds for the award can be inferred from the facts, the award should be confirmed.

All of the grounds Minhas cites in support of his Motion to Modify or Correct the Award directly relate to the merits of the controversy before the arbitrator or the formula the arbitrator chose to apply when issuing the Award. Importantly, Paragraph 37 of Parmar's Pre-Hearing Brief outlines in detail exactly the relief sought in the arbitration proceedings, which is mirrored

identically in the Arbitration Award, except that the arbitrator denied Parmar's request for MEC AR 2011 buy-in reimbursement, profit sharing, and prejudgment interest. While it is clear the arbitrator did not calculate the Award in accordance with Minhas's own view of the merits of the controversy, this does not constitute a "miscalculation" as contemplated by the South Carolina Uniform Arbitration Act. Even an erroneous decision on the merits does not constitute an evident miscalculation of figures to warrant a modification of the Award.

It is clear from the record that the Award was a result of the conscious decision of Arbitrator Kelly and was not inadvertent error. On June 1, 2016, Minhas filed a Motion to Correct the Award for the identical reasons set forth in Minhas' Motion to Vacate. Parmar replied to Minhas's Motion by emails dated June 1 and June 2, 2016. On June 3, 2106, a hearing was held by telephone on Minhas's Motion to Correct. On June 10, 2016, Minhas submitted a memo in reply to Parmar's response. In his Reply, Minhas conceded that "[a] grant in whole or part of Respondents' motion to correct [evidences] that some or the entire award was due to inadvertent mistake. *A denial of the motion demonstrates the arbitrator's calculations and ultimate disposition was the product of intentional decision making and free of computational error*." (emphasis added).

#21

Finally, "[a]fter careful consideration of the parties' briefs, emails, arguments at the June 3, 2016 hearing, and careful review of Order No. 7.," the arbitrator denied Respondents' Motion to Correct. (Order Denying Motion to Correct, June 21, 2016). All of this evidences purposeful, clear and decisive action on the part of the arbitrator to enter the Award as written. Arbitrator Kelly was aware of and explicitly rejected the very same arguments Minhas now presents to this Court for a third time. At a bare minimum, there is a colorable inference that the arbitrator considered the facts surrounding the "buy-in" and Minhas' claiming ownership of A/R and cash

on hand at that time, the course of dealing in terms of compensation and distribution of A/R and cash on hand during the years of joint ownership as well as the evidence concerning calculations requested by Minhas at the time of "buy-out" and determined that it was the parties intent that Parmar would receive 50% of the A/R and cash in the operating accounts along with the variance in MG production at the time of separation.

Whether the arbitrator misinterpreted the evidence is irrelevant to whether there is an evident miscalculation of figures. Minhas based his Application to Vacate the Award in part on the argument that "§3.8(ii) of the Midlands Gastroenterology agreement does not entitle [Parmar] 50% of operating accounts and/or accounts receivables." (Amended App. to Vacate, p. 11). That agreement was deemed ambiguous as to compensation with regard to accounts receivables and operating accounts, and the arbitrator necessarily found in favor of Parmar on the merits of that issue when he awarded him half of those accounts.

The standard required to modify an arbitration award is inadvertent error or mistake by the arbitrator. Section 15-38-140 is not an avenue for litigants to persuade courts to review the evidence and then reach a different result because it might be interpreted differently. Such an interpretation would completely frustrate the underlying purposes of the arbitration process. Based on the foregoing, I find the Award does not contain any inadvertent mistakes, errors, miscalculations or computational errors. I further find the arbitrator consciously declined to use Minhas's accounting method to calculate the accounts receivable and operating accounts. Minhas's Motion to Modify the Award pursuant to S.C. Code Ann. §15-38-40 is Denied.

#22

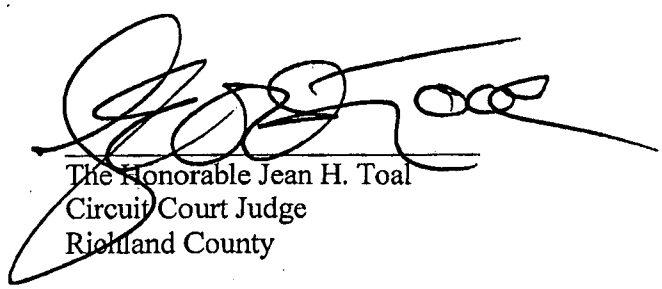
CONCLUSION

Having denied the Motion to Vacate the Award, the Award is confirmed. Therefore, it is ordered that the Arbitration Award be, and it hereby is, confirmed, and pre-judgment interest is

assessed in favor of Respondent. It is further ordered that the Clerk of Court of Richland County be authorized and directed to enter judgment against Balbir S. Minhas, Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC, in the amount of $339,568.48, plus pre-judgment interest[9] at a rate of 8.75% per annum from the date of the Arbitrator's Award dated May 17, 2016 to February 16, 2017 in the amount of $22,385.94 for a total judgment of $361,954.42.

AND IT IS SO ORDERED.

February 16, 2017



The Honorable Jean H. Toal
Circuit Court Judge
Richland County

#23

[9] In a similar case to the present dispute, *Fatigues, Inc. v. Varat Enters*, 813 F. Supp. 1336 (N.D. Ill. 1992) considered the issue of the award of pre-judgment interest from the date of the arbitrator's award. It is a U.S. District Court, Illinois District, case but applies South Carolina law and S.C. Code Ann. 34-31-20(A) in concluding that pre-judgment interest was appropriate. Parmar sought pre-judgment interest in his motion and maintains it is appropriate.

Rajinder Parmar, Plaintiff, vs. Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, Defendants.	)	AMERICAN HEALTH LAWYERS ASSOCIATION AHLA Arbitration Case No. 2648

ORDER NO. 7

Having heard and thoroughly considered all testimony, arguments and exhibits in the December 8-9, 2015 hearing, and all portions of the Record, I hereby order that:

(A) Petitioner is awarded:

1. ½ of operating accounts $179,104.98
2. ½ of trailing accounts receivable: $78,463.50
3. 2013 MG variance: $53,000.00
4. 2014 MG variance: $29,000.00

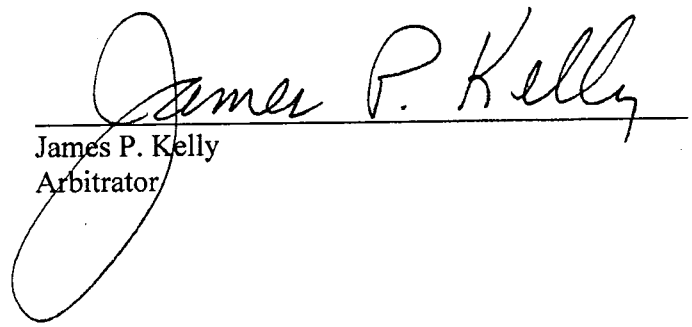
(B) Petitioner is denied:

1. MEC Account Receivable differential (posted vs. actual collection): $7,225.50
2. 2012 and 2013 VA weekend: $8,900.00
3. Profit Sharing: $7,100.00
4. Prejudgment interest
5. the Nissan automobile; and

JPC

(C) Respondents' counterclaim(s) are denied.

SO ORDERED this 17th day of May 2016.



James P. Kelly
Arbitrator

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO.: 2014-CP-40-06017
Rajinder Parmar,	)	
	)	
Plaintiff,	)	**ORDER**
	)	
vs.	)	
	)	
Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC,	)	
	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2015 JUL 22 PM 2:30
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Plaintiff's Motion to Compel Arbitration, Defendants' Motions for Temporary Injunction or in the alternative for a Stay and to Dismiss the Complaint were heard before this Court on January 5, 2015, at 9:30 AM. Eric S. Bland, Ronald L. Richter, Jr., and Scott Mongillo appeared on behalf of the Plaintiff. Joel W. Collins and Christian Stegmaier appeared on behalf of the Defendants.

Based upon the evidence, the law, the arguments of counsel, and the entire record before me, **I HEREBY FIND AND RULE** as follows:

1. Plaintiff's Motion to Compel Arbitration is **GRANTED.**

2. Defendants' Motion to Dismiss the Complaint is **DENIED.**

3. I find that the arbitration clauses in Defendant Midlands Gastroenterology, PC Shareholder's Agreement and the Operating Agreement of April 23, 2003 for Midlands Gastroenterology, LLC both executed and adopted by the parties herein on June 30, 2011, are both valid and enforceable on the parties, and therefore, requires that the parties arbitrate all remaining issues in dispute between them after the May 31, 2014 purchase by Defendant Minhas

of Plaintiff Parmar's interests in Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC.

4. I further find that the arbitration clauses in Defendant Midlands Endoscopy Center, LLC's "Operating Agreement", which are expressly incorporated in the Agreements of the Sale of a Limited Liability Interest and sale of Shareholder Interests executed on June 30, 2011, are both valid and enforceable, and therefore requires that the parties arbitrate all of the remaining issues in dispute.

5. I further find that the following law is applicable to this matter:

A. The United States Supreme Court has held that arbitration clauses are separable from the contracts which they are embedded. *Prima Paint Corp. v. Flood & Conklin*, 388 U.S. 395, 87 S.Ct. 1801 (1967).

B. The Supreme Court of South Carolina adopted the *Prima Paint* reasoning that "a party cannot avoid arbitration through rescission of the entire contract when there is no independent challenge to the arbitration clause." *South Carolina Public Service Authority v. Great Western Coal, Inc.*, 312 S.C. 559, 437 S.E.2d 22 (1993).

C. Further, under South Carolina law, the general rule is that the duty to arbitrate under an arbitration clause in a contract survives termination for the contract. *Jackson Mills, Inc. v. BT Capital Corp.*, 312 S.C. 400, 440 S.E.2d 877 (1994).

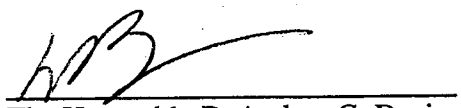
6. Based on the law cited above, I further find that both of the aforementioned arbitration clauses survive the purported termination of the contracts in which they are imbedded.

7. Therefore, the Court orders that this action be stayed, and that the parties immediately arbitrate all remaining issues in dispute currently pending before the American Health Lawyers Association in case number 2648.

8. The Court further finds that the Arbitration Clause at issue provides that "Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by binding arbitration."

9. The Court finds that Defendant's counterclaims relate to and arise out of the parties Shareholder's Agreement and Operating Agreement and are thus subject to arbitration.

IT IS SO ORDERED!



The Honorable DeAndrea G. Benjamin

Columbia, South Carolina

July 22 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	Civil Action No: 2014-CP-40-_____
Rajinder Parmar,	)	
	)	
Plaintiff,	)	**DECLARATORY JUDGMENT COMPLAINT SEEKING ARBITRATION (NON-JURY)**
	)	
v.	)	
	)	
Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC,	)	
	)	
Defendants.	)	

2014 SEP 30 PM 12:40
JEANNETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND CO.
FILED

The Plaintiff, complaining of the conduct of the Defendants herein, alleges as follows:

Parties and Jurisdiction

1. The Plaintiff, Rajinder Parmar ("Parmar" or "Dr. Parmar") is a citizen and resident of Richland County, South Carolina, who at all times relevant hereto, was both a 50% shareholder of Midlands Gastroenterology, PC and a 50% member of Midlands Endoscopy Center, LLC.

2. Defendant Balbir S. Minhas ("Minhas" or "Dr. Minhas") is a citizen and resident of Richland County, South Carolina, who at all times relevant hereto, was a 50% shareholder of Midlands Gastroenterology, PC; a 50% member of Midlands Endoscopy Center, LLC and managing shareholder and managing member of both entities.

3. Defendant Midlands Gastroenterology, PC ("Midlands Gastro") is a professional corporation organized and existing under the laws of the State of South Carolina with its principal place of business located in Richland County, South Carolina.

4. Defendant Midlands Endoscopy Center, LLC ("Midlands Endoscopy") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business located in Richland County, South Carolina.

5. This action is being brought pursuant to the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq.*, 1976, as amended ("SCUDJA"), as well as pursuant to Rule 57 of the South Carolina Rules of Civil Procedure.

6. All interested parties have been joined in this action. This court has jurisdiction over the parties to and the subject matter of this litigation.

Facts for Justiciable Controversy

7. At all times relevant hereto, Parmar and Minhas were the only shareholders of Midlands Gastro and equal owners.

8. At all times relevant hereto, Parmar and Minhas were the only members of Midlands Endoscopy and equal members.

9. A dispute arose between Parmar and Minhas regarding their respective rights and obligations in Midlands Endoscopy and Midlands Gastro.

10. In the event of a dispute that could not be resolved by the parties themselves, Midlands Endoscopy's 2003 Operating Agreement and Midlands Gastro's June 30, 2011 Shareholders Agreement both mandate binding arbitration pursuant to the American Health Lawyers Association ("AHLA") Dispute Resolution Service or its predecessor's rules with the venue being Columbia, South Carolina and these agreements are attached hereto as **Exhibits A** and **B**[1]. (Exhibits A and B are hereinafter collectively referred to as the "Agreements" and

[1] Notwithstanding the foregoing, the Midland's Gastro Shareholders Agreement provides on the cover page and page one of the agreement that all disputes shall be arbitrated pursuant to S.C. Code Ann. Sections 15-48-10, et seq.

please section 12.6 of Exhibit A and section 8.11 of Exhibit B for the mandatory binding arbitration provisions.)

11. Edward White ("White") of the law firm of Nelson Mullins was the attorney purportedly representing Midlands Endoscopy and Midlands Gastro in connection with the dispute and Minhas's request that he purchase out Parmar's interests in the two entities pursuant to the purchase terms contained therein.

12. At the time, the parties disagreed as to the amount to be paid for Parmar's ownership interests and how much, if any, Parmar would be entitled to receive prior to the purchase date for outstanding accounts receivable for 2011 and 2014, cash on hand in the bank accounts for both entities, his retirement account amounts, a Nissan Murano automobile and other matters (the "Disputes")

13. After the Disputes between Parmar and Minhas ripened, the parties agreed that Parmar would sell his shareholder and member interests in the two entities pursuant to the terms and conditions of the governing agreements only at a May 30, 2014 closing and that all other matters in dispute as set forth in paragraph 12 above, would remain to be resolved in either "mediation or arbitration".

14. On May 30, 2014, via email from White in response to the request that he affirm that the remaining disputes will not be affected by the sale of Parmar's shares and member interests to Minhas, the General Corporate Counsel for the Corporate Defendants confirmed the understanding and on behalf of the entities, agreed to arbitrate per the terms of the Agreements. **See Exhibit C attached hereto.** White's email was sent immediately prior to the closing and Parmar agreeing to execute the transfer documents.

15. As attorney for Midlands Endoscopy and Midlands Gastro, White was duly authorized to make the representations and made them with the intent that they would be relied upon by Parmar and his counsel. White, as an attorney of the South Carolina Bar, owes a duty of candor not to mislead opposing counsel and to dispense his fiduciary duties in favor of the entities for which he represents and not advocate for one owner or the other, especially in 50/50 owned entities.

16. Minhas's private counsel Lowndes Pope ("Pope") was copied on Exhibit "C" and as Minhas's attorney, and the attorney for the party purchasing the interests from Parmar, did not object to the representations made by White.

17. In direct reliance on the agreements reached with White, Midlands Endoscopy, Midlands Gastro and Minhas, Parmar sold his interests on May 30, 2014 and received the sale consideration, while leaving open the remaining Disputes to be mediated and/or arbitrated.

18. After the closing, Cory Manning ("Manning"), a litigation attorney for Nelson Mullins and as counsel for Midlands Endoscopy and Midlands Gastro, sent an email stating that he would be scheduling a mediation with mediator Tom Wills in advance of any arbitration in an attempt to resolve the Disputes. The mediation was scheduled for August 15, 2014[2]. Please see **Exhibit "D"** attached hereto from the first email to the last.

19. On July 15, 2014, Defendants' current attorney of record Joel Collins ("Collins") preferred to arbitrate the Disputes rather than mediate them and wanted them arbitrated with the AHLA organization as agreed to arbitrate per the terms of the Agreements. Please see **Exhibit E** attached hereto.

[2] This date was later changed to August 8, 2014 by Manning and later by Minhas's new counsel to September 29, 2014.

20. After a meeting in August 2014, Collins agreed on behalf of his clients for the parties to mediate with Tom Wills on September 29, 2014.

21. Prior to the scheduled mediation being held, Collins abruptly canceled it. See **Exhibit "F"** attached hereto.

22. In direct reliance on these written promises and the unambiguous arbitration provisions contained within the four corners of the governing Agreements on September 16 2014, Plaintiff filed a Demand for Arbitration with the AHLA (as Minhas and his counsel requested in the July 15, 2014 letter) and said demand is attached as **Exhibit G**.

23. On September 25, 2014, Defendants' current attorney of record inexplicably declined to arbitrate the matter and would not agree to accept service of the arbitration complaint, forcing Plaintiff the unnecessary costs, fees and time to file this declaratory judgment action. Please see **Exhibit H** attached hereto.

FOR A FIRST CAUSE OF ACTION
Declaratory Judgment

24. Plaintiffs incorporate herein by reference the allegations asserted in paragraphs above as if set forth herein *verbatim.*

25. This action seeks to have a determination of the rights, obligations, status, construction and enforceability of the arbitration provisions contained in the Agreements, and as such is properly brought under the SCUDJA.

26. There exists a justiciable controversy between the parties regarding the construction, interpretation and enforcement of the written Agreements at issue and written agreements and representations made between counsel on behalf of their clients and judicial determination is necessary to determine whether the parties must arbitrate.

27. "The South Carolina Uniform Declaratory Judgment Act should afford relief from uncertainty and insecurity with respect to the rights, status and other relations" and as such "it is to be liberally construed and administered." See South Carolina Uniform Declaratory Judgment Act, §15-53-130, S.C. Laws, 1976, as amended.

28. Plaintiff desires for this Court to construe, analyze, and determine the enforceability of Agreements' arbitration provisions and their rights and obligations under South Carolina law and to compel the matters which are in dispute into binding arbitration.

29. Defendants' attempt to evade the arbitration provisions are frivolous and are for the purpose of delaying justice and burdening Plaintiff with unnecessary legal fees.

WHEREFORE, Plaintiff requests an Order finding that:

1. That this matter be stayed and that the parties be immediately directed to arbitrate all their disputes in accordance with AHLA guidelines as per the Agreements and the arbitration complaint filed by the Plaintiff on September 16, 2014;

2. To immediately reimburse Plaintiff his attorneys fees and costs for filing this declaratory judgment action; and

3. For such other and further relief that this Court deems just and proper.

[SIGNATURE PAGE TO FOLLOW]

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September 30, 2014

Columbia, South Carolina

DRAFT

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE AMERICAN HEALTH LAWYERS ASSOCIATED ALTERNATIVE DISPUTE RESOLUTION RULES FOR ARBITRATION ~~SECTION 15-48-10, ET SEQ., OF THE SOUTH CAROLINA CODE OF LAWS (THE SOUTH CAROLINA UNIFORM ARBITRATION ACT), AS MODIFIED HEREIN.~~

MIDLANDS ENDOSCOPY CENTER, LLC

OPERATING AGREEMENT

~~DRAFT~~

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SECTION 15-48-10, ET SEQ., OF THE SOUTH CAROLINA CODE OF LAWS (THE SOUTH CAROLINA UNIFORM ARBITRATION ACT), AS MODIFIED HEREIN.

MIDLANDS ENDOSCOPY CENTER, LLC

THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the 23RD ——day of April——, 2003, by and among **Balbir S. Minhas, Surbjinder S. Guram, M.D., Benjamin J. Levinson, M.D., J. Frank Martin, Jr., M.D.** and **Russell E. Ditzler, M.D.** (collectively referred to as the "Members" and individually as a "Member").

WITNESSETH:

WHEREAS, the parties desire to form a limited liability company under South Carolina law for the limited purposes hereinafter set forth.

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

ARTICLE I
Formation, Purposes and Powers

1.1 Formation. The parties to this Agreement hereby form a limited liability company under the laws of the State of South Carolina, and agree to and adopt the terms and conditions set forth in this Agreement. The limited liability company ("Company") shall exist under and be governed by the provisions of the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101, et seq., of the Code of Laws of South Carolina (1976), as amended (the "Act"), except as otherwise provided or modified by this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

1.2 Name. The name of the Company shall be Midlands Endoscopy Center, LLC.

1.3 Articles of Organization. The Company shall file Articles of Organization with the South Carolina Secretary of State, and shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.

1.4 Annual Report. As required by Section 33-44-211 of the Act, the Company shall prepare and file an annual report with the Secretary of State as follows:

(a) The first annual report of the Company shall be filed with the Secretary of State between January 1 and April 1 of the following calendar year the Company was organized.

(b) All subsequent annual reports for the Company shall be filed with the Secretary of State on or before the fifteenth (15th) day of the third month following the close of the Company's tax year.

1.5 Designated Office. The Company shall maintain a designated office in South Carolina in accordance with Section 33-44-108(a) of the Act. The initial designated office shall be 9 Medical Park, Suite 520, Columbia, South Carolina 29203. The Company may from time to time change the location of its designated office.

1.6 Registered Agent and Address. The registered agent for service of process on the Company shall be **Frederick A. Crawford**. The street address of the registered agent for service of process on the Company shall be 1600 Marion Street, Columbia, South Carolina 29201. The Company may change the registered agent's street address or designate a new agent for service of process by filing with the Secretary of State a Statement of Change, in compliance with Section 33-44-109 of the Act.

1.7 Term Company. The Company shall be a term company within the meaning of the Act. The Company's term of existence and business shall commence on the date Articles of Organization are filed with the South Carolina Secretary of State, unless a later effective date is specified in said Articles of Organization, and the existence of the Company shall terminate upon the expiration of its term on **December 31, 2033**, unless extended or sooner terminated by law or pursuant to the provisions of this Agreement. The Members agree to remain Members until expiration of the Company's term of existence.

1.8 Statement of Company; Fictitious Name Certificates. The Members shall execute and file in the proper offices such statement of the Company and such assumed or fictitious name certificates as may be required by law.

1.9 Income Tax Election. The Company shall be taxed as a partnership for state and federal income tax purposes, and the Company shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the Company and the Members.

1.10 Purposes. The character of business and purposes of the Company shall be to own and operate an endoscopy center to provide medical services ancillary to such purpose, and to engage in such other activities as the Members deem necessary or appropriate.

1.11 Powers. Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

(a) Sue and be sued, and defend in its name;

(b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;

(c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;

(d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;

(e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;

(f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;

(i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money and credit;

(j) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(k) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;

(l) Perform any act and execute and deliver any documents required by any governmental authority; and

(m) Perform any and all other acts or activities customary, incidental, necessary or convenient to the purposes and powers enumerated herein.

1.12 Company Accounts. The Company shall maintain such separate bank accounts as appropriate for the conduct of the Company's business, in the name of the Company, at such bank or banks as from time to time may be designated by the Company.

1.13 Construction. If and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

1.14 Minimum Property/Casualty Insurance Requirements. Unless otherwise determined by an Action of the Company, the Company shall carry and maintain in force, or cause to be carried and maintained in force, insurance insuring the Company for the fair market value of the Company Property (other than land), including without limitation, insurance for all insurable leasehold improvements, furniture, fixtures and equipment owned or leased by the Company against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, and public liability insurance against claims for bodily injury, death or property damage. All such insurance shall be effected under policies issued by insurers and be in forms and for amounts approved by the Company. If the Company renders professional services within the meaning of Section 33-19-103(7) of the Code of Laws of South Carolina (1976), as amended, the Company shall acquire and maintain such additional insurance or segregated funds as may be required by the applicable licensing authority.

ARTICLE II
Definitions

2.1 Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

(a) "Act" shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101, et seq., of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(b) "Action of the Company" and any reference to an action taken, or to be taken, by the Company shall mean any action properly approved by the Members in accordance with ARTICLES IV, V and VI.

(c) "Agreement" shall mean this Operating Agreement and any amendments made thereto from time to time.

(d) "Articles of Organization" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act.

(e) "Capital Account" shall mean the account established and maintained for each Member on the books of the Company pursuant to ARTICLES VII and VIII hereof.

(f) "Capital Contribution" or "Contribution to Capital" shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of each Member.

(g) "Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.

(h) "Company" shall mean Midlands Endoscopy Center, LLC, a South Carolina limited liability company.

(i) "Company Liability" shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

(j) "Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on EXHIBIT A attached hereto.

(k) "Disinterested" shall mean with respect to any Member, a Member who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(l) "Family" shall mean the spouse, lineal descendants and ancestors of a Member.

(m) "Financial Rights" shall mean the right of a Member, or any other person, to share in the Profits and Losses of the Company and the right to share in distributions. The phrase "Financial Rights" shall have the same meaning, and describe the same rights, as the phrase "Distributional Interest" as used in the Act.

(n) "Losses" shall mean the losses of the Company as determined under SECTION 8.3 hereof.

(o) "Member" shall mean the parties to this Agreement from time to time. For purposes of ARTICLES IX, X and XI, the term "Member" includes any Member who has withdrawn or otherwise dissociated from the Company.

(p) "Membership Share" and/or "Membership Interest" shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights. There are two (2) classes of

Membership Shares which are "Class A Units" and "Class B Units." The Class A Units shall represent, collectively, fifty-one percent (51%) of the Financial Rights and Voting Rights (as applicable) of the Company. The Class B Units shall represent, collectively, forty-nine percent (49%) of the Financial Rights and Voting Rights (as applicable) of the Company.

(q) "Person" shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(r) "Profits" shall mean the profits of the Company as determined under SECTION 8.3 hereof.

(s) "S.C. Code" shall mean the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(t) "Voting Rights" shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member's Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(u) "Voting Rights in the Company" shall mean the Voting Rights held by the Members, collectively, regardless of Class of Membership Shares, unless otherwise specifically provided for herein.

(v) "Units" is the term used to express the amount of Membership Shares owned by a Member.

ARTICLE III
Membership and Capitalization

3.1 Initial Members.

Upon transfer of the property and/or cash constituting each Member's Initial Capital Contribution to the Company, the amount of Class A Units and/or Class B Units of the Members shall be in the amounts set forth on Exhibit B attached hereto.

3.2 Admission of New Members. Except in the case of transferees of all or any part of a Membership Share, who shall be subject to SECTION 3.3, additional Members may be admitted to the Company as follows:

(1) In the case of admission of a new Member who will obtain only Class A Units, only those Members who own Class A Units must consent in writing to the admission of such new Member. Furthermore, a transfer of Class A Units, pursuant to

this SECTION 3.2(1), may only be made to a person who is a licensed gastroenterologist or colorectal surgeon in the state of South Carolina.

(2) In the case of admission of a new Member who will obtain only Class B Units, only those Members who own Class B Units must consent in writing to the admission of such new Member. Furthermore, a transfer of Class B Units pursuant to this SECTION 3.2(2), may only be made to a person who is licensed to practice primary care or internal medicine in the state of South Carolina.

The Members' consent to the admission of a new Member shall be evidenced by the Members executing a memorandum to be attached to this Agreement setting forth the names and addresses of all the Members, the amount cash or fair market value of property being contributed by the new Member (if applicable), the amount of Class A Units or Class B Units transferred to the new Member and the Membership Shares of all Members as a result of the new Member's admission. In addition, no Person shall become a Member unless such Person:

(a) Agrees in writing to assume and to be bound by all the obligations and subject to all the restrictions of this Agreement and any further agreement with respect to the Company;

(b) Executes and acknowledges, as required, a certificate amending the fictitious name certificate or assumed name certificate of the Company in order to reflect the Member's admittance and to take any other action that may be required in connection therewith;

(c) Notifies the Company of his current address and provides his federal and state tax identification numbers and such other information as the Company may deem appropriate to the Company.

3.3 Effect of Transfer of Membership Share – Transferee Admitted as a Member. A transferee of all or any part of a Membership Share who is not already a Member may only become a Member if (a) the other Members holding the Class A Units or Class B Units (whichever is applicable) in the Company required by SECTION 3.2 unanimously consent to the transferee's admission (without regard to the Voting Rights of the transferor or transferee), and (b) such transferee meets all the qualification requirements for Members contained in this Agreement, including but not limited to, all requirements of SECTION 3.2. If the transferee becomes a Member, he shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member, including the transferor's obligations to make contributions to the Company.

Notwithstanding anything herein to the contrary, no creditor of a Member who obtains any portion of a Membership Share, including any Financial Rights, by charging order pursuant to Section 33-44-504 of the Act, or otherwise, or any person or entity, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure,

bankruptcy, receivership, divorce, or any similar proceeding may become a full Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

3.4 Transferee not Admitted as a Member. If the transferee of all or any part of a Member's Membership Share is not admitted as a Member, he shall be entitled to receive only the distributions to which the transferor would otherwise be entitled. The transferee shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any rights of a Member. The transferee takes all Financial Rights subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change a Member's rights and consequently affect the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under Section 33-44-801(b)(6) of the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Company written notice of the transfer, proof of the transfer deemed sufficient by the Company, the transferee's federal and state tax identification numbers, current legal address and telephone number, and such other information as the Company may reasonably require.

3.5 Representation and Warranties. Each Member hereby represents and warrants to the Company and each other Member that: (a) the Member is acquiring such Member's interest in the Company for the Member's own account as an investment and without an intent to distribute the interest; (b) the Member acknowledges that such Member's interest has not been registered under the Securities Act of 1933 or any state securities laws; (c) the Member acknowledges that such Member's interest, subject also to the restrictions on transfer contained in the Agreement and the Act, may not be resold or transferred by the Member without appropriate registration under applicable securities laws, or the availability of an exemption from such requirements and compliance with restrictions herein; (d) the financial capacity of the Member is such that the investment in the Company is not material to the Member's total financial capacity, and the Member has the financial ability to bear the economic risk of the investment and has means for providing for the Member's current needs and personal contingencies and has no need for liquidity with respect to the Member's investment in the Company; (e) the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of investment in the Company, understands that investment in the Company AND HAS HAD OPPORTUNITY TO SEEK THE ADVICE OF THE MEMBER'S OWN INDEPENDENT LEGAL COUNSEL AND OTHER INDEPENDENT EXPERTS REGARDING THIS TRANSACTION; (f) the Member acknowledges that~~, to the best of Member's~~

~~knowledge,~~ the purchase of the Member's interest in the Company was not solicited by the use of general advertising or solicitation, that no brokerage or similar commission was paid to anyone relating to the Member's acquisition of an interest in the Company; and (g) the Member has been given opportunity to ask questions and receive answers with respect to the Company and concerning the terms and conditions of the Member's investment and has been given the opportunity to obtain such additional information necessary to verify the accuracy of the information provided to such Member in order for the Member to evaluate the merits and risks of investment in the Company. The inclusion of the foregoing does not constitute an acknowledgment that an interest in the Company is a security under applicable law, and the Company reserves the right to contest whether an interest in the Company constitutes a security.

3.6 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under Section 33-44-504 of the Act, the Company may redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with Section 33-44-504(c) of the Act. Nothing in this SECTION 3.6 shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with Section 33-44-504(c) of the Act.

3.7 Ceasing to be a Member. A Member shall cease to be a Member and shall have no power to exercise any rights of a Member if such Member:

(a) Transfers his entire Membership Share to a transferee who is or becomes a Member;

(b) is expelled from the Company by judicial determinations under Section 33-44-601(6) of the Act;

(c) Ceases to be a "qualified person" within the meaning of Section 33-19-103(8) of the South Carolina Professional Corporation Supplement; or

(d) Retires and ceases to practice medicine in Lexington and Richland Counties, South Carolina.

3.8 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member and any action taken pursuant to such power of attorney shall be valid for all purposes as if done or executed by the Member giving such a power of attorney, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Company. Any such power of attorney may be general or may be limited to certain acts or instruments, may contain conditions and restrictions, and may be changed or revoked at any time by the Member who gave such power giving notice of its change or revocation to the Company.

3.9 Initial Capital Contribution by Members. The initial five (5) Members of the Company have agreed to make a collective Initial Capital Contribution of Two Hundred Thousand and 00/100 ($200,000.00) Dollars based upon their Membership Shares. These Initial Capital Contributions shall be made in four (4) equal installments on or before May 1, 2003; July 15, 2003; October 1, 2003 and December 15, 2003, as more specifically set forth on Exhibit A attached. ~~upon demand, or in the event demand is not made, not later than July 1, 2003.~~ If a Member fails to timely make any installment of his~~his proportionate~~ Initial Capital Contribution within thirty (30) days after the due date~~receiving notice of demand or the July 1, 2003 deadline~~ (as applicable) ("Defaulting Member") each Member owning the same Class of Units as the Defaulting Member (Class A or Class B, as applicable) who has made his required Initial Capital Contribution, pursuant to this SECTION 3.9, may make an additional Contribution to Capital equal to such Member's proportionate share of the Defaulting Member's required contribution (without regard to the Members owning any other Class of Units). If any Member, owning the same Class of Units as~~of~~ the Defaulting Member, fails to make any such additional Capital Contributions within thirty (30) days after expiration of the original thirty (30) day period, the ~~other~~ Members owning the same Class of Units as the Defaulting Member, who made additional Contributions to Capital, may make an additional Contribution to Capital equal to such Member's proportionate share of the Defaulting Member's required Contribution (in relation to the other Members owning the same Class of Units as the Defaulting Member who made additional Contributions to Capital to pay the monies owed by the Defaulting Member). If the Members owning the same Class of Units as the Defaulting Member fail to make additional Capital Contributions equal to the amount due by the Defaulting Member within forty-five (45) days after the expiration of the original thirty (30) day period, the other Members, ~~,~~ regardless of the Class of Units owned by them, may make further contributions in proportion to their Financial Rights until either the entire amount of the Defaulting Member's obligation is paid, or until no Member wishes to make any additional Capital Contributions. The Members shall have thirty (30) days to make such additional Contributions to Capital. Any Member that contributes additional capital to the Company shall have his Membership Share increased so that it is equal to a fraction, the numerator of which is the sum of all such Member's Capital Contributions to the Company and the denominator of which is the sum of all Capital Contributions to the Company made by each Member. The Membership Share of the Defaulting Member and each Member that elects not to make an additional Capital Contribution to the Company shall be reduced accordingly. To the extent a Defaulting Member's obligation to make Capital Contributions remains unsatisfied, such obligation of the Defaulting Member shall be a personal debt obligation of the Defaulting Member enforceable by the Company and the other Members as provided herein.

The Defaulting Member hereby grants to the Company a security interest in his Membership Share to the extent of the Defaulting Member's unpaid obligation under this SECTION 3.9. If the Defaulting Member fails to satisfy his obligation hereunder by making the required Initial Capital Contributions as set forth herein, the Defaulting Member shall forfeit his Membership Share. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture. The Members, by signing this Operating Agreement, agree that this forfeiture

is reasonable given the unique financial requirements associated with obtaining a Certificate of Need and other start-up costs of the Company.

3.10 Additional Capital Contributions. The Company may make a mandatory capital call, in whatever amount it deems appropriate (in addition to the Initial Capital Contribution), by giving notice to all the Members of the amount each is required to contribute to the Company's capital. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this SECTION 3.10, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights and responsibilities so transferred.

If any Member fails to make his proportionate Capital Contribution within thirty (30) days after receiving notice of a mandatory capital call ("Defaulting Member"), each Member owning the same Class of Units as the Defaulting Member (Class A or Class B, as applicable) who has made his required Capital Contribution, pursuant to this SECTION 3.10, may make an additional Contribution to Capital equal to such Member's proportionate share of the Defaulting Member's required contribution (without regard to the Members owning any other Class of Units). If any Member, owning the same Class of Units as~~of~~ the Defaulting Member, fails to make any such additional Capital Contributions within thirty (30) days after expiration of the original thirty (30) day period, the ~~other~~ Members owning the same Class of Units as the Defaulting Member, who made additional Contributions to Capital, may make an additional Contribution to Capital equal to such Member's proportionate share of the Defaulting Member's required Contribution (in relation to the other Members owning the same Class of Units as the Defaulting Member who made additional Contributions to Capital to pay the monies owed by the Defaulting Member). If the Members owning the same Class of Units as the Defaulting Member fail to make additional Capital Contributions equal to the amount due by the Defaulting Member within forty-five (45) days after the expiration of the original thirty (30) day period, the other Members,~~,~~ regardless of the Class of Units owned by them, may make further contributions in proportion to their Financial Rights until either the entire amount of the Defaulting Member's obligation is paid, or until no Member wishes to make any additional Capital Contributions. The Members shall have thirty (30) days to make such additional Contributions to Capital. Any Member that contributes additional capital to the Company shall have his Membership Share increased so that it is equal to a fraction, the numerator of which is the sum of all such Member's Capital Contributions to the Company and the denominator of which is the sum of all Capital Contributions to the Company made by each Member. The Membership Share of the Defaulting Member and each Member that elects not to make an additional Capital Contribution to the Company shall be reduced accordingly. To the extent a Defaulting Member's obligation to make Capital Contributions remains unsatisfied, such obligation of the Defaulting Member shall be a personal debt obligation of the Defaulting Member enforceable by the Company and the other Members as provided herein.

The Defaulting Member hereby grants to the Company a security interest in his Membership Share to the extent of the Defaulting Member's unpaid obligation under this

SECTION 3.10. If the Defaulting Member fails to satisfy his obligation hereunder by making Capital Contributions to the Company in the amount required within ninety (90) days after receiving notice of a mandatory capital call, the Defaulting Member shall forfeit his Membership Share, to the extent of any unpaid obligation. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture.

ARTICLE IV
Member Meetings

4.1 Place of Meetings. All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by the affirmative vote of all of the Voting Rights in the Company.

4.2 Time of Meeting. Meetings of the Members may be called at any time by any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the purpose, time, date and place of the meeting.

4.3 Quorum; Voting Requirement for an Action of the Company. Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. More than seventy-five percent (75%) of the Voting Rights in the Company constitutes a quorum. Except as provided in SECTION 4.6, in order for any vote of the Members to be valid and constitute an Action of the Company, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative vote of seventy-five percent (75%) of the Voting Rights in the Company shall constitute a valid decision of the Members, and an authorized Action of the Company, unless the matter being voted on is one which requires a different vote pursuant to the Act or other provisions in this Agreement.

4.4 Proxies. Members may vote by proxy appointed by an instrument in writing.

4.5 Waiver of Notice. A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

4.6 Action without Meeting. The Members may take action, pursuant to S.C. Code § 33-44-405(d) without notice and a meeting if the Members entitled to vote and who hold the required percentage of Voting Rights as set forth in the Act or this Agreement (whichever is applicable) consent to such action by signing a Consent of the Members which sets forth the action to be taken and contains the signature of each such Member.

4.7 Ratification. The Members entitled to vote may, by action under SECTION 4.6, ratify and adopt any and all acts of a Member done on behalf of the Company.

ARTICLE V
Management and Control

5.1 General Authority. Except as otherwise expressly provided by this Agreement or required by any nonwaivable provisions of applicable law, any matter relating to the business and affairs of the Company shall be decided by the affirmative vote of those Members owning seventy-five percent (75%) of the Voting Rights in the Company. In addition, such Members may authorize or delegate any of their authority to any Person (i.e., Managing-Member) from time to time to act on their behalf. Such Members, or their authorized designees~~delegates~~, shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business **subject to the limitations in this Agreement and in the Articles of Organization.** Without limiting the generality of the foregoing, the Members, upon proper authorization, shall have the power and authority on behalf of the Company to:

(a) Acquire property, real, personal, tangible and intangible;

(b) Borrow money for the Company from banks, other lending institutions, and other persons on such terms as the Company deems appropriate and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;

(c) Purchase liability and other insurance (including life insurance upon Members) to protect the Company Property and business;

(d) Hold and own any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, interests in general partnerships, limited partnerships, limited liability companies, mutual funds and stocks.

(e) Invest and reinvest any Company funds in time deposits and short-term governmental obligations;

(f) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder; provided, however, no Member nor Member-Manager may obligate the Company on any contract where the payments to be made by the Company may exceed Two Thousand and 00/100 ($2,000.00) Dollars without the approval of the Members as provided for herein;

(g) Employ accountants, legal counsel, managing agents money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them from Company funds;

(h) Screen, interview, and examine staff and personnel to be employed by the Company;

(i) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;

(j) Maintain the assets of the Company in good order;

(k) Collect sums due the Company;

(l) Pay debts and obligations of the Company to the extent that Company funds are available;

(m) Sell, purchase, lease, loan, borrow, rent, repair, mortgage, pledge, improve, or otherwise deal with any property, including Company Property;

(n) Bring suit on the Company's behalf or defend the Company in any such action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;

(o) File on behalf of the Company a voluntary petition for bankruptcy, or to bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding;

(p) Invest and reinvest in any kind of property, real, personal, tangible and intangible, including, but not limited to, stocks, bonds, notes, mortgages, general or limited partnerships, limited liability companies, savings accounts and certificates of deposit, mutual funds, and real estate; and

(q) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

5.2 Additional Voting Requirements for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

(a) Any amendment to this Agreement of the Articles of Organization shall require the approval of the affirmative vote of all of the Voting Rights in the Company.

(b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the affirmative vote of all of the Voting Rights of all Disinterested Members.

(c) The Company shall not sell, or contract to sell, or otherwise dispose of (collectively "Transfer") substantially all of the Company Property without the approval of the affirmative vote of at least eighty percent (80%) of the Voting Rights in the Company. For purposes of this paragraph, all or substantially all of the Company Property shall mean more than eighty percent (80%) of the depreciated book value of such property as reflected on the Company's balance sheet as of December 31 of the year preceding the Transfer.

(d) The Company shall not enter into any merger or joint venture, or other such arrangement without the approval of the affirmative vote of all of the Voting Rights in the Company.

(e) The Company shall not open any additional offices or additional locations without the approval of the affirmative vote of all of the Voting Rights in the Company.

(f) The Company shall not close any existing office without the approval of the affirmative vote of all of the Voting Rights in the Company.

5.3 Liability for Certain Acts. A Member who performs his duties in good faith and in a manner he reasonably believes to be in the best interests of the Company shall not have any liability solely by reason of being or having been a Member of the Company. A Member shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of such Member's fraud, deceit, gross negligence, willful misconduct, breach of this Agreement or a knowing violation of the law.

ARTICLE VI
Fiduciary Duties; Right to Rely; Indemnification.

6.1 Duty of Loyalty. A Member's duty of loyalty to the Company and the other Members is limited to the following:

(a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Member in the conduct or winding up of the Company's business or derived from a use by the Member of the Company's Property, including the appropriation of a Company opportunity;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) To refrain from competing with the Company in the conduct of the Company's business before dissolution of the Company.

More than fifty percent (50%) of the Voting Rights of the Disinterested Members may identify activities that do not violate the duty of loyalty and ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

6.2 Duty of Care. A Member's duty of care to the Company and the other Members in the conduct of and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

6.3 Fiduciary Duties. Each Member shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the other Members. A Member does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company subject to approval of the other Members as provided herein. As to each loan or transaction, the rights and obligations of the Member are the same as those of a Person who is not a Member, subject to other applicable law. The duty of loyalty, duty of care and fiduciary duties set forth in this Agreement shall apply to any Person winding up the Company's business and the personal or legal representative of the last surviving Member as if such Person were a Member.

6.4 Duty of Confidentiality. Each Member hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to future plans, accounting, marketing, financial data, or contract information, other than to advance the Company's business or as required by law.

6.5 Right to Rely. The Members shall not be held liable to the Company, or to the other Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by any of the Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Member reasonably believes are within such other Person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits or Losses of the Company or any other facts relevant to the existence or amount of assets from which distributions to Members might properly be made.

6.6 Indemnification of Members. To the fullest extent allowed by law, the Members shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the

Company, except for acts or omissions of gross negligence, intentional misconduct, or knowing violation of the law.

6.7 Remedies. Each Member acknowledges and represents that irreparable damage and harm could be done to the Company if there is a breach of the covenants contained herein, and that in the event of a breach, the Members agree that the Company shall be entitled to injunctive relief (both temporary and/or permanent), without posting bond, as well as monetary damages and reasonable attorney's fees for the enforcement of this Agreement. Each Member agrees to return all documents and copies of documents upon request by the Company.

ARTICLE VII
Capital Accounts and Accounting

7.1 Capital Accounts. The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

(a) Each Member's Capital Account shall be credited with the following:

(1) Such Member's Capital Contributions;

(2) Such Member's distributive share of Profits;

(3) The amount of any Company Liabilities that are assumed by such Member or that are secured by any property distributed to such Member; and

(4) With respect to a transferee Member, a pro rata portion of the Capital Account of the transferor Member.

(b) Each Member's Capital Account shall be debited by the following:

(1) The amount of cash and the net fair market value of any property distributed to such Member (as of the date of the distribution);

(2) Such Member's distributive share of Losses;

(3) The amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company; and

(4) With respect to a transferor Member, a pro rata portion of the Capital Account of the transferee Member.

7.2 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by an Action of the Company or a Member authorized to make such decisions pursuant to ARTICLE V.

7.3 Taxable Year and Tax Accounting Methods. Unless otherwise required by the Code, Treasury Regulations or the Internal Revenue Service, the Company's taxable and fiscal years shall be the calendar year, and the books of account of the Company shall be maintained on a cash basis consistently applied and shall show all items of income and expense. Subject to SECTION 7.6 hereof, all elections required or permitted to be made by the Company under the Code shall be made by an Action of the Company or a Member authorized to make such election pursuant to ARTICLE V.

7.4 Tax Returns. Not later than the time required by law, the Company shall prepare and file or cause to be prepared and filed for each fiscal year, all federal, state, and local income tax returns required of the Company.

7.5 Tax Elections.

(a) The Company shall make the following elections for federal income tax purposes:

(1) To treat as an expense for federal income tax purposes all amounts incurred for real estate taxes, interest and other charges that may, in accordance with applicable law and regulations, be considered as an expense; and

(2) To deduct expenses incurred in organizing the Company ratably over a sixty (60) month period as provided in Section 709 of the Code.

(b) In the event of a distribution of Company Property to a Member or a transfer, whether during life or at death, by a Member of all or any part of his Membership Share, the Company shall determine whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

7.6 Compliance with Section 704(b) of the Code. The provisions of this Agreement as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to ARTICLE VIII to have substantial economic effect within the meaning of the Treasury Regulations promulgated under §704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.7 Tax Matters Partner. The Company may designate a "tax matters partner" from time to time, as that term is defined by Section 6231(a)(7) of the Code.

ARTICLE VIII
Interim Distributions and Allocations

8.1 A. Interim Distributions. On or before April 1st following the end of each calendar year, the Members owning at least seventy-five percent (75%) of the Voting

Rights in the Company shall determine the amount of Profits and Losses of the Company for such year and the allocation of such Profits and Losses to the Members' Capital Accounts. The Company shall promptly distribute to each Member the excess of that Member's Capital Account over the sum of such Member's Capital Contributions; provided, however, that the Members owning at least eighty percent (80%) of the Voting Rights in the Company may agree to the establishment of reasonable reserves by the Company for current or future expenses and investments, anticipated and unanticipated. At no time shall the Company have less than four (4) months operating expenses in reserve, unless unanimously agreed otherwise by all Members owning the Voting Rights in the Company. All such distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both as unanimously agreed by the Members owning Voting Classes of Membership Shares. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights with respect to the property and cash distributed to all the Members. Any Person who holds Financial Rights in the Company but who is not otherwise a Member shall be allocated distributions only if such Person has provided a current address to the Company, and has given notice and proof of his Financial Rights satisfactory to the Company. The Members owning Voting Classes of Membership Shares may meet from time to time to discuss and vote on the timing of distributions other than as set forth in this SECTION 8.1.

B. Tax Distributions. Notwithstanding the above, but subject to the limitations of distributions imposed by this Agreement and by the Act, a portion of any cash available for distribution shall be distributed to each Member in an amount equal to the anticipated federal and state income tax liabilities of such Member as generated solely by such Member's allocable share of the Company income or gain, excluding all other income and/or gain of such Member.

8.2 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this SECTION 8.2.

8.3 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) (organizational expenditures which the Company elects not to amortize under Code Section 709(b)) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

8.4 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. Upon termination of the Company or upon liquidation of any Member's Membership Share, distributions shall be made in accordance with the positive Capital Account balances of the Members after taking into account all Capital Account adjustments for the year during which such termination or liquidation occurs.

8.5 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company's tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the

capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution. In the event the Company uses the "Traditional Method with Curative Allocations" under Treasury Regulations Section 1.704-3(c) to correct for distortions caused by the "ceiling rule" (as defined therein) in making allocations pursuant to Section 704(c) of the Code, the Company may make curative allocations in any given year to offset the effects of the "ceiling rule" for prior taxable years. Any such allocations shall be made over a reasonable period of time, such as over the property's economic life, in compliance with Treasury Regulations Section 1.704-3(c)(3)(ii). If cost recovery deductions with respect to an item of contributed property have been limited by the "ceiling rule," the general limitation on the character of any curative allocation, contained in Treasury Regulations Section 1.704-3(c)(3)(iii)(A), shall not apply to income from disposition of the contributed property.

8.7 Nonrecourse Deductions. Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members' Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member's Nonrecourse Liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company Minimum Gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company's taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of Company Minimum Gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(2)), any Member with a share of that Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated items of income and gain for that taxable year (and, if necessary, for

succeeding taxable years) equal to that Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain. A Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain is determined in a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member Nonrecourse Debt Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the Member Nonrecourse Minimum Gain chargeback is added to the Member's share of Company Minimum Gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset. Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This SECTION 8.9 will be interpreted, applied, and if necessary modified to constitute a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Distributions Subject to Set-Off. Subject to SECTIONS 3.3 and 3.4, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE IX
Dissolution, Winding Up, and Termination

9.1 Dissolution. The Company shall dissolve, its affairs shall be wound up, and the Company shall terminate upon the first to occur of the following:

(a) The written consent of all of the Members owning all of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this section;

(c) On application by a Member or a dissociated Member, upon entry of a judicial decree that any of the following have occurred:

(1) The economic purpose of the Company is likely to be unreasonably frustrated;

(2) Another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;

(3) It is not otherwise reasonably practical to carry on the Company's business in conformity with the Articles of Organization and this Agreement;

(4) The Company failed to purchase the petitioner's Financial Rights as required by Section 33-44-701 of the Act; or

(5) The Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial to the petitioner.

(d) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to Section 33-44-810 of the Act.

(e) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless extended by the affirmative vote of all of the Members owning all of the Voting Rights in the Company.

9.2 Waiver of Right to Wind Up. Notwithstanding anything herein to the contrary, at any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (a) the Company shall resume carrying on its business as if dissolution had never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred, and (b) the rights of a third party accruing under Section 33-44-804(a) of the Act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

9.3 Winding Up: Powers and Duties of Liquidator. Following the dissolution of the Company, if the Members do not continue the Company's business under SECTION 9.1 or SECTION 9.2, one or more Members or an independent third party shall be appointed to serve as liquidator by the affirmative vote of at least seventy-five percent (75%) of the Voting Rights in the Company (without regard to the Voting Rights of any wrongfully dissociated Member). The liquidator shall have full authority in winding up the Company's affairs, and may preserve the Company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the Company's business, dispose of and transfer the Company's property, discharge the Company's liabilities, distribute the assets

of the Company pursuant to SECTION 9.6, settle disputes by mediation or arbitration, and perform other necessary acts. In winding up the Company's affairs, the liquidator shall:

(a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in Section 33-44-807 of the Act;

(b) Publish notice of the Company's dissolution as provided in Section 33-44-808 of the Act;

(c) Make final liquidating distributions as provided in SECTION 9.6, and distribute any Company Property discovered after any such final liquidating distributions in accordance with SECTION 9.6; and

(d) After dissolution and the completion of winding up, file Articles of Termination with the South Carolina Secretary of State to terminate the legal existence of the Company in accordance with Section 33-44-805 of the Act.

9.4 Sale of Company Property. Unless otherwise agreed by the affirmative vote of all of the Voting Rights in the Company (without regard to the Voting Rights of a wrongfully dissociating Member), the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6) months after the date of the dissolution, or such other period of time agreed to by the affirmative vote of all of the Voting Rights in the Company (without regard to the Voting Rights of a wrongfully dissociating Member), the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in accordance with SECTION 9.5.

9.5 Distribution In Kind. The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire two (2) independent appraisers to appraise the asset(s) in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737 and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.6 Final Liquidating Distributions. After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale or the Company assets as follows:

(a) Payment or adequate provision for payment shall be made to creditors including the liquidator if the liquidator is not a Member for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, Members who are creditors in satisfaction of liabilities of the Company;

(b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;

(c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs, including adjustments for distributions made under this SECTION 9.6.

9.7 Deficit Capital Account Balances. Notwithstanding anything herein to the contrary, and notwithstanding any custom or rule of law to the contrary, any deficit in a Member's Capital Account upon dissolution of the Company shall not be an asset of the Company and such Member shall not be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member has otherwise agreed to restore.

9.8 Final and Complete Distribution. The distributions provided for in this ARTICLE IX shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

ARTICLE X
Dissociation

10.1 Events of Proper Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a proper dissociation:

(a) The death of the Member;

(b) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement;

(c) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; and

(d) Withdrawing or resigning from the Company with the consent of all of the Members owning all of the Voting Rights in the Company (without regard to the Voting Rights of the withdrawing or resigning Member).

(e) The Member retires and ceases to practice medicine or ceases to be a "qualified person" within the meaning of § 33-19-103(8) of the South Carolina Professional Corporation Supplement.

(f) Upon the unanimous consent of the Members (exclusive of the Member in question) that a Member should be dissociated from the Company.

10.2 Effect of Member's Proper Dissociation. Unless otherwise agreed between the Company and the other Members, the rights of a properly dissociating Member shall be governed by ARTICLE XI.

10.3 Events of Wrongful Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a wrongful dissociation:

(a) The voluntary withdrawal, retirement or resignation of any Member other than as permitted in SECTION 10.1; or

(b) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:

(1) Engaged in wrongful conduct that adversely and materially affected the Company's business; or

(2) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or

(3) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member.

(c) Failure to make the required Initial Capital Contribution set forth in SECTION 3.9; however, such dissociation shall not entitle the Dissociating Member to any payment for his Membership Share under ARTICLES X or XI of this Agreement. It is the express agreement of the original Members that the forfeiture provision in SECTION 3.9 shall control.

10.4 Effect of Member's Wrongful Dissociation. A wrongfully dissociating Member is liable to the Company and to the other Members for all costs, expenses (including reasonable attorneys' fees) and damages caused by the wrongful dissociation, including the reasonable costs of obtaining replacement of the services the wrongfully dissociating Member was obligated to perform. The Company may offset such costs,

expenses and damages against any distributions to which the wrongfully dissociating Member may be entitled in addition to pursuing any remedies provided for in this Agreement or otherwise available under applicable law. Subject to the limitations in SECTION 3.9 and SECTION10.3(c), the parties to this Agreement agree that a wrongfully dissociating Member's sole entitlement upon wrongfully dissociating from the Company shall be receipt of the purchase price for his Membership Share, as determined in ~~SECTION 11.2(a) and~~ SECTION 11.4 upon the terms set forth in SECTION 11.5. The parties to this Agreement agree that the purchase price as so determined and reduced shall constitute fair value for the Membership Share of a wrongfully dissociating Member within the meaning of Sections 33-44-701 and 33-44-702 of the Act, and that payment of the purchase price upon the terms contained in SECTION 11.5 is permissible, authorized and in compliance with all provisions of the Act. The parties waive any right they may have to assert that the provisions of this Agreement regarding the rights of a wrongfully dissociating Member are inconsistent with, or in contravention of the Act.

10.5 Character of Payments. To the extent permitted by the Code and all applicable Treasury Regulations, all payments made to any dissociating Member (whether proper or wrongful), including those which relate to unrealized receivables and the goodwill of the Company, shall be treated as payments described in Section 736(a) of the Code.

10.6 Statement of Dissociation. A dissociated Member or the Company may file a Statement of Dissociation in accordance with Section 33-44-704 of the Act.

ARTICLE XI
Restrictions on Transfer and Buy-Sell Provisions

11.1 Restrictions on Transfer. No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without first complying with the provisions of this ARTICLE XI, except as contemplated by SECTION 3.2.

11.2 Transfer of Membership Share.

(a) In the event a Member receives a bona fide written offer to purchase his Membership Shares and such Member desires to transfer all or a portion of his Membership Share (or any rights or interests therein) pursuant to such offer, such Member (hereinafter referred to as the "Selling Member") within fifteen (15) days of receipt of such bona fide written offer shall give written notice of his intent to transfer all or a portion of his Membership Share (the "Written Notice") to the other Members of the Company. The Written Notice must set forth the name of the proposed transferee, the number and Class of Units to be transferred (hereinafter referred to as the "Offered Units"), the price per Offered Unit, and all other terms and conditions of the proposed transfer. If the Company or another Member becomes aware of a purported transfer made or attempted without compliance with the provisions of this Agreement, the Company or other Member may send the Written Notice on behalf of the Selling

Member.

(b) Purchase Option - Members Holding Same Class of Membership Share. On receipt of the Written Notice from the Selling Member, the other Members holding the same Class of Units as the Selling Member shall have the exclusive right and option, exercisable at any time during a period of thirty (30) days from the date the Written Notice is received, to purchase all, but not less than all, of the Offered Units at the purchase price determined and paid in accordance with this ARTICLE XI. Unless unanimously agreed that the Offered Units shall be purchased by them in some other proportion, each Member electing to purchase the units as set forth under this SECTION 11.2 is entitled to purchase that portion of the Offered Units which proportion shall be equal to the number of Units held by him over the number of Units held by all Members electing to participate in the purchase of the Offered Units pursuant to this section.

(c) Purchase Option – All Members. If the Members holding the same Class of Units as the Selling Member do not elect to exercise their option to purchase all of the Offered Units, then prior to the expiration of the 30-day period set out above, the Company shall call and give proper notice pursuant to this Agreement of a meeting of the Members to be held no later than thirty (30) days and no fewer than ten (10) days after the date upon which the meeting is called. At such meeting, all the Members (other than the Selling Member) shall be given an opportunity to purchase all the Offered Units.

(d) The Selling Member shall not be required to sell any of the Offered Units to the Members who desire to purchase Offered Units (hereinafter referred to as "Purchasing Members") unless the Purchasing Members are willing, as a group, to purchase all of the Offered Units. Such purchase price shall be determined and paid in accordance with this ARTICLE XI. If the Purchasing Members desire to purchase all of the Offered Units, the sale and purchase of the Offered Units shall be closed within the greater of the time period stated in the Written Notice or thirty (30) days after the date of the Members' meeting. The Selling Member shall take all necessary steps to transfer the Offered Units to the Purchasing Members. Unless the Purchasing Members unanimously agree that the Offered Units shall be purchased by them in some other proportion, each Purchasing Member is entitled to purchase that portion of the Offered Units which proportion shall be equal to the number of Units held by him over the number of Units held by all Members electing to participate in the purchase of the Offered Units.

11.3 Withdrawal by a Member.

(a) Wrongful Dissociation of a Member. (1) Subject to the limitations in SECTION 10.3(c), *if a Member wrongfully dissociates from the Company within the* meaning of SECTION 10.3 (the "Withdrawing Member"), he shall be deemed to have immediately offered to sell to the Members holding the same Class of Membership Share all of the Withdrawing Member's Membership Share at the price determined under

SECTION 11.4, and on the terms contained in SECTION 11.5, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the Company as a result of the Withdrawing Member's wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary (other than the limitations in SECTION 10.3(c)), (i) if the Withdrawing Member wrongfully dissociates within the first three (3) years of operation of the Company then in no event will the purchase price exceed fifty percent (50%) of the "Appraised Value" of such Member's Membership Share determined pursuant to SECTION 11.4; or (ii) if the Withdrawing Member otherwise wrongfully dissociates, in no event will the purchase price to be paid for a wrongfully dissociating Member's Membership Share exceed eighty percent (80%) of the "Appraised Value" of such Member's Membership Share as determined pursuant to SECTION 11.4. Given the enormous capital requirements of the Company, the Members agree that no amount of the purchase price shall be due to the Withdrawing Member, however, unless he gives sixty (60) days' prior written notice (as applicable) of his dissociation (pursuant to SECTION 10.3(a)) to the Company. Unless unanimously agreed that the Withdrawing Member's Membership Share shall be purchased by them in some other proportion, each Member electing to purchase, as set forth under this SECTION 11.3 is entitled to purchase that portion of the Withdrawing Member's Membership Share which proportion shall be equal to the number of Units held by him over the number of Units held by all Members electing to participate in the purchase pursuant to this section.

(2) If the Members holding the same Class of Membership Share as the Withdrawing Member do not elect to exercise their option to purchase all of the Withdrawing Member's Membership Share, then all the Members (other than the Withdrawing Member) shall have an option to purchase all the Withdrawing Member's Membership Share. The purchase price shall be determined and paid in accordance with this ARTICLE XI, subject to the penalty for wrongful dissociation set forth in SECTION 11.3(a)(1). The Members agree that the ~~penalty and~~ reduction in purchase price provided in SECTION 11.3(a)(1) is reasonable, fair and equitable in that the reduction in purchase price is proportionate to the anticipated damages to be sustained by the Company resulting from a wrongful dissociation. Unless the Members unanimously agree that the Withdrawing Member's Membership Share shall be purchased by them in some other proportion, each Member shall purchase that portion of the Withdrawing Member's Membership Share in an amount equal to the number of Units held by him over the number of Units held by all Members who elect to participate in the purchase of Units pursuant to this section.

(b) Transfers Other Than Death or Disability. (1) If a Member attempts to transfer all or a portion of his Membership Share without complying with the provisions of this ARTICLE XI, or if a Member properly dissociates other than by reason of death or disability from the Company within the meaning of ARTICLE X (the "Dissolving Member"), such Member is deemed to have immediately offered to sell to the Members holding the same Class of Membership Share all of the Dissolving Member's Membership Share at the price determined under SECTION 11.4, and on the terms contained in SECTION 11.5. Unless unanimously agreed that the Dissolving Member's Membership Share

shall be purchased by them in some other proportion, each Member electing to purchase the Units as set forth under this SECTION 11.3 is entitled to purchase that portion of the Units of the same Class of Units which proportion shall be equal to the number of Units of the same Class of Units held by him over the number of Units held by all Members of the same Class of Units electing to participate in the purchase pursuant to this section.

(2) If the Members holding the same Class of Units as the Dissolving Member do not elect to exercise their option to purchase all of the Dissolving Member's Membership Share, then all the Members (other than the Dissolving Member) shall have an option to purchase all the Dissolving Member's Membership Share. The purchase price shall be determined and paid in accordance with this ARTICLE XI. Unless the Members unanimously agree that the Dissolving Member's Membership Share shall be purchased by them in some other proportion, each Member shall purchase that portion of the Dissolving Member's Membership Share in an amount equal to the number of Units held by him over the number of Units held by all Members exercising their option to purchase pursuant to this section.

(c) Death. (1) Except as contemplated by SECTION 11.6, upon the death of a Member (the "Deceased Member"), the Members holding the same Class of Membership Share as the decedent shall have an option to purchase the Deceased Member's Membership Share at the price determined under SECTION 11.4, and on the terms contained in SECTION 11.5. Unless unanimously agreed that the Deceased Member's Membership Share shall be purchased by them in some other proportion, each Member electing to purchase the Units as set forth under this SECTION 11.3 is entitled to purchase that portion of the Units which proportion shall be equal to the number of Units of the same Class of Membership Share held by him over the number of Units held by all Members of the same Class of Membership Share electing to participate in the purchase pursuant to this section.

(2) If the Members holding the same Class of Membership Share as the Deceased Member do not elect to exercise their option to purchase all of the Deceased Member's Membership Share, then all the Members (other than the Dissolving Member) shall purchase all the Deceased Member's Membership Share. The purchase price shall be determined and paid in accordance with this ARTICLE XI. Unless the Members unanimously agree that the Deceased Member's Membership Share shall be purchased by them in some other proportion, each Member shall purchase that portion of the Deceased Member's Membership Share in an amount equal to the number of Units held by him over the number of Units held by all Members.

(d) Disability. (1) Notwithstanding anything herein to the contrary, if a Member is disabled continuously for more than twelve (12) months ("Disabled Member"), the Members holding the same Class of Membership Share as the Disabled Member shall have an option to purchase all of the Disabled Member's Membership Share at the price determined under SECTION 11.4, and on the terms contained in SECTION 11.5. Unless unanimously agreed that the Dissolving Member's Membership Share shall be

purchased by them in some other proportion, each Member electing to purchase the Units as set forth under this SECTION 11.3 is entitled to purchase that portion of the Units which proportion shall be equal to the number of Units of the same Class of Membership Share held by him over the number of Units held by all Members of the same Class of Membership Share electing to participate in the purchase pursuant to this section.

(2) If the Members holding the same Class of Membership Share as the Disabled Member do not elect to exercise their option to purchase all of the Disabled Member's Membership Share, then all the Members (other than the Disabled Member) shall purchase all the Disabled Member's Membership Share. The purchase price shall be determined and paid in accordance with this ARTICLE XI. Unless the Members unanimously agree that the Disabled Member's Membership Share shall be purchased by them in some other proportion, each Member shall purchase that portion of the Disabled Member's Membership Share in an amount equal to the number of Units held by him over the number of Units held by all Members.

(e) Option to Purchase not Exercised or Default of Mandatory Purchase Obligation. If the Members do not purchase the Withdrawing, Dissolving, Deceased or Disabled Member's Membership Share (as the case may be), as provided herein, then a Withdrawing, Dissolving, Deceased or Disabled Member may offer his Membership Share for sale to any other Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Members. The rights of the transferee of such Membership Share shall be determined in accordance with ARTICLE III.

In the event any sale of a Membership Share to a third person shall not be consummated within sixty (60) days after the expiration of the Members' option or obligation to purchase, the Withdrawing, Dissolving, Deceased or Disabled Member shall have no right to sell said Membership Share or any portion thereof unless the same shall be offered again to the Members in the manner and in accordance with the terms herein provided.

11.4 Purchase Price. Subject to SECTION 10.3(c~~G~~) and SECTION 11.3(a)(1), the price to be paid for a Withdrawing, Dissolving, Deceased or Disabled Member's Membership Share shall be the purchase price agreed upon by the Withdrawing, Dissolving, Deceased or Disabled Member or their legal representative and the Members who have elected to buy, as the case may be. If the parties do not agree upon the purchase price of the Membership Share within thirty (30) days following the death, disability, attempted transfer or the event of dissociation, then the purchase price shall be the "Appraised Value" (as defined in the next sentence) of the Membership Share. Appraised Value shall mean the value obtained, not taking into account any minority, lack of marketability nor any other discounts, by agreement of two (2) appraisers, one appointed by the Company, or a majority of the Remaining Members who wish to purchase the offered Membership Share and who have not previously agreed upon the purchase price, and one appointed by the Dissolving Member. Both appraisers must

have at least five (5) years experience valuing healthcare businesses. If the two (2) appraisers cannot agree on an Appraised Value within thirty (30) days after they have both been selected, they shall appoint a third appraiser. The third appraiser shall determine the Appraised Value within thirty (30) days after his appointment. Appraised Value shall be the average of all three (3) appraisals. The seller and the purchaser(s) shall each pay the costs of the appraiser appointed by them, and one-half (½) of the cost of the third appraiser. The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

11.5 Payment of Purchase Price. The closing of the purchase shall take place at the offices of Richardson, Plowden, Carpenter & Robinson, P.A., 1600 Marion Street, Columbia, South Carolina 29201, or at such other place as the parties may agree, and at a time and date designated by the parties. Unless the parties mutually agree otherwise, the purchase price shall be paid in twelve (12) equal and consecutive monthly installments of principal and interest beginning ninety (90) days after the death, disability, attempted transfer or event of dissociation, and the determination of the purchase price has been made. The purchase price shall be evidenced by a promissory note made by the purchaser(s) to the order of the seller and shall bear interest at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be prepaid, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon default of any payment of interest or principal, the note shall become due and payable immediately, at the option of the holder of the note. Upon payment of the purchase price, the Dissolving Member's Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the purchase price is paid in full, the Dissolving Membership Share shall be held by the Dissolving Member as collateral security for payment of the note, but in no case may the Dissolving Member participate in the management of the Company as long as the note is not in default.

Any closing adjustments which are then usual and customary shall be made between the Dissolving Member and the purchaser(s) on and as of the date of closing. The Dissolving Member shall pay any transfer, gains or similar taxes arising out of or in connection with the sale and transfer of his Membership Share. All Members agree to execute and deliver all certificates and other instruments reasonably necessary to effectuate any transaction contemplated herein. Without limiting the foregoing, any Dissolving Member transferring his Membership Share shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party and shall execute or cause to be executed any and all documents required to fully transfer good and clear title to such Membership Share to the purchaser(s), including, but not limited to, any documents required to release any interest of a Dissolving Member's spouse or any other party who may claim an interest in such Dissolving Member's Membership Share.

ARTICLE XII
Miscellaneous Provisions

12.1 Members' Rights To Receive Information.

(a) The Company shall provide Members and their agents and attorneys access to its records at the Company's principal office. The Company shall provided former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(3) Monthly financial statements, including but not limited to a Balance Sheet and Statement of Income and Expenses.

(c) A Member has the right upon written demand given to the Company to obtain, at the Company's expense, a copy of this Agreement.

12.2 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Company at its principal place of business and to a Member at the address on EXHIBIT B attached hereto, or to such other address as may hereafter be designated by any amendment or addendum to this Agreement. All notices, consents or other communications shall be deemed given when actually hand delivered, or three (3) days after mailing in accordance with this Section.

12.3 No Partnership Intended for Nontax Purposes. The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under either the South Carolina Uniform Partnership Act or the South Carolina Uniform Limited Partnership Act. The Members do not intend to be partners one to another, or partners as to any third party. To the extent any Member, by word or action, represents to another person that any such other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other

Member who incurs personal liability by reason of such wrongful representation. Solely for Federal income tax purposes, each of the Members hereby recognizes that the Company will be subject to all provisions of Subchapter K of Chapter m1 of the Code; PROVIDED, HOWEVER, the filing of U.S. Partnership Tax Returns shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Company or its Members.

12.4 Time of Essence. Time is of the essence of this Agreement.

12.5 Governing Law. This Agreement shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability Company Act of 1996, as amended, any corresponding provisions of future laws, and other applicable laws of the State of South Carolina.

12.6 Arbitration. In the event of any controversy or claim arising out of or relating to this Agreement, or the breach, termination, or validity thereof, the parties will attempt in good faith to resolve such controversy or claim. If the matter has not been resolved within sixty (60) days of the commencement of such discussions (which period may be extended by mutual agreement), the controversy shall be settled by binding arbitration which shall be conducted by a single arbitrator in accordance with the American Health Lawyers Association Alternative Dispute Resolution Rules for Arbitration ("AHLA Rules"). In the event AHLA Rules are no longer in effect, the arbitration shall be held pursuant to Section 15-48-10, et seq., of the South Carolina Code of Laws (The South Carolina Uniform Arbitration Act), as modified herein. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. Each party shall bear its own expenses and attorneys' fees incurred in the arbitration, except that all expenses and fees incurred in any appeal shall be borne by the party not prevailing on such appeal. The place of arbitration shall be Columbia, South Carolina. Notwithstanding the foregoing, nothing in this section shall impair the Company's right to seek injunctive relief as set forth in SECTION 12.16 of this Agreement.

12.7 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made

only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

12.8 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

12.9 Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

12.10 Captions. The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

12.11 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

12.12 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.

12.13 Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. *Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any* person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.

12.14 Use of Terms. Use of the terms "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter," and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article," "this Section," or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

12.15 Further Assurances. Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement.

12.16 Equitable Remedies. The rights and remedies of the Members hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The Members confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any Member aggrieved against any other Member for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the Members that the respective rights and obligations of the Members hereunder shall be enforceable in equity as well as at law or otherwise.

12.17 Exhibits. The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

12.18 Effective Date. This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.

12.19 Attorney's Representations. The parties all acknowledge that the law firm of Richardson, Plowden, Carpenter & Robinson, P.A. (the "Firm"), prepared this Agreement on behalf of and in the course of its representation of the Company and that:

(a) The undersigned Members have been advised that a conflict exists *among their individual interests; and*

(b) The parties have been advised to seek the advice of independent counsel and have elected not to do so; and

IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement as of the day and year first above written.

Witnesses:

Russell E. Ditzler, M.D.

Surbjinder S. Guram, M.D.

Benjamin J. Levinson, M.D.

J. Frank Martin, Jr., M.D.

Balbir S. Minhas, M.D.

EXHIBIT A

Description of Initial Company Property

Member's Name	Initial Capital Contribution*	Amount due by May 1, 2003
Balbir S. Minhas, M.D.	$102,000.00	$ 25,500.00
Russell E. Ditzler, M.D.	$ 24,500.00	$ 6,125.00
Surbjinder S. Guram, M.D.	$ 24,500.00	$ 6,125.00
Benjamin J. Levinson, M.D.	$ 24,500.00	$ 6,125.00
J. Frank Martin, Jr., M.D.	$ 24,500.00	$ 6,125.00

* The Members have agreed to pay their Initial Capital Contributions in four (4) equal installments ~~to be approved by the Members; however, the Members agree their entire Initial Capital Contribution must be paid in full~~ on or before May 1, 2003; July 15, 2003; October 1, 2003 and December 15, 2003 ~~July 1, 2003~~.

EXHIBIT B

FINANCIAL RIGHTS AND VOTING RIGHTS

Member's Name	Financial Rights	Voting Rights	Class of Membership Share
Balbir S. Minhas, M.D. 9 Medical Park, Suite 520 Columbia, S.C. 29203	51.0%	51.0%	Class A
Surjinder S. Guram, M.D. South Carolina Internal Medicine Associates and Rehabilitation, LLC 7021 St. Andrews Road Columbia, SC 29212	12.25%	12.25%	Class B
Benjamin J. Levinson, M.D. South Carolina Internal Medicine Associates and Rehabilitation, LLC 7021 St. Andrews Road Columbia, SC 29212	12.25%	12.25%	Class B
J. Frank Martin, Jr., M.D. Palmetto Family Medicine 1655 Bernardin Avenue Columbia, S.C. 29204	12.25%	12.25%	Class B
Russell E. Ditzler, M.D. Palmetto Family Medicine 1655 Bernardin Avenue Columbia, S.C. 29204	12.25%	12.25%	Class B

Russell E. Ditzler, M.D.

Surbjinder S. Guram, M.D.

Benjamin J. Levinson, M.D.

J. Frank Martin, Jr., M.D.

Balbir S. Minhas, M.D.

PROMISSORY NOTE

$24,500.00 Columbia, South Carolina

April 23, 2003.

FOR VALUE RECEIVED, the undersigned promises to pay to the order of **Midlands Endoscopy Center, LLC**, its successors and assigns, in lawful money of the United States of America the sum of Twenty Four Thousand Five Hundred and 00/100 ($24,500.00) Dollars, without interest thereon prior to default. The said principal shall be payable in four (4) equal installments of Six Thousand One Hundred Twenty Five and 00/100 ($6,125.00) Dollars on May 1, 2003; July 15, 2003, October 1, 2003 and December 15, 2003, respectively.

Upon default, interest shall accrue on the unpaid balance at ten (10%) percent per annum.

If default be made in the performance of or compliance with any of the covenants or conditions of this Note, then in any of said events, said principal sum with all the accrued interest thereon, shall become at once due and payable at the option of the holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this Note be placed in the hands of an attorney at law for collection after the same shall for any reason become due or if collected by legal proceedings or through the probate or bankruptcy courts, then all costs of collection, including a reasonable attorneys fee of not less than fifteen percent (15%) of the outstanding balance shall be added hereto.

The undersigned expressly agrees to remain and continue bound for the payment of the principal and interest provided for by the terms of this Promissory Note notwithstanding any extension or extensions of time for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this Promissory Note.

The maker and any endorsers of this Promissory Note hereby waive presentment, demand, protest and notice of dishonor.

Russell E. Ditzler, M.D.

PROMISSORY NOTE

$24,500.00 Columbia, South Carolina

April 23, 2003.

FOR VALUE RECEIVED, the undersigned promises to pay to the order of **Midlands Endoscopy Center, LLC**, its successors and assigns, in lawful money of the United States of America the sum of Twenty Four Thousand Five Hundred and 00/100 ($24,500.00) Dollars, without interest thereon prior to default. The said principal shall be payable in four (4) equal installments of Six Thousand One Hundred Twenty Five and 00/100 ($6,125.00) Dollars on May 1, 2003; July 15, 2003, October 1, 2003 and December 15, 2003, respectively.

Upon default, interest shall accrue on the unpaid balance at ten (10%) percent per annum.

If default be made in the performance of or compliance with any of the covenants or conditions of this Note, then in any of said events, said principal sum with all the accrued interest thereon, shall become at once due and payable at the option of the holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this Note be placed in the hands of an attorney at law for collection after the same shall for any reason become due or if collected by legal proceedings or through the probate or bankruptcy courts, then all costs of collection, including a reasonable attorneys fee of not less than fifteen percent (15%) of the outstanding balance shall be added hereto.

The undersigned expressly agrees to remain and continue bound for the payment of the principal and interest provided for by the terms of this Promissory Note notwithstanding any extension or extensions of time for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this Promissory Note.

The maker and any endorsers of this Promissory Note hereby waive presentment, demand, protest and notice of dishonor.

Surbjinder S. Guram

Surbjinder S. Guram, M.D.

PROMISSORY NOTE

$24,500.00 Columbia, South Carolina

April 23, 2003.

FOR VALUE RECEIVED, the undersigned promises to pay to the order of **Midlands Endoscopy Center, LLC**, its successors and assigns, in lawful money of the United States of America the sum of Twenty Four Thousand Five Hundred and 00/100 ($24,500.00) Dollars, without interest thereon prior to default. The said principal shall be payable in four (4) equal installments of Six Thousand One Hundred Twenty Five and 00/100 ($6,125.00) Dollars on May 1, 2003; July 15, 2003, October 1, 2003 and December 15, 2003, respectively.

Upon default, interest shall accrue on the unpaid balance at ten (10%) percent per annum.

If default be made in the performance of or compliance with any of the covenants or conditions of this Note, then in any of said events, said principal sum with all the accrued interest thereon, shall become at once due and payable at the option of the holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this Note be placed in the hands of an attorney at law for collection after the same shall for any reason become due or if collected by legal proceedings or through the probate or bankruptcy courts, then all costs of collection, including a reasonable attorneys fee of not less than fifteen percent (15%) of the outstanding balance shall be added hereto.

The undersigned expressly agrees to remain and continue bound for the payment of the principal and interest provided for by the terms of this Promissory Note notwithstanding any extension or extensions of time for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this Promissory Note.

The maker and any endorsers of this Promissory Note hereby waive presentment, demand, protest and notice of dishonor.

Benjamin J. Levinson, M.D.

PROMISSORY NOTE

$24,500.00 Columbia, South Carolina

April 23, 2003

FOR VALUE RECEIVED, the undersigned promises to pay to the order of **Midlands Endoscopy Center, LLC**, its successors and assigns, in lawful money of the United States of America the sum of Twenty Four Thousand Five Hundred and 00/100 ($24,500.00) Dollars, without interest thereon prior to default. The said principal shall be payable in four (4) equal installments of Six Thousand One Hundred Twenty Five and 00/100 ($6,125.00) Dollars on May 1, 2003; July 15, 2003, October 1, 2003 and December 15, 2003, respectively.

Upon default, interest shall accrue on the unpaid balance at ten (10%) percent per annum.

If default be made in the performance of or compliance with any of the covenants or conditions of this Note, then in any of said events, said principal sum with all the accrued interest thereon, shall become at once due and payable at the option of the holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this Note be placed in the hands of an attorney at law for collection after the same shall for any reason become due or if collected by legal proceedings or through the probate or bankruptcy courts, then all costs of collection, including a reasonable attorneys fee of not less than fifteen percent (15%) of the outstanding balance shall be added hereto.

The undersigned expressly agrees to remain and continue bound for the payment of the principal and interest provided for by the terms of this Promissory Note notwithstanding any extension or extensions of time for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this Promissory Note.

The maker and any endorsers of this Promissory Note hereby waive presentment, demand, protest and notice of dishonor.

J. Frank Martin, Jr., M.D.

PROMISSORY NOTE

$102,000.00

Columbia, South Carolina

April 23, 2003.

FOR VALUE RECEIVED, the undersigned promises to pay to the order of **Midlands Endoscopy Center, LLC**, its successors and assigns, in lawful money of the United States of America the sum of One Hundred Two Thousand and 00/100 ($102,000.00) Dollars, without interest thereon prior to default. The said principal shall be payable in four (4) equal installments of Twenty Five Thousand Five Hundred and 00/100 ($25,500.00) Dollars on May 1, 2003; July 15, 2003, October 1, 2003 and December 15, 2003, respectively.

Upon default, interest shall accrue on the unpaid balance at ten (10%) percent per annum.

If default be made in the performance of or compliance with any of the covenants or conditions of this Note, then in any of said events, said principal sum with all the accrued interest thereon, shall become at once due and payable at the option of the holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this Note be placed in the hands of an attorney at law for collection after the same shall for any reason become due or if collected by legal proceedings or through the probate or bankruptcy courts, then all costs of collection, including a reasonable attorneys fee of not less than fifteen percent (15%) of the outstanding balance shall be added hereto.

The undersigned expressly agrees to remain and continue bound for the payment of the principal and interest provided for by the terms of this Promissory Note notwithstanding any extension or extensions of time for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this Promissory Note.

The maker and any endorsers of this Promissory Note hereby waive presentment, demand, protest and notice of dishonor.

Balbir S. Minhas, M.D.

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C. CODE ANN. § 15-48-10, et seq.

SHAREHOLDERS' AGREEMENT

BY AND AMONG

MIDLANDS GASTROENTEROLOGY PC

AND

SHAREHOLDERS

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THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C. CODE ANN. § 15-48-10, et seq.

SHAREHOLDERS' AGREEMENT

This Shareholders' Agreement (this "Agreement"), effective as of June 30, 2011 (the "Effective Date") is entered into by and among Midlands Gastroenterology PC, a South Carolina professional corporation (the "Corporation"), and each of the persons listed on Schedule A hereto (such persons and their respective successors and assigns are hereinafter referred to collectively as the "Shareholders" and individually as a "Shareholder").

RECITALS

1. The authorized capital stock of the Corporation consists of Two Hundred (200) shares of common stock (hereinafter referred to as "Common Stock");

2. As of the Effective Date of this Agreement, the Corporation has issued and outstanding Two Hundred (200) shares of Common Stock in the amounts and to the Shareholders identified on Schedule A; and

3. The Shareholders desire to set forth certain understandings regarding their ownership of the Common Stock and to impose certain restrictions upon the Transfer of their Common Stock in the Corporation.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I
RECITALS

Section 1.1 Recitals. The above recitals are true and correct and incorporated herein.

ARTICLE II
DEFINITIONS

Section 2.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Agreement" means this Agreement (together with Exhibits), as amended, supplemented, modified or waived from time to time, in accordance with its provisions.

"Articles of Incorporation" means the Corporation's Articles of Incorporation, as amended from time to time, in accordance with its provisions.

"Bankruptcy" shall mean, with respect to any Person, that such Person has: (i) applied for or consented to the appointment of a receiver, trustee, liquidator or custodian or the like, of his property; (ii) admitted in writing his inability to pay his debts generally as they become due; (iii) made a general assignment for the benefit of his creditors, (iv) been adjudicated a bankrupt or insolvent; (v) commenced a voluntary case under the federal bankruptcy laws of the United States of America; (vi) filed a voluntary petition or answer seeking an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law; or (vii) filed an answer admitting the material allegation of a petition filed against him in any bankruptcy or insolvency proceeding. For the purpose of any provision contained in this Agreement requiring reference to the date on which a bankruptcy has occurred, a bankruptcy shall be deemed to have occurred upon the commencement of the first to occur of any one of the foregoing enumerated events.

"Bylaws" means the Corporation's Bylaws, as in effect on the date hereof, as amended, supplemented or modified from time to time, in accordance with its provisions.

"Code" shall mean the Federal Internal Revenue Code of 1986, as the same may be amended from time to time.

"Common Stock" shall have the meaning set forth in the recitals.

"Corporation" shall have the meaning set forth in the preamble.

"Departing Shareholder" shall mean a Shareholder who is Transferring Shares in accordance with any provision of this Agreement, including by virtue of a permitted sale, or as a result of death, disqualification, termination of employment or Permanent Disability. Where applicable, Departing Shareholder shall also mean the personal representative of a deceased Shareholder.

"Departure Event" is any event described in Section 4.2, 4.3 and 4.4.

"Disability" is the inability of Shareholder to perform the usual and customary duties of a physician employed in a full-time medical practice, as such term is defined in any Disability income insurance policy that the Corporation or Shareholder has obtained with respect to such Shareholder.

"Effective Date" shall have the meaning set forth in the preamble.

"Employment Agreement" is the agreement between a Shareholder and Corporation establishing the employment obligation of the shareholder.

"Equal Percentage" means, with respect to any Shareholder as of any date, the result (expressed as a percentage) obtained by dividing the number of shares of Common Stock held by the Shareholder by the number of shares of Common Stock then issued and outstanding.

"Involuntary Transferee" shall have the meaning set forth in Section 4.2.

"Note" shall have the meaning set forth in Section 4.7.

"Outside Work" shall have the meaning set forth in Section 3.14.

"Permanent Disability" occurs when the insurance carrier providing Disability Insurance to the Shareholder has determined that the Shareholder has a total disability.

"Person" shall mean an individual or a corporation, association, partnership, joint venture, organization, business, trust, or any other entity or organization, including a government or any subdivision or agency thereof.

"President" shall mean Balbir S. Minhas, M.D.

"Purchase Price" means that amount paid a Departing Shareholder as set forth in Section 4.5 and paid in accordance with Sections 4.6 and 4.7.

"Qualified Person" shall mean an individual who is licensed to practice medicine in the State of South Carolina in the area of gastroenterology.

"Remaining Shareholders" are those Shareholders retaining shares in Corporation after the Transfer of Shares, disqualification, termination, Disability or death of a Shareholder.

"Shareholder" or "Shareholders" shall have the meaning set forth in the preamble.

"Shares" means any Common Stock purchased or otherwise acquired by any Shareholder or any equity securities issued or issuable directly or indirectly with respect to the Common Stock.

"Transfer" shall have the meaning set forth in Section 4.1.

"Transferred Shares" shall have the meaning set forth in Section 4.2.

ARTICLE III
MANAGEMENT AND CONTROL; CAPITAL CONTRIBUTIONS

Section 3.1 General. The business and affairs of the Corporation shall be managed, controlled and operated in accordance with its Articles of Incorporation and this Agreement, as the same may be amended from time to time, except that the Articles of Incorporation and this Agreement shall not be amended in any manner that would conflict with, or be inconsistent with, the provisions of this Agreement.

Section 3.2 Voting Requirements. Except as otherwise provided in this Section, each outstanding Share entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of Shareholders. In the event of a tie in the voting on any matter

requiring a majority vote, the President shall break the tie by casting a second vote to decide the matter.

Section 3.2.1 Supermajority Voting Requirements. Notwithstanding any other provision of this Agreement, the Shareholders of the Corporation shall approve the following actions of the Corporation by affirmative vote of sixty-seven percent (67%) vote of the Shareholders:

(i) Merger, consolidation, joint venture, dissolution or liquidation of the Corporation;

(ii) Establishment of the limits of coverage for malpractice or professional insurance coverage; and

(iii) Creation of any subsidiary organization or affiliation of the Corporation with any other entity for the purpose of the joint conduct of business or other programs whether in the form of participation in a corporation (either through the holding of capital stock or by membership), partnership, joint venture, co-tenancy, limited liability company, limited liability partnership or other form of ownership or control.

Section 3.2.2 Unanimous Voting Requirements. The following actions of the Corporation require unanimous consent of the Shareholders of the Corporation:

(i) Amendments to the Articles of Incorporation or this Agreement;

(ii) Requirement of loans or contribution of capital from Shareholders; and

(iii) The admission of a shareholder in the Corporation or acceptance of an offer of Transfer of Shares, including, but not limited to, preliminary offers or discussions with any person regarding admission as a shareholder.

Section 3.2.3 Informal Action by Shareholders. Any action required or permitted to be taken at a meeting of the Shareholders may be taken without a meeting if one or more consents in writing, setting forth the action so taken, shall be signed by all of the Shareholders entitled to vote with respect to the subject matter thereof and are delivered to the Corporation for inclusion in the minute book. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Section 3.3 Officers. The officers of the Corporation shall consist of a President, Vice President, Secretary and Treasurer..

Section 3.4 Shareholder Guarantee. The Shareholders agree to execute any guarantee necessary to secure the obligations of the Corporation as approved by a majority of the Shareholders.

Section 3.5 Capital Contributions. None of the Shareholders shall at any time be required to contribute a larger sum than the Shareholder's Equal Percentage of the total amount of any capital contribution. This paragraph shall not apply to a Shareholder's initial purchase of stock in the Corporation.

Section 3.6 Confidentiality. The Shareholders shall not disclose any information relating to the Corporation regarding the Corporation's operations, records, patients, or procedures, to any persons other than employees of the Corporation, federal and state regulatory agencies, third-party reimbursement agencies, the Corporation's accountants, lawyers, consultants and other professional advisors, without the prior written consent of the Corporation or, as the case may be, an enforceable subpoena, or the final order of a court of competent jurisdiction. Each Shareholder shall use information related to the business of the Corporation to advance the Corporation's best interests, and not to benefit their personal interest. All forms, templates, systems (including billing systems) are the property of the Corporation and shall not be used apart from the Corporation by a Shareholder or Departing Shareholder without the written consent of the Corporation. This provision shall survive the termination of this Agreement or the termination of a Shareholder's employment. This confidentiality clause is not intended to restrict or limit any confidentiality clause contained in a Shareholder's employment agreement, if any. Accordingly, any separate confidentiality clause contained in a Shareholder's employment agreement will be separately enforceable in addition to the terms contained in this Agreement.

Section 3.7 Banking. Corporation's banking arrangements with any banking institution shall provide that deposits may be withdrawn only by check, wire transfer or other similar instruments and valid only when signed by the President, Vice President, Secretary, Treasurer or other Person authorized (by appropriate corporate resolutions) by the Corporation.

Section 3.8 Founding Shareholder Protection Provisions. As the founding shareholder of the Company, the following provisions shall apply to Balbir S. Minhas for so long as he remains a Shareholder of the Company:

(i) From the Effective Date and for one (1) year thereafter, in the event of a dispute that cannot be resolved by the Shareholders after good faith efforts, Balbir S. Minhas shall be entitled to elect in writing to purchase all of the Shares owned by Rajinder Parmar, M.D. for the sum of $50,000, which shall be paid in a lump sum with a closing to occur within ninety (90) days of the election with Rajinder Parmar making the representations contained in Section 4.6.3 and subject to the conditions in Section 4.6.4.

(ii) From the period beginning one (1) year from the Effective Date and ending (3) years from the Effective Date, in the event of a dispute that cannot be resolved by the Shareholders after good faith efforts, Balbir S. Minhas shall be entitled to elect in writing to purchase all of the Shares owned by Rajinder Parmar for the sum of $50,000 plus interest

computed from the Effective Date at a per annum rate of Four and No/100 Percent (4.00%) with a closing to occur within ninety (90) days of the election with Rajinder Parmar making the representations contained in Section 4.6.3 and subject to the conditions in Section 4.6.4.

(iii) From the period beginning three (3) years from the Effective date and at all times thereafter, in the event of a dispute that cannot be resolved by the Shareholders after good faith efforts, Balbir S. Minhas shall be entitled to elect in writing to purchase all of the Shares owned by Rajinder Parmar, for the fair market value of such Shares, as determined by an independent third party appraiser mutually agreed upon by the Shareholders. Payment shall be made for Shares in twenty-four (24) equal monthly installments as evidenced by a promissory note and the closing for the purchase shall occur within 30 days of the determination of the Purchase Price in the manner provided in Section 4.6.2 and subject to the conditions in Section 4.6.4.

In the event Balbir S. Minhas elects to purchase the Shares of Rajinder Parmar pursuant to Section 3.8(i)(ii) or (iii) then Rajinder Parmar agrees that he will simultaneously sell all of his membership interests in Midlands Endoscopy Center, LLC (the "LLC Interest") to Balbir S. Minhas, with a closing on the sale to occur at the same time and with the same conditions that apply to the Shares. If the sale occurs pursuant to Section 3.8(i) the purchase price shall equal the amount deemed paid for the LLC Interest up to the time of the closing. If the sale occurs pursuant to Section 3.8(ii) the purchase price shall be the amount deemed paid for the LLC Interest plus interest computed from the Effective Date at a per annum rate of Four and No/100 Percent (4.00%). If the sale occurs pursuant to Section 3.8(iii) then the purchase price shall equal the fair market value of the LLC Interest, as determined by an independent third party appraiser mutually agreed upon by the Shareholders. The terms of the sale contained in this paragraph shall control notwithstanding the terms of any operating agreement or other agreement applicable to Midlands Endoscopy Center, LLC and in the event of any conflict with the terms of this Agreement the parties intend for this Agreement to control and shall be deemed to override or amend any other agreement to the contrary.

Section 3.9 New Shareholder Protection Provision. As the new shareholder of the Company, the following provisions shall apply to Rajinder Parmar for so long as he remains a Shareholder of the Company:

(i) From the Effective Date and for one (1) year thereafter, Rajinder Parmar shall be entitled to elect in writing to sell all of his Shares to Balbir S. Minhas for the sum of $50,000, which shall be paid in a lump sum with a closing to occur within ninety (90) days of the election with Rajinder Parmar making the representations contained in Section 4.6.3 and subject to the conditions in Section 4.6.4.

(ii) From the period beginning one (1) year from the Effective Date and ending (3) years from the Effective Date Rajinder Parmar shall be

entitled to elect in writing to sell all of his Shares to Balbir S. Minhas for the sum of $50,000 plus interest computed from the Effective Date at a per annum rate of Four and No/100 Percent (4.00%) with a closing to occur within ninety (90) days of the election with Rajinder Parmar making the representations contained in Section 4.6.3 and subject to the conditions in Section 4.6.4.

(iii) From the period beginning three (3) years from the Effective date and at all times thereafter Rajinder Parmar shall be entitled to elect in writing to sell all of his Shares to Balbir S. Minhas for the fair market value of such Shares, as determined by an independent third party appraiser mutually agreed upon by the Shareholders. If Balbir S. Minhas fails to confirm in writing within 30 days of the written election his intention to purchase Rajinder Parmar's Shares, then Rajinder Parmar shall be entitled to elect in writing to purchase all of the Shares owned by Balbir S. Minhas, for the fair market value of such Shares, as determined by an independent third party appraiser mutually agreed upon by the Shareholders. For either purchase, payment shall be made for the Shares in twenty-four (24) equal monthly installments as evidenced by a promissory note and the closing for the purchase shall occur within 30 days of the determination of the Purchase Price with the selling Shareholder making the representations contained in Section 4.6.3 and subject to the conditions in Section 4.6.4.

In the event Rajinder Parmar elects to sell all of his Shares Balbir S. Minhas pursuant to Section 3.8(i)(ii) or (iii) then Rajinder Parmar agrees that he will simultaneously sell all of his membership interests in Midlands Endoscopy Center, LLC (the "LLC Interest") to Balbir S. Minhas, with a closing on the sale to occur at the same time and with the same conditions that apply to the Shares. If the sale occurs pursuant to Section 3.9(i) the purchase price shall equal the amount deemed paid for the LLC Interest up to the time of the closing. If the sale occurs pursuant to Section 3.9(ii) the purchase price shall be the amount deemed paid for the LLC Interest plus interest computed from the Effective Date at a per annum rate of Four and No/100 Percent (4.00%). If either sale occurs pursuant to Section 3.9(iii) then the purchase price shall equal the fair market value of the selling member's LLC Interest, as determined by an independent third party appraiser mutually agreed upon by the Shareholders. The terms of the sale contained in this paragraph shall control notwithstanding the terms of any operating agreement or other agreement applicable to Midlands Endoscopy Center, LLC and in the event of any conflict with the terms of this Agreement the parties intend for this Agreement to control and shall be deemed to override or amend any other agreement to the contrary.

Section 3.10 Personnel. The President shall have the right to hire and terminate any employee of the Corporation except that the hiring or termination of a physician, physician extender, or office manager shall require the vote of a majority of the Shareholders. The duties, authority, limitations and compensation of officers and employees shall be determined by the majority vote of Shareholders.

Section 3.11 Distributions. Each year all compensation, including bonuses, shall be paid to the Shareholders in their capacity as employees and all operating expenses of the Corporation shall be paid prior to any distribution of profits of the Corporation. Distributions of profits shall be made on an annual basis unless the Shareholders agree by a majority vote not to distribute profits.

Section 3.12 Expenditures. The President shall not make any disbursements of cash or assets of the Corporation or incur any debt on behalf of the Corporation in excess of Fifteen Thousand and 00/100 ($15,000) dollars without consultation and agreement by a majority of the Shareholders.

Section 3.13 Loans To and From Shareholders. No Shareholder shall have any obligation to make contributions to the Corporation other than those as mutually agreed upon. Any Shareholder that makes a loan to the Corporation shall do so in writing with such loan not being effective unless authorized in writing by the President.

Section 3.14 Outside Work. With the prior written consent of the President, a Shareholder may engage in medically-related work, outside of the Corporation's scheduled work hours, not performed for the Corporation ("Outside Work"), including, but not limited to, locum tenens assignments, teaching positions, expert witness appearances, hospice care and medical directorships, provided such work does not utilize the resources of the Corporation or Midlands Endoscopy Center, LLC or interfere with the Shareholder's services to the Corporation, and either (1) the revenues from such Outside Work are assigned to the Corporation and the Outside Work is covered by the Corporation's liability insurance policy, or (2) the revenues from such Outside Work are retained by the performing Shareholder but are covered by such Shareholder's liability insurance policy in which case such Shareholder shall at least annually, and as otherwise requested by the President provide such documentation requested by the President evidencing that the Shareholder has in full force and effect a liability insurance policy with coverage limits satisfactory to the Corporation covering the approved Outside Work.

Section 3.15 Shareholder Compensation. Shareholder compensation for physician services provided to the Corporation shall be equal for all Shareholders as long as each Shareholder's production is within ten percent (10%) of each other Shareholder. If a Shareholder's production is not within ten percent (10%) but is within twenty percent (20%) of each other Shareholder, then Shareholder compensation shall be fifty percent (50%) equal and fifty percent (50%) based upon the personal production of each Shareholder. If a Shareholder's production is not within twenty percent (20%) of each other Shareholder, then Shareholder compensation shall be one hundred percent (100%) based upon the personal production of each Shareholder.

ARTICLE IV
RESTRICTIONS ON TRANSFER OF SHARES

Section 4.1 General. No Shareholder may sell, assign, transfer, grant, give away, hypothecate, pledge or in any manner dispose of or encumber ("Transfer") any Common Stock

whether presently owned or hereafter acquired, except as specifically set forth in this Article IV. No Transfer of Common Stock shall be valid or recognized in the books and records of the Corporation without first obtaining the written consent of the Corporation and the other Shareholders or, in the absence of such written consent, without first complying with the terms and conditions of this Agreement. No Transfer of any Common Stock pursuant to this Agreement shall be valid or recognized on the books and records of the Corporation as a Transfer of the interest in the Corporation unless such transferee is a Qualified Person who first becomes a party to this Agreement and evidences his or her consent to, and approval of, the terms and provisions hereof by execution of this Agreement. If any Common Stock is transferred in accordance with this Article IV, the Employment Agreement of such Shareholder shall terminate effective upon such transfer.

Section 4.2 Involuntary Transfers or Transfers According to Judicial Process. Any Person (the "Involuntary Transferee") who becomes the holder of any shares or possessor of any certificates representing shares (the "Transferred Shares") by virtue of any judicial process, attachment, bankruptcy, receivership, execution, insolvency proceeding and competency proceeding, judicial sale or divorce decree (a "Departure Event") shall immediately offer all such shares to the Corporation whenever requested by the Corporation to do so. The Corporation shall have the obligation to purchase the Transferred Shares, which right shall be exercised by written notice given to the Involuntary Transferee within 30 days after the shares are presented to the Corporation for registration in the Involuntary Transferee's name. None of such shares will be entitled to any vote nor will any dividend or other distribution be paid, allowed or made upon any of such shares for so long as such Involuntary Transferee fails to comply with such request. Corporation shall pay such holder of any shares or possessor of such certificates representing shares pursuant to this Section in accordance with Sections 4.5, 4.6 and 4.7 of this Agreement. The compensation of the Shareholder whose shares are Transferred pursuant to this Section shall be applied to the Purchase Price set forth in Section 4.5. The Shareholder's salary, bonus and profit distributions set forth under such Shareholder's Employment Agreement may be reduced accordingly until the Purchase Price is paid.

Section 4.2.1 Transfer Upon Shareholder Disqualification. In the event that a Shareholder is no longer authorized to practice medicine in South Carolina in the area of gastroenterology, other than for a period lasting no longer than five months (a "Departure Event"), then the Corporation shall have the obligation to purchase the Departing Shareholder's shares. The Corporation shall pay such holder of any shares in accordance with Sections 4.5, 4.6 and 4.7 of this Agreement.

Section 4.3 Transfer Upon Death or Permanent Disability of Shareholder. In the event of the death or Permanent Disability (each, a "Departure Event") of a Shareholder, the Corporation or the Remaining Shareholders shall purchase, according to their Equal Percentages, and the Departing Shareholder agrees to sell, all shares owned by the Departing Shareholder in accordance with Sections 4.5, 4.6 and 4.7 of this Agreement.

Section 4.3.1 Simultaneous Death. If all of the Shareholders shall die simultaneously or shall die within thirty (30) days of one another, then there shall be no

obligation by any party herein to purchase the shares of any Shareholder in the Corporation, unless a sale shall have taken place prior to the first death, pursuant to this Agreement. As long as no such prior sale shall have occurred, the Departing Shareholder's interest in the proceeds of the liquidation of the Corporation and the proceeds of any insurance policies owned pursuant to Article V of this Agreement shall be delivered to the estate of such deceased Shareholder.

Section 4.4 Compulsory Redemption of Stock Upon Termination of Employment. If a Shareholder's employment is terminated: (i) by the Corporation, (ii) by the Shareholder, or (iii) because the Shareholder elects not to renew his employment agreement (if any) upon the expiration of its term (each a "Departure Event"), the Corporation shall purchase such Departing Shareholder's shares in the Corporation in exchange for the payment as provided in Sections 4.5, 4.6, and 4.7 of this Agreement. Nothing in this Section shall affect a Shareholder's right to arbitrate a decision of the Corporation to terminate his Employment Agreement. Any arbitration action related to a Shareholder's employment agreement shall be subject to the provisions of Section 7.11 of this Agreement.

Section 4.4.1 Modification of Employment Agreement by Corporation. If the Corporation elects not to extend the term of a Shareholder's Employment Agreement by giving notice to the Shareholder in accordance with such agreements then the Corporation must offer a new Employment Agreement to all Shareholders on substantially identical terms.

Section 4.5 Purchase Price. The Corporation or the Remaining Shareholders, as the case may be, shall pay the Departing Shareholder a purchase price ("Purchase Price") for the shares in an amount equal to the following: (i) from the Effective Date and for one (1) year thereafter, the Departing Shareholder shall be entitled to the sum of $50,000; (ii) from the period beginning one (1) year from the Effective Date and ending (3) years from the Effective Date, the Departing Shareholder shall be entitled to the sum of $50,000 plus interest computed from the Effective Date at a per annum rate of Four and No/100 Percent (4.00%); and (iii) from the period beginning three (3) years from the Effective date and at all times thereafter, the Departing Shareholder shall be entitled to the fair market value of his or her shares, as determined by an independent third party appraiser mutually agreed upon by the Shareholders. The Corporation and the Departing Shareholder may agree that such payments may be made in cash or as a distribution of corporate assets in kind to satisfy the Corporation's obligations. Notwithstanding anything in this Agreement to the contrary, a Departing Shareholder shall not be entitled to any distribution from the Corporation nor be entitled to vote the shares subsequent to the Departure Event.

Section 4.6 Method and Schedule of Payment of Purchase Price.

Section 4.6.1 Payment of Purchase Price. The Corporation or the Remaining Shareholders, as the case may be, shall commence payment of the Purchase Price as defined in Section 4.5 above to the Departing Shareholder, within sixty (60) days after the later of (a) the determination of the Purchase Price or (b) the following applicable date: (i) effective date of the Departing Shareholder's termination date; (ii) the effective date that a Shareholder is deemed to have a "Permanent Disability"; (iii) the effective date that a Shareholder is

disqualified from being a shareholder in the Corporation; (iv) the date of receipt of notice of the qualification of the personal representative of the estate of a Departing Shareholder; or (v) the date of notice to the Involuntary Transferee that the Corporation will purchase the Transferred Shares. To the extent permitted by applicable law, the Purchase Price shall be paid to the Departing Shareholder in twenty-four (24) equal monthly installments as evidenced by a promissory note. Notwithstanding the above, any life insurance proceeds or any Disability "buy-out" insurance proceeds received from such insurance policies on the Shareholder shall be paid as provided for in Article V of this Agreement.

Section 4.6.2 Closing of Sale of Shares. Upon the payment of the first installment of the Purchase Price as provided above in this Article IV, the Departing Shareholder shall endorse all of the shares to be sold and deliver such shares to an escrow agent appointed by the Corporation together with: (i) the appropriate amount of federal and state documentary stamps affixed thereto; and, if applicable; (ii) the appropriate tax waiver from the Estate Tax Division of the South Carolina Department of Revenue; and (iii) a certificate of discharged property from lien of federal estate tax. The shares shall be held by the escrow agent until such time as the Purchase Price for the shares has been fully paid. Upon payment in full of the Purchase Price, the escrow agent shall deliver the shares together with all endorsements to the Remaining Shareholders or the Corporation, as applicable. Title to the shares shall be deemed to have passed to the Remaining Shareholders upon the payment of the first installment of the Purchase Price.

Section 4.6.3 Shareholder Representations. The Departing Shareholder shall deliver at the closing and as a condition of sale, the following written representations: (i) that he or she is the owner and holder of record of such shares being sold, that such shares are free and clear of any and all liens, security interests, pledges, judgments or other encumbrances of any kind, and that the Departing Shareholder has full power to sell the shares being sold; (ii) that the Departing Shareholder has not entered into on behalf of the Corporation, any agreement, commitment or understanding binding upon the Corporation except for transactions in the normal course of business, in amounts, quantities and nature which are normal and reasonable in relation to the normal and reasonable requirements of the Corporation's businesses as have been previously conducted and which have been fully recorded on the books and records of the Corporation or fully disclosed to the Shareholders of the Corporation; (iii) that the Departing Shareholder has not incurred any debt or other charges for which the Corporation may be liable except for normal and reasonable charges in connection with the business of the Corporation and that Departing Shareholder has surrendered to the Corporation all credit cards issued to the Corporation in the Departing Shareholder's possession.

Section 4.6.4 Setoff. Any damages resulting from the breach of any of the foregoing representations or a breach of Section 3.6 shall be applied against the balance of the Purchase Price in the same manner as if there were a prepayment of the Purchase Price. The intent of this provision is to provide for a reduction in the Purchase Price as a result of such a breach. Additionally, any damages owed to the Corporation by the Departing Shareholder under an Employment Agreement between the Corporation and the Departing Shareholder shall be setoff against the Purchase Price. To the extent such adjustment or amount required to be

paid shall exceed the balance due on the Purchase Price, the Departing Shareholder shall make prompt payment of such excess to the Corporation or the Remaining Shareholders.

Section 4.7 Promissory Note. The Remaining Shareholders or the Corporation, as the case may be, shall execute a promissory note (hereinafter referred to as "Note") for all payments due pursuant to Article IV of this Agreement. Such Note shall be negotiable and bear interest at the adjusted prime rate plus one percent (1%). The Note shall become due and payable at the option of the holder immediately upon the occurrence of the following events:

(i) Default in the payment of any installment. Default shall occur following a thirty (30) day grace period after written notice of nonpayment is given to the defaulting party. If payment is not made within the thirty (30) day grace period, the Payee shall be in Default;

(ii) Sale of substantially all of the Corporation's assets;

(iii) Dissolution and liquidation of the Corporation; or

(iv) Bankruptcy of the Corporation.

Section 4.7.1 Default. If the payor of the Note shall default in paying any installment of the Purchase Price, then all remaining installments shall be accelerated. Out of the proceeds of such liquidation or dissolution, the Departing Shareholder shall be paid the balance of the Purchase Price remaining unpaid.

Section 4.8 Legend on Shares. The certificates for the shares shall, in addition to any notice thereon required by the Articles of Incorporation or Bylaws of the Corporation, or the Securities Act and other applicable securities laws, bear the following notice conspicuously marked on the face or back thereof:

THE SHARES REPRESENTED BY THIS CERTIFICATE WERE ISSUED BY THE CORPORATION PURSUANT TO EXEMPTIONS FROM REGISTRATION UNDER BOTH FEDERAL AND STATE SECURITIES LAWS. SUCH EXEMPTIONS MAY PROHIBIT CERTAIN TRANSFERS OF THESE SHARES. THEREFORE, NONE OF THE SHARES (NOR ANY INTEREST IN SUCH SHARES) MAY BE TRANSFERRED IN ANY MANNER WHATSOEVER (EITHER VOLUNTARILY OR INVOLUNTARILY, BY PLEDGE, SALE, GIFT, LEVY, OR ANY OTHER ATTEMPTED METHOD OF TRANSFER) WITHOUT THE PRIOR WRITTEN CONSENT OF THE CORPORATION.

THE CORPORATION'S SHAREHOLDERS HAVE ELECTED FOR THE CORPORATION TO RECEIVE THE TAX TREATMENT ACCORDED BY SUBCHAPTER "S" OF THE INTERNAL REVENUE CODE. THEREFORE, NONE OF THE SHARES (NOR ANY INTEREST IN SUCH SHARES) MAY BE TRANSFERRED IN ANY MANNER WHATSOEVER (EITHER

VOLUNTARILY OR INVOLUNTARILY, DIRECTLY OR INDIRECTLY, BY PLEDGE, SALE, GIFT, LEVY OR ANY OTHER ATTEMPTED METHOD OF TRANSFER) WITHOUT THE WRITTEN CONSENT OF THE CORPORATION.

THE TRANSFER OF SHARES OF A PROFESSIONAL CORPORATION IS RESTRICTED BY THE SOUTH CAROLINA PROFESSIONAL CORPORATION SUPPLEMENT, CHAPTER 19 OF TITLE 33, AND MAY BE SUBJECT TO FURTHER RESTRICTION IMPOSED BY THE LICENSING AUTHORITY. SHARES OF A PROFESSIONAL CORPORATION ARE SUBJECT ALSO TO A STATUTORY REPURCHASE OBLIGATION.

THE SECURITIES EVIDENCED HEREBY ARE SUBJECT TO THE TERMS OF A SHAREHOLDERS' AGREEMENT AMONG THE CORPORATION AND THE SHAREHOLDERS OF THE CORPORATION. A COPY OF THE SHAREHOLDERS' AGREEMENT IS ON FILE AT THE OFFICE OF THE CORPORATION AND IS AVAILABLE UPON REQUEST. THE SHAREHOLDERS' AGREEMENT PROVIDES, AMONG OTHER THINGS, FOR RESTRICTIONS ON THE SALE, TRANSFER, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE. ANY ATTEMPTED SALE, TRANSFER, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE SHAREHOLDERS' AGREEMENT SHALL BE VOID AND OF NO FORCE AND EFFECT.

Section 4.9 Effect of Waiver. Any failure of the Corporation to exercise any option to purchase given under this Agreement and any waiver by the Corporation of any rights hereunder as to any Transfer will not, as to any future Transfer of the shares (either voluntary or by operation of law), discharge the shares from any of the restrictions herein contained.

ARTICLE V
INSURANCE

Section 5.1 Life Insurance. The Corporation and each Shareholder shall have the right to purchase and maintain insurance on the life of each of the Shareholders.

Section 5.2 Disability Insurance. The Corporation and each Shareholder shall have the right to purchase and maintain Disability "buy-out" insurance on each of the Shareholders.

Section 5.3 Excess Insurance Proceeds. To the extent any insurance proceeds are in excess of the amount due a Shareholder under Section 4.5, such excess shall not affect the Purchase Price under Section 4.5. Any excess proceeds from a policy purchased by the

Corporation or a Shareholder shall be retained by the Corporation or Shareholder, as the case may be.

Section 5.4 Shareholders' Right to Purchase Insurance Policies. In the event that a Shareholder Transfers his shares in the Corporation, or upon dissolution or liquidation of the Corporation before the death or Permanent Disability of such Shareholder, the insured Shareholder shall have the right to purchase such life insurance and Disability insurance policies purchased by the Corporation that are subject to this Agreement for a purchase price equal to the amount of:

(i) the cash surrender value thereof, if any, calculated on a prorated basis to the date of the transaction, exclusive of any dividend, dividend accumulations, or policy loans, but inclusive of the cash value of any paid-up insurance additions; plus

(ii) the pro rata portion of any premium paid prior to the date which covers a period extending beyond the date of the transaction; plus

(iii) any dividend or dividend accumulations; and less

(iv) any policy loan plus interest then due.

The rights granted in this Section 5.4 shall lapse and expire unless the Transferring Shareholder notifies the Corporation in writing within thirty (30) days of the effective date of the Transfer of Departing Shareholder's shares of his desire to purchase all or some of the Disability or life insurance contracts maintained pursuant to this Article V. Any policy or policies not purchased within such thirty (30) day period may be disposed of by the Corporation in its discretion and the Departing Shareholder agrees to execute and deliver such instruments as may be required by the Corporation to dispose of such policies. If such an insurance policy is transferred to a Departing Shareholder, the Corporation shall execute and deliver to the Departing Shareholder, such instruments as are necessary and proper to transfer full and complete title to such policies.

ARTICLE VI
COVENANTS REGARDING SUBCHAPTER S

Section 6.1 Revocation. If the Shareholders shall determine to revoke the Corporation's Subchapter S election, each Shareholder agrees that he or she shall execute all documents and take such further action as may be necessary or advisable to effectuate such revocation.

Section 6.2 Maintain S Status. Except as provided in Section 6.1 above, the Corporation and each Shareholder covenant and agree not to do any act or fail to do any act, the commission or omission of which would cause the termination of the Subchapter S election of the Corporation. In the event of the violation of any provision of this Section 6.2 by any

Shareholder, the Shareholder who authorizes or causes the violation shall be liable to the Corporation and to the other Shareholder(s) for any damages, liabilities, or costs resulting directly or indirectly therefrom, including, without limitation, any additional federal or state income tax, penalties and interest incurred by the Corporation and the other Shareholder(s); provided, however, that no Shareholder shall be so liable if such Shareholder acted in the good faith belief and upon the advice of tax counsel that termination of the election would not be caused thereby. In the event of an inadvertent termination of the Corporation's Subchapter S election, the Corporation and each Shareholder shall take whatever actions are necessary under Section 1362(f) of the Code and the Regulations thereunder to request a determination of inadvertent termination from the Commissioner of Internal Revenue allowing the Corporation to be treated as continuing to be an S corporation, and if a waiver of the terminating event is not granted, to request consent for an early reelection of Subchapter S status under Section 1362(g) of the Code and the Regulations thereunder.

Section 6.3 Dividend Distributions. Each Shareholder and the Corporation acknowledge that the Corporation shall use its best efforts to make pro rata (based on the total Shares owned by each Shareholder) distributions of money with respect to the Shares in an amount at least sufficient to pay the federal and state income taxes on the income that passes through to the Shareholders from the Corporation under Section 1366 of the Code for each taxable year, net of any tax benefits produced by losses, deductions and credits that pass through under Section 1366 of the Code. The Corporation shall use its best efforts to make such distributions on a quarterly basis during each taxable year and in any event no later than ninety (90) days following the end of each taxable year. The President, after consultation and reasonable input from the Board of Directors, shall make the final decision as to the amount of each distribution with respect to the Shares. For purposes of this Section 6.3 a distribution shall be treated as made with respect to a particular taxable year of the Corporation if (A) it is made during the taxable year and not designated by the Corporation as made with respect to another taxable year or (B) it is specifically designated by the Corporation as made with respect to that particular taxable year. The foregoing distribution requirement set forth in this Section 6.3 is subject, however, to (Y) the reasonably required needs of the Corporation as determined by the President to maintain sufficient funds for working capital and business needs so as not to impair the ability of the Corporation to continue its business operations, and (Z) any applicable restrictions contained in loan documents with the Corporation's creditors.

Section 6.4 Withholding. The Corporation is authorized to withhold from amounts to be distributed to any Shareholder hereunder any amount required to be withheld by any provision of the Code, Treasury Regulations or other applicable law, and to pay such amounts to the Internal Revenue Service ("IRS") or other appropriate taxing authority in accordance with the Code, Treasury Regulations or other applicable law. In addition to such withholding from distributions, the Corporation is authorized to remit to the IRS or other appropriate taxing authority any amounts due as a result of the allocation of taxable income to any Shareholder. Any amounts paid over to the IRS or other appropriate taxing authority with respect to this Section to a Shareholder pursuant to this Section shall be treated for all purposes hereunder as a distribution made to the Shareholder with respect to whom such withholding or remittance was made.

Section 6.5 Code Section 1377(a)(2) Election. If a Shareholder makes a Transfer of his or her Shares pursuant to this Agreement while the Corporation is an S corporation, and such Transfer results in the complete termination of the interest in the Corporation of such Shareholder, and if either the selling Shareholder or the purchaser requests, then all of the Shareholders and the Corporation agree to take appropriate action to make an effective election under Section 1377(a)(2) of the Code and the Regulations thereunder to treat the taxable year of the Transfer as if it consisted of two taxable years, the first of which ended on the effective date of the Transfer. For purposes of this election, Shareholders shall mean all Persons who are or were Shareholders of the Corporation at any time during the taxable year in which the Transfer occurs.

Section 6.6 Closing of Corporate Books. In the event the Corporation's Subchapter S status terminates during the course of a taxable year for any reason whatsoever, and if any Shareholder so requests, then all of the Shareholders shall take appropriate action to make an effective election under Section 1362(e)(3) of the Code and the Regulations thereunder to close the Corporation's books on the date immediately preceding the date on which the termination of Subchapter S status occurs. For purposes of this election, the term Shareholders shall mean all Persons who are or were Shareholders of the Corporation at any time during the taxable year ending on the date of termination of the Corporation's Subchapter S status and all Persons who are or were Shareholders in the Corporation on the first day following the termination of the Corporation's Subchapter S status.

Section 6.7 South Carolina S Corporation Status. Each Shareholder agrees to file a South Carolina income tax return and pay South Carolina income tax on his or her proportionate share of the Corporation's taxable income for each taxable year of the Corporation that he or she is a Shareholder and the Corporation is an S corporation, and to execute such consents as are necessary to assure that the Corporation's Subchapter S election will be effective for South Carolina income tax purposes.

Section 6.8 President as Attorney-in-Fact for Elections. If any document evidencing a Shareholder's consent or other action is required for filing or for other purposes under the provisions of the Code or otherwise in order to effectuate the matters set forth in Article VI and any Shareholder is unable or otherwise fails to execute such document in a timely manner, then such Shareholder hereby appoints the President of the Corporation, as from time to time elected, as his agent and attorney-in-fact for the purpose of executing any such document and taking all such further action as may be necessary or advisable to effectuate such consent or other action. The Corporation shall indemnify, defend and hold harmless the President of the Corporation from, against and in respect of any liabilities, damages, losses, costs or expenses (including attorneys' and accountants' fees) incurred by him or her as result of acting under such power of attorney.

Section 6.9 Tax Matters Person. The President is hereby designated as the tax matters person of the Corporation. The tax matters person may resign at any time by giving written notice to the Corporation and each of the other Shareholders, and the tax matters person may be removed at any time by unanimous consent of all of the other Shareholders. Upon the resignation or removal of the tax matters person, a new tax matters person, who must be a

Shareholder, shall be elected by holders of a majority of the Shares, which majority shall be determined by excluding the Shares of a removed tax matters person. The Corporation shall indemnify, defend and hold harmless the tax matters person from, against and in respect of any liabilities, damages, losses, costs or expenses (including attorneys' and accountants' fees) incurred by him or her as a result of acting as tax matters person.

ARTICLE VII
TERM AND TERMINATION

The term of this Agreement shall begin on the Effective Date and terminate upon the occurrence of any of the following: (i) the bankruptcy of the Corporation or (ii) a written agreement to terminate this Agreement executed by Shareholders of not less than one hundred percent (100%) of the Common Stock subject to this Agreement.

ARTICLE VIII
MISCELLANEOUS

Section 8.1 Prior Agreements. All other agreements dated prior to the date of this Agreement are hereby superseded in their entirety by the terms and conditions of this Agreement; provided however, that this Agreement shall not be deemed to supersede the terms and conditions of the Employment Agreements executed simultaneously with this Agreement. Any inconsistency or ambiguity with the terms of this Agreement and the terms of the Employment Agreements shall be construed and interpreted in accordance with the terms of this Agreement.

Section 8.2 Patient Records. The Corporation owns all patient records and charts. The records of patients of a Departing Shareholder shall remain with the Corporation. In the event of dissolution of Corporation, the patient records shall be provided to the Shareholder who primarily treated the patient. Notwithstanding the above, upon written authorization of a patient, the patient's records shall be provided to such Departing Shareholder (or former Shareholder if a liquidation or dissolution has occurred) who shall bear the cost of such photocopying.

Section 8.3 Telephone Number. The telephone listing and number of the Corporation belongs to the Corporation. In the event a Shareholder Transfers his shares in the Corporation, the Corporation retains possession of all telephone numbers and the Departing Shareholder shall have no entitlement to such numbers. In the event of dissolution of the Corporation, the Shareholders agree that no Shareholder shall be entitled to the telephone number which shall be programmed to provide the current telephone numbers of each Shareholder following dissolution.

Section 8.4 Shareholder's Personal Property. Each Shareholder's personal property at the Corporation's physical location is listed on Schedule B hereto which shall remain each Shareholder's property and may be removed from the Corporation's physical location at any time by the owning Shareholder. Any amendments to the inventory list in this Schedule B must be approved by all of the Shareholders.

Section 8.5 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed effectively given upon personal delivery, and in the case where delivery is made by any established and reputable next day delivery service, delivery shall be deemed to occur on the day after delivery to such delivery service, or on the fifth day following mailing by registered or certified mail, return receipt requested, postage prepaid, addressed at such Shareholder's address as set forth on Schedule A attached hereto or at such other address as such Shareholder shall designate by written notice to the Corporation and the other Shareholders; or if to the Corporation, at 1 Wellness Boulevard, Suite 110, Irmo, South Carolina 29063 or at such other address as the Corporation shall have furnished to the Shareholder in writing.

Section 8.6 Construction. The Shareholders hereby agree and consent to take or cause to be taken all actions necessary to implement the intents and purposes of this Agreement, including, but not limited to, to vote their Common Stock to amend the Articles of Incorporation or the Bylaws in such manner as may be necessary to implement the provisions of this Agreement, and further agree not to vote their Common Stock at any time so as to amend the Articles of Incorporation in a manner inconsistent with or in contravention of this Agreement.

Section 8.7 Counterparts. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts, taken together, shall constitute and be one and the same instrument.

Section 8.8 Successor and Assigns. This Agreement shall be binding upon the parties hereto, their heirs, legal representatives, successors and permitted assigns.

Section 8.9 Entire Agreement. This Agreement contains the entire agreement of the parties with respect to its subject matter.

Section 8.10 Remedies. The parties acknowledge that remedies at law for breach of covenants contained in this Agreement may be inadequate and that the Corporation may be entitled to injunctive or to such other equitable relief as a court may deem appropriate for a breach of such covenants. If such covenants are at any time adjudged invalid to any extent by any court of competent jurisdiction, such covenants shall be deemed modified to the extent necessary to render any or all of them enforceable.

Section 8.11 Disputes. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, which shall be conducted in Columbia, South Carolina, in accordance with the NHLA Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the arbitration, shall be binding not only on all parties to the Agreement, but on any other entity controlled by, in control of or under common control with the party to the extent that such affiliate joins in the arbitration. Judgment upon the award rendered by the arbitrators may be enforced in any court having jurisdiction thereof and all costs shall be borne by the party against whose interest the arbitration is adversely determined.

Section 8.12 Amendment. This Agreement may not be amended or supplemented except in writing, executed by holders of not less than one hundred (100%) percent of the Common Stock subject to this Agreement.

Section 8.13 Severability. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of any other provisions hereof, all of which provisions are hereby declared severable.

Section 8.14 Choice of Law. This Agreement is to be governed by and construed in accordance with the laws of the State of South Carolina.

Section 8.15 Descriptive Headings and Section References. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Provided, however, any reference in this Agreement to a particular Section shall also include all subsections thereto unless explicitly referenced otherwise (e.g., a reference to Section 4.2 shall also include Section 4.2.1, 4.2.2, etc.).

Section 8.16 Gender and Number. Whenever the context hereof requires, the gender of all words shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural.

Section 8.17 Applicability of Agreement. Unless otherwise provided by this Agreement, each provision of this Agreement shall apply to all of the shares owned by each Shareholder, whether presently owned or hereafter acquired.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

MIDLANDS GASTROENTEROLOGY, PC

By: _____
Balbir S. Minhas, M.D.
Its: President

SHAREHOLDERS:

_____
Balbir S. Minhas, M.D.

_____
Rajinder Parmar, M.D.

SCHEDULE A

SHAREHOLDERS AND NUMBER OF SHARES

Name and Address of Shareholder	Number of Shares
Balbir S. Minhas, M.D. 1 Wellness Blvd., Ste. 111 Irmo, SC 29063	100
Rajinder Parmar, M.D. 1 Wellness Blvd., Ste. 111 Irmo, SC 29063	100

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	
Rajinder Parmar, Plaintiff, vs. Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, Defendants.	)))))))))	**AMERICAN HEALTH LAWYERS ASSOCIATION DEMAND FOR ARBITRATION** Claim Number: 2648

The Plaintiff, complaining of the conduct of the Defendants herein, alleges as follows:

Parties and Jurisdiction

1. The Plaintiff, Rajinder Parmar ("Parmar" or "Dr. Parmar") is a citizen and resident of Richland County, South Carolina.

2. Defendant Balbir S. Minhas ("Minhas" or "Dr. Minhas") is a citizen and resident of Richland County, South Carolina.

3. Defendant Midlands Gastroenterology, PC ("Midlands Gastro") is a professional corporation organized and existing under the laws of the State of South Carolina with its principal place of business located in Richland County, South Carolina. Defendant Midlands Gastro is named herein as an interested and necessary party.

4. Defendant Midlands Endoscopy Center, LLC ("Midlands Endoscopy") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business located in Richland County, South Carolina. Defendant Midlands Endoscopy is named herein as an interested and necessary party.

5. American Health Lawyers Association ("AHLA") Dispute Resolution Service has jurisdiction over the parties to and the subject matter of this action because Midlands

Endoscopy's Operating Agreement and Midland's Gastro's Shareholders Agreement both mandate binding arbitration pursuant to the AHLA or its predecessor's rules with the venue being Columbia, South Carolina. These agreements are attached hereto as **Exhibit A** and **Exhibit B**. Please see section 12.6 of Ex. A and section 8.11 in Ex. B for the mandatory binding arbitration language.

Factual Background

6. The Plaintiff is a physician who is licensed to practice medicine in the State of South Carolina and is board certified in the field of gastroenterology.

7. Defendant Minhas is a physician who is licensed to practice medicine in the State of South Carolina and is board certified in the field of gastroenterology.

8. Defendant Midlands Endoscopy was formed on April 24, 2003, for the purpose of operating as a medical endoscopy center. Defendant Minhas was one of four founding members of Midlands Endoscopy.

9. Effective April 23, 2003, the then existing members of Midlands Endoscopy entered into an Operating Agreement which was intended to govern the operation of the entity and rights and responsibilities of its members. A copy of the Operating Agreement is attached hereto as **Exhibit A**.

10. Between April 23, 2003 and June 30, 2011, the membership of Midlands Endoscopy changed such that Defendant Minhas remained as the sole member.

11. On or about June 30, 2011, the Plaintiff entered into an Agreement for Sale of Limited Liability Company Interest through which the Plaintiff was to acquire a 50% interest in the Company based upon the terms and conditions contained therein. A copy of the Agreement for Sale of Limited Liability Company Interest is attached hereto as **Exhibit B**.

12. Among the terms and conditions of the Agreement for Sale of Limited Liability Company Interest was the agreement that the parties would be bound by the Operating Agreement.

13. Defendant Midlands Gastro was formed on January 4, 2000 for the purpose of operating a medical gastroenterology practice. At the time of its formation, Defendant Minhas was the founding shareholder of Defendant Midlands Gastro.

14. On or about June 30, 2011, the Plaintiff acquired 100 shares of Midlands Gastro after paying $50,000.00 and entered into a Shareholders' Agreement which was intended to govern the operation of the entity and rights and responsibilities of its shareholders. A copy of the Stock Purchase Agreement and subsequent Shareholders' Agreement is attached hereto as **Exhibit C and Exhibit D.**

15. Thus, as of June 30, 2011, the Plaintiff had acquired a 50% membership interest in Midlands Endoscopy, as well as a 50% shareholder interest in Midlands Gastro. Defendant Minhas was the other 50% member/owner of the entities. Thereafter, by virtue of his purchases, Plaintiff had both ownership and production interests from his ongoing services performed in the entities. These are two separate and distinct compensable elements with their own financial formulas to be applied to Plaintiff's ownership.

16. While both the Shareholder Agreement and the Operating Agreement addressed issues concerning the financial rights of the parties upon a future sale or separation from the entities, the Shareholders' Agreement of Midlands Gastro clearly provides that:

- The terms of sale contained in this paragraph shall control notwithstanding the terms of any operating agreement or other agreement application to Midlands Endoscopy Center, LLC and in the event of any conflict with the terms of this

Agreement the parties intend for this Agreement to control and shall be deemed to override or amend any other agreement to the contrary. Shareholders' Agreement, Section 3.8.

17. Section 3.8 of the Shareholders' Agreement of Midlands Gastro, Minhas was afforded the right to buyout Parmar's interest at differing monetary levels based upon the passage of time. Under the tiered structure, Minhas had the right to purchase Parmar's interest in Midlands Gastro for:

a. The sum of $50,000.00 if notice was provided within the first year of Parmar's acquisition of ownership;

b. The sum of $50,000.00 with interest at 4% per annum if notice was provided after year one but before the third anniversary following Parmar's acquisition of ownership; and

c. The fair market value of his interest as determined by an independent third party appraiser if notice was provided after the third anniversary following Parmar's acquisition of ownership.

18. The Shareholders' Agreement further provided that in the event Minhas elected his right to compel Parmar to sell his shares of Midlands Gastro, then in such event there would be a simultaneous sale of Parmar's membership interest in Midlands Endoscopy to Minhas for:

a. The amount deemed to have been paid by Parmar to Minhas up to $300,000.00 through the time of closing if the closing were to take place within the first year following Parmar's acquisition of ownership;

b. The amount deemed to have been paid by Parmar to Minhas up to $300,000.00 through the time of closing, together with interest at 4% per annum if the closing

were to take place after year one but before the third anniversary following Parmar's acquisition of ownership; and

c. The fair market value of his interest as determined by an independent third party appraiser if notice was provided after the third anniversary following Parmar's acquisition of ownership.

19. Further, the agreement provided if there was going to be purchase of Parmar's interests by Minhas pursuant to 17 (a-b) and 18 (a-b) that such amount had to be paid by Minhas in a lump sum at the closing and not over time. (See Section 3.9 (iii) of **Exhibit B.**)

20. With regard to all of the buyout provisions set forth above, the Shareholders' Agreement provided that as a prerequisite to Minhas exercising his right to purchase there must have first been a "dispute that cannot be resolved by the Shareholders after **good faith efforts.**" Shareholders' Agreement, Section 3.8(i)(ii) and (iii). Emphasis Added.

21. Following Parmar's acquisition of an interest in the entities, Minhas managed the financial affairs of both Midlands Gastro and Midlands Endoscopy, including the calculation and payment of distributions and other forms of compensation. Notwithstanding, the Plaintiff and Minhas shared the administrative responsibilities of running both entities.

22. Following Parmar's acquisition of an interest specifically in Midlands Endoscopy, Minhas was permitted to adjust distributions so as to over distribute to himself the amount of $300,000.00 from the company's revenues in compensation for Parmar's acquisition of his ownership interest.

23. Parmar completed the payment of the $300,000.00 for his purchase of the Midlands Endoscopy 50% interest in early December 2013.

24. Following Parmar's acquisition of an interest in Midlands Endoscopy, Minhas actually over distributed to himself more than the $300,000.00 which was contemplated and allowed under the Operating Agreement.

25. Additionally, the Operating Agreement of MG provided that if the Plaintiff produced 10% more in annual revenues as compared to Minhas on annual basis, his compensation would be greater proportionally than that of Minhas. The two disagreed as to whether in fact Plaintiff out produced Minhas for the 2013 year and whether Parmar performed his share of administrative functions for the both entities. Minhas has refused to provide the final 2013 production information and documents

26. The third anniversary of Parmar's purchase of an ownership interest in the entities was June 30, 2014.

27. On February 20, 2014, a regular meeting of both Midlands Endoscopy and Midlands Gastro was conducted. In the official minutes of the meetings, there was no mention whatsoever of any dispute between the parties.

28. On March 3, 2014, Minhas wrote a letter to Parmar in which he sought to trigger his "right" to a mandatory buyout of Parmar's interest in both Midlands Endoscopy and Midlands Gastro.

29. As of March 3, 2014, there was no existing dispute between the parties as required by the Shareholders' Agreement in order to trigger the right for Minhas to exercise the mandatory buyout.

30. As of March 4, 2014, there had been no good faith effort to resolve any alleged dispute between the parties as required by the Shareholders' Agreement in order to trigger the right for Minhas to exercise the mandatory buyout.

31. Instead, and upon information and belief, Minhas recognized that the three year anniversary which is referenced in the Shareholders' Agreement was fast approaching and further recognized that after the three year anniversary it would be significantly more expensive to buyout Parmar's interests as there would be a fair market value determination of Parmar's 50% ownership interests.

32. In bad faith, Minhas sought to manufacture a dispute in order to trigger the right to buy Parmar's interests at a price which would be far more advantageous to him.

33. Not only was there no true dispute between the parties, in his March 3, 2014 notice letter, Minhas actually offered continued employment to Parmar after the intended buyout of Parmar's ownership interest.

34. As a result of the March 3, 2014 letter, Parmar was forced to engage legal counsel to defend his ownership rights in the entities.

35. Whereas prior to March 3, 2014, no dispute existed between the parties, Minhas plunged the parties into dispute via his letter.

36. On April 7, 2014, special meetings of Midlands Gastro and Midlands Endoscopy were held to discuss the issues created by Minhas.

37. Edward White, purported attorney for the two entities, oversaw the members' meeting and certain agreements were reached regarding the purchase by Minhas of Plaintiff's interests in both entities, the sale of the automobile that Plaintiff was using which was owned by Midlands Gastro, the distribution of Plaintiff's share of the bank accounts and outstanding Accounts Receivable in the two entities on the date of Plaintiff's sale of his interests, the reconciliation and distribution to Plaintiff of his share resulting from Minhas' taking

approximately $13,500.00 more in Accounts Receivable available to him as of June 30, 2011. See the official transcript from the meeting attached hereto as **Exhibit E.**

38. The parties agreed that Donny Burkett, CPA ("Burkett") would make the A/R, bank account, car purchase value, retirement account vesting amounts of Parmar and other required calculations for the purchase of Parmar's ownership interests and for the distribution to him at the time of sale of his production interests through that date.

39. At the meeting, Parmar and Burkett as the accountant for the entities believed that an agreement had been reached with regard to the financial rights and obligations of the parties going forward as evidenced by the transcript and subsequent emails. For example, it was resolved in part that Parmar would be entitled to purchase his company provided vehicle for its fair market value as determined by the CPA for the entities. Its value was then established by Burkett in a meeting attended by Parmar, Minhas and Burkett's assistant pursuant to the prior owners' agreements to be $13,000.00. **(See Exhibit F.)**

40. Plaintiff's ownership interests were purchased on May 30, 2014 with the corresponding principal and interest amounts being paid in one lump sum but only after Minhas and his counsel Ed White deceptively attempted to contravene the purchase terms by drafting purchase documents and promissory notes which attempted to pay Plaintiff for his ownership amounts plus interests over 24 months despite the governing agreements requiring that the amounts be paid in one lump sum at closing. **(See Exhibit G.)** This type of deceptive conduct was par for the course for Minhas since he manufactured the parties' disputes in or about February 2014. The final agreed upon sale documents from the May 30, 2014 transaction are attached hereto as **Exhibit H.**

41. The parties agreed that the issues of the bank account and A/R distributions would be preserved and await the calculations being made by Burkett and finalized in late June 2014. **(See Exhibit I.)** In fact, the parties agreed to mediation which was scheduled to first occur on August 8, 2014 and then rescheduled for September 29, 2014. Minhas's new counsel unilaterally canceled the mediation which was consistent with his initial position that the parties should go straight to arbitration with their disputes. **(See Exhibit J.)**

42. Despite Minhas's prior counsel agreeing to provide Burkett's final calculations to the Plaintiff **(See Exhibit K)**, both Ed White and Minhas's current counsel Joel Collins, have steadfastly and repeatedly refused to provide the final financial calculations and related documents to the Plaintiff despite the previous agreements and it is believed they are trying to manipulate those documents and the calculations on issues such as reoccurring operating costs for the entities. **(See Exhibit L.)**

43. Minhas has since refused to honor any agreement reached between the parties including, but not limited to, Plaintiff's portion of the bank accounts, A/R for both entities, Plaintiff's distribution of his retirement accounts, provide financial information and documents through May 30, 2014 and refused to have Midlands Gastro sell the automobile to Plaintiff as agreed. In fact, Minhas has gone so far as to refuse tender of $13,000.00 in exchange for the aforementioned vehicle and to threaten criminal prosecution for its alleged theft.

44. Most disturbingly, Minhas and Minhas's current counsel have manufactured and sought to manipulate coding and billing issues for Plaintiff's past services to both entities, encouraged Midlands Gastro employees to state that Plaintiff overcoded on billing issues and may have reported Plaintiff to third parties such as Medicare. **(See Exhibit M.)**

45. Explanations have been provided to Minhas and Minhas' counsel about some of the disputed coding issues (**See Exhibit N.**) Notwithstanding, this "supposed" investigation concerns targeted invoices of Plaintiff **only** without a true, objective and complete examination of Minhas's invoices and coding during the same time period (**See Exhibit O**).

46. Minhas and his counsel are leading and orchestrating this "sham investigation" in an attempt to try and offset these amounts against what Plaintiff is due for his production interests incident to his ownership which he earned in the bank accounts and A/R as of May 30, 2014.

For a First Cause of Action
Breach of Contract

47. The allegations contained herein above are incorporated herein by reference as if realleged and restated in full verbatim.

48. The contractual relationship between the parties is governed by two contracts: the Shareholders' Agreement of Midlands Gastro and the Operating Agreement of Midlands Endoscopy.

49. As contracts to be performed in South Carolina, both the Shareholders' Agreement and the Operating Agreement are imbued with the obligation of good faith and fair dealing.

50. Both the Shareholders' Agreement and the Operating Agreement grant Minhas the right to demand a sale of Parmar's interest in the two entities at different times and at differing prices, provided however, that Minhas a) act in good faith, b) identify a true dispute then existing between the parties and c) engage in good faith efforts to resolve the dispute.

51. Of course, these payments would represent payment for the ownership interest only. Upon an actual sale and separate, Parmar would also be entitled to his distributional share

of any surplus cash, as well as to be compensated for his outstanding accounts receivable as a part of his regular compensation as an employee and production interests incidental to his performance as a physician in the entities.

52. Minhas has breached his contracts with Parmar in a number of manners, including but not limited to:

a. Agreeing to allow Parmar to purchase his company car for $13,000.00, only to retract his agreement and threatened to have Parmar prosecuted criminally;

b. Failing and refusing to provide Parmar with the final calculations and financial documents as prepared by Burkett for both entities as of May 30, 2014;

c. Failing and refusing to pay Parmar compensation and benefits owed to him by virtue of his ownership and employment, including but not limited to fair and proper cash distributions for his 2013 overproduction compared to Minhas, bank account balances as of May 30, 2014 and accounts receivables as of June 30, 2011 and through May 30, 2014 and sell the automobile for the fair market value established by Burkett and retirement account distributions; and

d. Such other particulars as the evidence in the case may demonstrate.

53. As a direct and proximate result of the conduct of the Defendant, the Plaintiff has been harmed.

54. The Plaintiff is entitled to an award of damages for all losses contained herein, including but not necessarily limited to damages equal to the amount of money which was under distributed to him during his ownership for his 2013 overproduction, bank account balances as of May 30, 2014, damages equal to the value of his accounts receivable which were generated as an

employee of the entities, legal fees and costs and such other relief as the panel deems just and proper.

For a Second Cause of Action
Breach of Fiduciary Duty

55. The allegations contained herein above are incorporated herein by referenced as if realleged and restated in full verbatim.

56. At all times relevant hereto, Minhas was the managing partner of Midlands Gastro and Midlands Endoscopy as a result of which he owed fiduciary duties to the Plaintiff as a shareholder and member to act with the utmost trust, confidence and loyalty to the Plaintiff.

57. Minhas breached his fiduciary duties to Parmar in a number of manners, including but not limited to the following:

a. In over distributing surplus cash in the entities to himself and in a way that was disproportionate to the ownership of the entities and to the agreements between the parties notwithstanding Parmar's overproduction for the 2013 year compared to him and overdistributed to himself based on the June 30, 2011 existing A/R at that time;

b. In failing and refusing to pay Parmar for his fair share of the accounts receivable and bank account balances as of May 30, 2014 which were generated by Parmar's efforts;

c. In failing to distribute Parmar's earned and vested retirement account balance to him;

d. In threatening Parmar with criminal prosecution on retaining possession of the automobile and as a result of manufacturing coding and invoicing issues concerning Parmar to harm his reputation and to manufacture offsets on monies

due Parmar from both entities as a result of the sale of his interests and his production as a physician before May 30, 2014; and

e. In such other particulars as the evidence in the case may demonstrate.

58. As a direct and proximate result of the conduct of the Defendant, the Plaintiff has been harmed.

59. The Plaintiff is entitled to an award of damages equal to the amount of money which was under distributed to him during his ownership, damages equal to the value of his accounts receivable which were generated as an employee of the entities, legal fees and costs and such other relief as the panel deems just and proper, as well as an award of punitive damages in an amount deemed sufficient to impress upon the Defendant the seriousness of his conduct and to deter such similar conduct in the future.

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Columbia, South Carolina

September 16, 2014

AGREEMENT FOR SALE
OF
LIMITED LIABILITY COMPANY INTEREST

THIS AGREEMENT FOR SALE OF LIMITED LIABILITY COMPANY INTEREST (this "Agreement") is made and entered into effective as of June 30, 2011 (the "Effective Date") by and among Rajinder Parmar, M.D. (the "Purchaser"), and Midlands Endoscopy Center, LLC, a South Carolina limited liability company (the "Company").

WITNESSETH

WHEREAS, the Company desires to sell a Fifty Percent (50%) interest in the Company represented by Class A Units (the "Purchased Interest") to the Purchaser and the Purchaser desires to purchase from the Company the Purchased Interest pursuant to the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **Sale and Purchase of the Purchased Interest**. Subject to and upon the terms contained herein, the Company hereby sells, transfers, assigns, conveys and delivers good and marketable title to the Purchased Interest to the Purchaser.

2. **Consideration for Purchase**. As consideration for the Purchased Interest, the Purchaser agrees that an amount up to $300,000 of available cash flow distributable to the Purchaser shall be distributed to Balbir Minhas until the third anniversary of the Effective Date (the "Purchaser Distributions") or, if sooner, until the total distributions otherwise due to the Purchaser and being distributed to Balbir Minhas equal $300,000. In the event the Purchaser Distributions are less than $300,000 then the amount of the Purchaser Distributions shall be the complete consideration for the Purchased Interest. In the event the Purchaser Distributions are more than $300,000, then the excess shall be distributed to Purchaser. Notwithstanding anything in the Company's Operating Agreement to the contrary, all allocations of Company tax items shall be made in the same manner in which cash distributions have been made until the Purchaser Distributions referenced above has been distributed to Balbir Minhas.

3. **The Company's Representations and Warranties**. The Company hereby represents and warrants to the Purchaser, as of the date hereof, as follows:

a. Ownership. The Company has not previously assigned or transferred any ownership interest in the Purchased Interest to another party. The Purchased Interest is free and clear of all tax liabilities, judgments, liens, claims, charges, proxies, encumbrances or any other liabilities of any kind. Except for the Class A Units, there are no other Membership Interests outstanding.

b. Authority. The Company has all necessary capacity, power and authority to enter into this Agreement and to perform its obligations hereunder.

c. Binding Agreement. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable in accordance with its terms.

4. **The Purchaser's Representations and Warranties**. The Purchaser hereby represents and warrants to the Company, as of the date hereof, as follows:

a. Authority. The Purchaser has all necessary capacity, power and authority to enter into this Agreement, and to perform its obligations hereunder.

b. Binding Agreement. This Agreement has been duly executed and delivered by the Purchaser and constitutes his legal, valid and binding obligation, enforceable in accordance with its terms.

5. **Other Actions**. The Company and the Purchaser agree that they will at any time and from time to time do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, assignments, transfers, conveyances and assurances as may be reasonably required by the other party in order to carry out fully and to effectuate the transactions herein contemplated in accordance with the provisions of this Agreement.

6. **Entire Agreement**. This Agreement is the entire agreement among the parties hereto with respect to the transaction contemplated hereby and supersedes all other prior or contemporaneous agreements or understandings, whether written or oral, among the parties, or any of them, with respect to the subject matter hereof.

7. **Binding Affect**. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors, and assigns.

8. **Amendment**. This Agreement may be amended only by a written instrument duly executed by all parties or their respective heirs, personal representatives, successors or assigns.

9. **Assignment**. Neither this Agreement nor any of the rights hereunder shall be assigned by any of the parties hereto without the prior written consent of all other parties.

10. **Severability**. In the event that any paragraph, section, or subsection of this Agreement shall be declared to be illegal, unenforceable, or otherwise surplusage, then, nevertheless, all remaining provisions of this Agreement shall remain in full force and effect.

11. **Counterparts**. This Agreement may be executed in counterparts, each of which shall for all purposes be deemed an original, and all of such counterparts shall together constitute one and the same agreement.

12. **Headings**. The paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

13. **Survival of Representations and Warranties**. All representations, warranties, covenants, and agreements of the parties contained in this Agreement or in any other writing provided for by this Agreement and the indemnification provisions contained in this Agreement shall survive the closing and delivery of all documents hereunder.

14. **Governing Law**. This Agreement shall be interpreted construed and enforced in accordance with the laws of South Carolina. Any dispute arising between any of the parties hereto regarding the subject matter of this Agreement shall be subject to the exclusive jurisdiction of the federal and state courts within the State of South Carolina.

15. **Addition to Operating Agreement**. Upon execution of this Agreement, the Purchaser is agreeing to be bound by the terms of that certain Operating Agreement of the Company dated April 23, 2003, as amended, (the "Operating Agreement") and acknowledges that the Purchased Interest is subject to the terms and conditions of this Agreement.

16. **Amendment of Operating Agreement**. Upon execution of this Agreement, the Operating Agreement shall be amended in all respects to reflect the following as all of the members of the Company:

Balbir Minhas, M.D	50% of the Class A Units
Rajinder Parmar, M.D	50% of the Class A Units

The notice address for both members of the Company shall be 1 Wellness Boulevard, Suite 110, Irmo, SC 29063. The consideration for Rajinder Parmar's interest shall be the first amount of the Purchaser Distributions referenced in paragraph 2 of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

THE PURCHASER:

Rajinder Parmar, M.D.

THE COMPANY:

By: _____
Name: Balbir Minhas, M.D.
Its: Sole Member

~#4821-0579-3033 v.5~

STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (this "Agreement") is made to be effective the 30th day of June, 2011, by and between Rajinder Parmar, M.D., ("Purchaser") and Balbir S. Minhas, M.D. (the "Seller").

WHEREAS, Seller desires to sell, and Purchaser desires to purchase shares of capital stock of Midlands Gastroenterology PC (the "Corporation") in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing, and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

1. Sale and Purchase of Shares. Subject to and in accordance with the terms and conditions of this Agreement, Seller agrees to sell, and Purchaser agrees to purchase, 100 shares of the Corporation's common stock (the "Shares") for $50,000.

2. Closing. The closing of the sale and purchase of the Shares (the "Closing") shall be effective on June 30, 2011, or as soon as possible thereafter.

3. Deliveries at Closing.

(a) At Closing, Seller shall deliver to Purchaser a stock power evidencing the transfer of the Shares to Purchaser.

(b) At Closing, Purchaser shall deliver the purchase price to Seller.

4. Shareholders' Agreement. The Purchaser hereby agrees to become bound by all of the terms and conditions of that certain shareholders' agreement of even date herewith and attached hereto as **Exhibit A**.

5. Representations and Warranties of Seller. Seller represents and warrants to Purchaser as follows:

(a) Seller has full power and authority to execute and deliver this Agreement and to perform Seller's obligations hereunder. This Agreement, and each and every other agreement, document and instrument to be executed, delivered and performed by Seller in connection herewith constitute, or will, when executed and delivered, constitute the legal, valid and binding obligation of Seller, enforceable in accordance with their respective terms and conditions. Seller is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any person, any private entity, or any governmental agency, court or other public entity in respect of entering into this Agreement or performing Seller's obligations hereunder.

(b) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will: (i) violate or constitute a default under (or an event which, with notice or lapse of time or both, would constitute a default), or require notice or consent or permit the acceleration of obligations, under any mortgage, deed of trust, lease, contract, agreement, license or other instrument or document; or (ii) violate, conflict with, or require notice or consent under any law, regulation, rule, injunction, order, decree, ruling, judgment or other restriction of any governmental agency, court or other public entity to which Seller or the Shares are subject.

6. Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller that Purchaser has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms and conditions. Purchaser is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any person, any private entity, or any governmental agency, court or other public entity in respect of entering into this Agreement or performing its obligations hereunder.

7. Covenants of the Parties. Subject to the terms and conditions of this Agreement, the parties hereto shall use all reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper, or advisable under applicable laws to consummate and make effective, as soon as practical after the date of this Agreement, the transactions contemplated by this Agreement. Each party hereto shall cooperate with the other, and execute and deliver, or cause to be executed and delivered, all such additional instruments, including instruments of conveyance, assignment and transfer and take all such other actions as may reasonably be requested from time to time in order to effectuate the provisions and purposes of this Agreement or to ensure that each party hereto receives the full benefit of the transactions contemplated by this Agreement.

8. Miscellaneous. This Agreement (and the documents and instruments referred to herein) constitute the entire Agreement between the parties with respect to the matters herein addressed, and supersede and cancel all prior or contemporaneous agreements, representations, warranties, communications or understandings, whether oral or written. This Agreement may not be modified or amended except by a writing duly executed and delivered by the parties. No waiver of any provision of this Agreement shall be effective against a party unless in a writing duly executed and delivered by such party. No waiver of any particular provision of this Agreement shall constitute a waiver of any other provision hereof. No waiver of any provision of this Agreement in respect of a particular event or circumstance shall constitute a waiver of the same provision in respect of any other event or circumstance. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns. The invalidity or unenforceability of any provision of this Agreement shall not render invalid or unenforceable any other provision hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without giving effect to its choice of law provisions. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered to be effective the 30th day of June, 2011.

PURCHASER:

Rajinder Parmar, M.D.

SELLER:

Balbir S. Minhas, M.D.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Rajinder Parmar Plaintiff,	)	C/A NO. 2014-CP-40-6017
v.	)	**ANSWER AND COUNTER-CLAIMS OF DEFENDANTS**
Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, Defendants.	)	**(Jury Trial Requested)**

RICHLAND COUNTY
FILED
2014 OCT 24 PM 2 20
JEANNETTE McBRIDE
C.C.P. & G.S.

Defendants Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, ("Defendants"), by and through their undersigned counsel, not waiving, but expressly reserving their right to be heard on their Motion to Dismiss the Complaint, answering the Complaint and counterclaiming against the Plaintiff Rajinder Parmar, would show unto this Honorable Court as follows:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Each and every allegation of the Complaint, not expressly admitted herein, is denied and strict proof thereof is demanded.
2. Defendants admit the allegations in Paragraphs 1, 2, 3, and 4.
3. The allegations in paragraph 5 call for a legal conclusion; therefore, no response by Defendants is required. To the extent a response is required, Defendants deny the allegations in Paragraph 5.
4. Defendants admit the allegations in Paragraphs 6, 7, 8 and 9.

5. Defendants admit so much of Paragraph 10 as alleges that Plaintiff has attached his Exhibits A and B to his Complaint. Defendants deny the Midlands Endoscopy Center, LLC 2003 Operating Agreement and the Midlands Gastroenterology June 30, 2011, Shareholder Agreement currently mandate binding arbitration. Defendants would show neither of these agreements remained in force after May 30, 2014. Defendants would further show both of these exhibits were superseded and invalidated by the Stock Agreement Sale and the Agreement for Sale of Limited Liability Company Agreement, both dated May 30, 2014. Copies of these agreements are attached to this Answer as Exhibits 1 and 2. Defendants crave reference to paragraph 4 of the Stock Sale Agreement (Exhibit 1), which Defendants incorporate as if quoted verbatim herein.

6. Defendants admit so much of Paragraph 11 as alleges Attorney Edward White of the law firm of Nelson, Mullins, Riley & Scarborough, LLP represented Midlands Endoscopy Center, LLC and Midlands Gastroenterology, PC, but deny the remaining allegations of Paragraph 11.

7. Defendants admit so much of Paragraph 12 as alleges Plaintiff and Defendant Minhas disagreed about how much money one owed to the other, but deny the remaining allegations of Paragraph 12.

8. Defendants deny the allegations of Paragraph 13.

9. Defendants admit so much of Paragraph 14 as alleges there was an email exchange involving Attorney White; however, the remaining allegations of Paragraph 14 are denied. Further answering Paragraph 14, Defendants would show the parol evidence rule provisions of the Agreements attached hereto as Exhibits 1 and 2 preclude any other oral or written exchange between the parties having any legal force or effect.

10. For the reasons set forth in Paragraph 9 of this Answer, the allegations of Paragraphs 15, 16, 17, and 18 are denied.

11. Defendants admit so much of Paragraph 19 as alleges Defendants are currently represented by Joel Collins of the law firm of Collins & Lacy, PC. The remaining allegations of Paragraph 19 are denied. Further answering Paragraph 19, Defendants would show that pursuant to Rule 408 of the South Carolina Rules of Evidence, correspondence, email exchanges, and conversations between attorneys regarding settlement negotiations—including possible mediation–are prohibited from use as evidence in court.

12. For the reasons set forth in Paragraph 11 of this Answer, the allegations of Paragraphs 20, 21, 22, and 23 of the Complaint are denied. Further answering these paragraphs, Defendants would show Plaintiff's Exhibits C, D, E, F, G, and H are inadmissible and prohibited from use at the trial of this case pursuant to paragraph 4 of the Stock Sale Agreement (Exhibit 1).

13. The allegations of Paragraph 24 require no answer. To the extent an answer is required, the allegations of Paragraph 24 are denied.

14. Defendants admit so much of Paragraph 25 as alleges this action seeks declaratory judgment. The remaining allegations of Paragraph 25 are denied. Further answering Paragraph 25, Defendants would show that pursuant to the clear provisions of the documents attached as Exhibit 1 and 2 to this Answer, the relief sought by Plaintiff is prohibited.

15. Defendants admit so much of Paragraph 26 as alleges there is a justiciable controversy between the parties; however, the remaining allegations of Paragraph 26 are denied.

16. Defendants deny the allegations of Paragraphs 27, 28 and 29. Further answering these paragraphs, Defendants would show the contractual agreement between Plaintiff and Defendant Minhas—as expressly stated in the agreements signed on May 30, 2014–was that any dispute between them would be resolved in a court of law as guaranteed by the Seventh Amendment of the United States Constitution.

17. Defendants deny Plaintiff is entitled to the relief he seeks, which is articulated in the Wherefore clause.

FOR A SECOND DEFENSE
(Waiver)

18. Defendants would show that by executing the Agreements dated May 30, 2014, and attached hereto as Exhibits 1 and 2, Plaintiff has waived any right to seek a declaratory judgment and require Defendants to engage in a binding arbitration proceeding.

FOR A THIRD DEFENSE
(Estoppel)

19. Defendants would show that by executing the Agreements dated May 30, 2014, and attached to this Answer as Exhibits 1 and 2, Plaintiff is estopped to seek a declaratory judgment and require Defendants to engage in a binding arbitration proceeding.

FOR A FOURTH DEFENSE
(Accord and Satisfaction)

20. Defendants would shows that Plaintiff received from Defendants $337,058.04 on May 30, 2014, for all of his "right title and interest" in Midlands Endoscopy Center, LLC and an additional $56,174.34 from Defendant Minhas for all his shares of stock in Midlands Gastroenterology, PC. Therefore, Defendants plead accord and satisfaction as a complete defense to this lawsuit.

FOR A FIFTH DEFENSE
(Unclean Hands)

21. Defendants would show Plaintiff is precluded from receiving declaratory relief from this Court under the Doctrine of Unclean Hands, as recognized and applied by our courts in South Carolina. See, e.g., 12 S.C. Jur. Equity § 7.

FOR A FIRST COUNTERCLAIM
(Breach of Contract)

22. Defendants incorporate by reference the allegations asserted in the paragraphs above as if set forth verbatim.

23. Defendants would show that Plaintiff Parmar and Defendant Minhas were, up until May 30, 2014, equal partners in Midlands Gastroenterology, PC and were to be equally compensated.

24. Defendants would show that Plaintiff, without authorization or consent, practiced medicine outside of Midlands Gastroenterology, PC at the Veterans' Administration Hospital in Columbia, South Carolina.

25. Section 3.14 of the Shareholders' Agreement dated June 30, 2011, which was in force and effect at the time, required prior written consent of the president, Defendant Minhas, in order for Plaintiff to engage in medically related work outside of Midlands Gastroenterology, PC.

26. Plaintiff never received such consent. Thus, Plaintiff breached the explicit terms of the parties' Shareholders' Agreement.

27. Such outside work or "moonlighting" put the practice of Midlands Gastroenterology, PC at risk and caused it to suffer losses.

28. Defendants would show that Plaintiff breached the implied covenant of good faith and fair dealing, which is a part of every contract in South Carolina. The breaches of this covenant are those alleged in Defendants' Third Counterclaim for breach of fiduciary duty.

FOR A SECOND COUNTERCLAIM
(Conversion)

29. Defendants incorporate by reference the allegations asserted in the paragraphs above as if set forth verbatim.

30. By written agreement signed on May 30, 2014, Plaintiff conveyed all of his ownership and all of his rights in Midlands Gastroenterology, PC.

31. At the time, Midlands Gastroenterology, PC owned a Nissan Murano automobile.

32. This agreement, attached hereto as Exhibit 1, made no provision for Plaintiff to retain ownership or possession of the automobile after May 30, 2014 owned by Midlands Gastroenterology, PC.

33. Defendant Midlands Gastroenterology, PC would show that Plaintiff, has wrongly and tortiously refused to surrender this automobile owned by Midlands Gastroenterology, PC and has continued to possess this automobile for his own use.

34. Plaintiff's continued possession of this automobile has been without Defendant Midlands Gastroenterology, PC's permission. Moreover, Defendant Midlands Gastroenterology, PC's repeated demands for the return of this automobile have been ignored or refused.

35. The aforesaid acts and omissions by Plaintiff constitute conversion.

36. This wrongful conversion and related expenses have caused Midlands Gastroenterology, PC to suffer damages of $18,500.00, the approximate fair retail value of said automobile and the related expenses.

FOR A THIRD COUNTERCLAIM
(Breach of Fiduciary Duty)

37. Defendants incorporate by reference the allegations asserted in the paragraphs above as if set forth verbatim.

38. Plaintiff owed a fiduciary duty to Defendants.

39. Defendants would show Plaintiff violated the fiduciary duty he owed to Defendants Balbir S. Minhas and Midlands Gastroenterology, PC by engaging in erroneous and unallowable billing practices which have created exposure of liability and demands for refunds from Medicare, Medicaid and private healthcare insurance companies.

40. Plaintiff also violated his fiduciary duty and his ethical obligations by instructing surgical assistants at Midlands Endoscopy Center, LLC to dump human waste containers in the toilet so they could be reused.

41. Such dumping and reuse would be a violation of the law and a violation of DHEC regulations.

42. Plaintiff's breach of his fiduciary duty to Defendants Minhas and Midlands Gastroenterology has resulted in harm to these defendants. Defendants, therefore, are entitled to damages for the harm caused by Plaintiff's breach of his fiduciary duty to them.

FOR A FOURTH COUNTERCLAIM
(Equitable Indemnification by Midlands Gastroenterology, PC)

43. Defendants incorporate by reference the allegations asserted in the paragraphs above as if set forth verbatim.

44. Defendant Midlands Gastroenterology, PC would show that it has been required and will be required to make refund and restitution payments to Medicaid, Medicare and private healthcare insurance providers due to the erroneous and unallowable billing practices of Plaintiff. Midlands Gastroenterology, PC is entitled to be reimbursed by Plaintiff for these restitution payments under the common law doctrine of equitable indemnification.

FOR A FIFTH COUNTERCLAIM
(Tortious Interference with Prospective Contractual Rights)

45. Defendants incorporate by reference the allegations asserted in the paragraphs above as if set forth verbatim.

46. Defendant Midlands Endoscopy Center, LLC would show that in early 2014, it was in need of new equipment in order to provide state of the art care to its patients.

47. On March 19, 2013, Midlands Endoscopy Center, LLC received a proposed lease from Olympus America, Inc. whereby it could acquire eight (8) new endoscopy scopes for a total lease cost of $260,871.02 less a $55,000.00 trade in allowance for the existing equipment.

48. On March 17, 2014, Midlands Endoscopy Center, LLC received a proposed lease from Olympus America, Inc. for the same number of scopes for a lease cost of $255,914.25 less an $83,000 trade in allowance.

49. On June 27, 2014, after Plaintiff sold his interest in Midlands Endoscopy Center, LLC, Olympus America, Inc. presented a proposal for the same eight (8) scopes for a lease cost of $291,041.62 with no trade in allowance for the existing equipment.

50. The replacement of these scopes will now be much more expensive. The new equipment is needed because the existing equipment will no longer be serviced by Olympus America, Inc. after 2014.

51. The deadline for acceptance of the March 17, 2014 proposal from Olympus America, Inc. was March 31, 2014.

52. On or about March 19 and March 21, 2014, Plaintiff, acting through his attorney, sent emails to Defendant Minhas and Defendant Midlands Endoscopy Center, LLC, essentially threatening legal action if the new equipment was leased or purchased.

53. Plaintiff knew the need for the new equipment and the lease proposed from Olympus America, Inc. Plaintiff acted with the improper purpose of preventing the acquisition of the needed new equipment so there would be more money for him.

54. Plaintiff's attorney had no authority to interfere with the acceptance of the lease proposal of March 17, 2014.

55. Plaintiff represented to Defendant Minhas that he would not consent to the acceptance of the lease proposed and the replacement of the new and needed endoscopy equipment.

56. Defendant Midlands Endoscopy Center, LLC would show Plaintiff, through his counsel, intentionally interfered with its potential contractual relations regarding its needed upgrade of equipment.

57. Defendant Midlands Endoscopy Center, LLC would show also that Plaintiff and Plaintiff's attorney's actions resulted in substantial damage and loss to it. Defendant Midlands Endoscopy Center, LLC therefore asserts it is entitled to recover those damages proximately related to Plaintiff's wrongful and tortious interference with its prospective contractual rights.

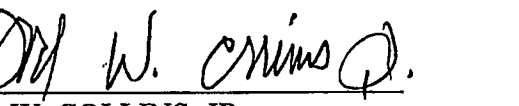
WHEREFORE, having fully answered and having counterclaimed against the Plaintiff, Defendants pray for the following relief:

1. For the dismissal of Plaintiff's Complaint;

2. For judgment on behalf of Defendants on their counterclaims; and

3. For such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,
COLLINS & LACY, P.C.

By: 

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ATTORNEYS FOR BALBIR S. MINHAS, M.D., MIDLANDS GASTROENTEROLOGY, PC, AND MIDLANDS ENDOSCOPY CENTER, LLC

These Defendants Request a Trial by Jury

Columbia, South Carolina
October 24, 2014

STOCK SALE AGREEMENT

THIS STOCK SALE AGREEMENT (this "Agreement") is made and entered into effective as of May 30, 2014 (the "Effective Date") by and between BALBIR S. MINHAS, M.D. (the "Purchaser") and RAJINDER PARMAR, M.D. (the "Seller") with regard to MIDLANDS GASTROENTEROLOGY, PC, a South Carolina professional corporation (the "Corporation").

WITNESSETH

WHEREAS, Seller currently owns One Hundred (100) shares of common stock in the Corporation (the "Shares");

WHEREAS, pursuant to Section 3.8(ii) of that certain Shareholders' Agreement dated and deemed executed June 30, 2011 (the "Shareholders' Agreement") by and among Seller, Purchaser, and Corporation, Purchaser has elected to purchase all Shares; and

WHEREAS, the parties now desire to enter into this Agreement to memorialize the sale and transfer of the Shares as provided in the Shareholders' Agreement.

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Sale of Shares. In accordance with Section 3.8 of the Shareholders' Agreement, Seller hereby sells, assigns, transfers and delivers all Shares to Purchaser, and Purchaser hereby purchases all Shares from Seller, in exchange for Fifty-six Thousand, One Hundred Seventy-six, and 34/100 Dollars ($56,176.34) (the "Purchase Price"). Upon execution of this Agreement, Seller shall deliver a stock power representing all Shares in and to the Corporation being duly transferred to Purchaser (the "Stock Power").

2. Seller's Representations and Warranties. In accordance with Section 4.6.3 of the Shareholders' Agreement, Seller hereby represents and warrants to Purchaser, as of the Effective Date and the date hereof, as applicable, as follows:

a. Seller owns, beneficially and of record, the Shares. Shares are free and clear of all liens, security interests, pledges, judgments or other encumbrances of any kind.

b. Seller has all necessary capacity, power and authority to enter into this Agreement and to perform his obligations hereunder.

c. Seller has not entered into on behalf of the Corporation, any agreement, commitment or understanding binding upon the Corporation except for transactions in the normal course of business, in amounts, quantities and nature which are normal and reasonable in relation to the normal and reasonable requirements of the Corporation's business as have been previously conducted and which have been fully recorded on the books and records of the Corporation or fully disclosed to the shareholders of the Corporation.

d. Seller has not incurred any debt or other charges for which the Corporation may be liable except for normal and reasonable charges in connection with the business of the Corporation and Seller has surrendered to the Corporation all credit cards issued to, on behalf of, and/or for the benefit of the Corporation in Seller's possession.

EXHIBIT 1

3. Other Actions. Seller and Purchaser agree that they will at any time and from time to time do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, assignments, transfers, conveyances and assurances as may be reasonably required by the other party in order to carry out fully and to effectuate the transactions herein contemplated in accordance with the provisions of this Agreement.

4. Entire Agreement. This Agreement is the entire agreement among the parties hereto with respect to the transaction contemplated hereby and supersedes all other prior or contemporaneous agreements or understandings, whether written or oral, among the parties, or any of them, with respect to the subject matter hereof.

5. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, and assigns.

6. Assignment. Neither this Agreement nor any of the rights hereunder shall be assigned by any of the parties hereto without the prior written consent of all other parties.

7. Severability. In the event that any paragraph, section, or subsection of this Agreement shall be declared to be illegal, unenforceable, or otherwise surplusage, then, nevertheless, all remaining provisions of this Agreement shall remain in full force and effect.

8. Counterparts. This Agreement may be executed in counterparts, each of which shall for all purposes be deemed an original, and all of such counterparts shall together constitute one and the same agreement. Such executions may be transmitted by facsimile, and such facsimile execution shall have the full force and effective of an original signature.

9. Survival of Representations and Warranties. All representations, warranties, covenants, and agreements of the parties contained in this Agreement or in any instrument certificate, or other writing provided for by this Agreement shall survive the Effective Date.

10. Governing Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of South Carolina. Any dispute arising between any of the parties hereto regarding the subject matter of this Agreement shall be subject to the exclusive jurisdiction of the federal and state courts within the State of South Carolina.

IN WITNESS WHEREOF the parties have executed this Agreement effective as of the Effective Date.

SELLER:

Rajinder Parmar, M.D.

PURCHASER:

Balbir S. Minhas, M.D.

IRREVOCABLE STOCK POWER

FOR VALUE RECEIVED, the undersigned, RAJINDER PARMAR, M.D. ("Assignor"), has fully and irrevocably granted, assigned and transferred and hereby does fully and irrevocably grant, assign and transfer to BALBIR S. MINHAS, M.D. ("Assignee") One Hundred (100) shares of the common stock of MIDLANDS GASTROENTEROLOGY, PC, a South Carolina professional corporation (the "Corporation") represented by Certificate No. 3 and standing in Assignor's name on the Corporation's books.

Assignor hereby irrevocably appoints any present or future officer of the Corporation to be Assignor's true and lawful attorney-in-fact, with full power of substitution, and empowers such officer, for and in the name and stead of Assignor, to transfer such shares on the books of the Corporation in and to Assignee. Assignor acknowledges that this appointment is coupled with an interest and shall not be revocable by Assignor for any reason.

IN WITNESS WHEREOF, the undersigned has executed and sealed this Irrevocable Stock Power effective as of the 30th day of May, 2014.

WITNESS:

Name: Eric S. Bland

Rajinder Parmar, M.D.

AGREEMENT FOR SALE
OF
LIMITED LIABILITY COMPANY INTEREST

THIS AGREEMENT FOR SALE OF LIMITED LIABILITY COMPANY INTEREST (this "Agreement") is made and entered into effective as of May 30, 2014 (the "Effective Date") by and between RAJINDER PARMAR, M.D. (the "Seller") and BALBIR S. MINHAS, M.D. (the "Purchaser") with regard to MIDLANDS ENDOSCOPY CENTER, LLC, a South Carolina limited liability company (the "Company").

WITNESSETH

WHEREAS, Seller currently owns fifty percent (50%) of the Class A Units in the Company (the "Interest");

WHEREAS, pursuant to Section 3.8(ii) of that certain Shareholders' Agreement dated and deemed executed June 30, 2011 (the "Shareholders' Agreement") by and among Seller, Purchaser, and Midlands Gastroenterology PC, Purchaser has elected to purchase all of the membership interest of Seller; and

WHEREAS, the parties now desire to enter into this Agreement to memorialize the transfer of the Interest in accordance with the requirements of the Shareholders' Agreement.

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Purchase and Sale of the Interest. In accordance with Section 3.8 of the Shareholders' Agreement, Seller hereby sells to Purchaser and Purchaser hereby purchases from Seller all of Seller's right, title, and interest of any nature whatsoever in the Interest in exchange for Purchaser's payment of Three Hundred Thirty-seven Thousand Fifty-eight and 4/100 Dollars ($337,058.04) (the "Purchase Price"). Upon execution of this Agreement, Seller shall deliver an assignment representing the Interest in and to the Company being duly endorsed and transferred unto Purchaser (the "Assignment").

2. Seller's Representations and Warranties. In accordance with Section 4.6.3 of the Shareholders' Agreement, Seller hereby represents and warrants to Purchaser, as of the Effective Date, the following:

a. Seller owns, beneficially and of record, the Interest. The Interest is free and clear of all liens, security interests, pledges, judgments or other encumbrances of any kind.

b. Seller has all necessary capacity, power, and authority to enter into this Agreement and to perform his obligations hereunder.

c. Seller has not entered into on behalf of the Company, any agreement, commitment or understanding binding upon the Company except for transactions in the normal

EXHIBIT
2

course of business, in amounts, quantities and nature which are normal and reasonable in relation to the normal and reasonable requirements of the Company's businesses as have been previously conducted and which have been fully recorded on the books and records of the Company or fully disclosed to the members of the Company.

d. Seller has not incurred any debt or other charges for which the Company may be liable except for normal and reasonable charges in connection with the business of the Company and Seller has surrendered to the Company all credit cards issued to, on behalf of, and/or for the benefit of the Company in Seller's possession.

3. Other Actions. Seller and Purchaser agree that they will at any time and from time to time do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, assignments, transfers, conveyances and assurances as may be reasonably required by the other party in order to carry out fully and to effectuate the transactions herein contemplated in accordance with the provisions of this Agreement.

4. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors, and assigns.

5. Assignment. Neither this Agreement nor any of the rights hereunder shall be assigned by any of the parties hereto without the prior written consent of all other parties.

6. Severability. In the event that any paragraph, section, or subsection of this Agreement shall be declared to be illegal, unenforceable, or otherwise surplusage, then, nevertheless, all remaining provisions of this Agreement shall remain in full force and effect.

7. Survival of Representations and Warranties. All representations, warranties, covenants, and agreements of the parties contained in this Agreement or in any instrument, certificate, or other writing provided for by this Agreement shall survive the Effective Date.

8. Governing Law. This Agreement shall be interpreted construed and enforced in accordance with the laws of South Carolina. Any dispute arising between any of the parties hereto regarding the subject matter of this Agreement shall be subject to the exclusive jurisdiction of the federal and state courts within the State of South Carolina.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

Seller:

Rajinder Parmar, M.D.

Purchaser:

Balbir S. Minhas, M.D.

ASSIGNMENT OF LIMITED LIABILITY COMPANY INTEREST

THIS ASSIGNMENT OF LIMITED LIABILITY COMPANY INTEREST (this "Assignment") is made effective as of May 30th, 2014 (the "Effective Date"), by RAJINDER PARMAR, M.D. ("Assignor") to BALBIR S. MINHAS, M.D. (the "Assignee") with regard to MIDLANDS ENDOSCOPY CENTER, LLC, a South Carolina limited liability company (the "Company").

RECITALS:

WHEREAS, Assignor owns fifty percent (50%) of the Class A Units in the Company (the "Interest"); and

WHEREAS, Assignor desires to memorialize Assignor's assignment to Assignee of all of his right, title and interest in the Interest as of the Effective Date.

NOW, THEREFORE, Assignor hereby grants, transfers, and assigns to the Assignee, his heirs and assigns, all of Assignor's right, title, and interest of any nature whatsoever in the Interest free and clear of all liens, encumbrances, and security interests, and subject to no liabilities.

This Assignment is made pursuant to that certain Agreement for Sale of Limited Liability Company Interest dated of even date herewith by and between Assignor and Assignee.

Assignor warrants and covenants (i) that he is the full and lawful owner of the Interest hereby transferred, (ii) that he has complete legal authority to make this conveyance, and (iii) that the Interest hereby transferred has not been otherwise transferred, pledged, or hypothecated to any other person or entity whatsoever.

This Assignment shall inure to the benefit of the heirs and assigns of Assignee and shall bind Assignor's legal representatives, heirs, successors and assigns.

IN WITNESS WHEREOF, Assignor has duly executed this Assignment to be effective as of the Effective Date.

Rajinder Parmar, M.D.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	Civil Action No: 2014-CP-40-_____
Rajinder Parmar,	)	
	)	
Plaintiff,	)	
	)	**NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION**
v.	)	
	)	
Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC,	)	
	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2014 SEP 30 PM 12:42
JEANNETTE W. McBRIDE
C.C.P. & G.S.

TO: ALL DEFENDANTS

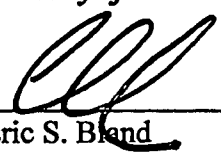
YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through the undersigned counsel, will move before the Presiding Judge of the Richland County Court of Common Pleas, Fifth Judicial Circuit, ten (10) days after notice hereof or as soon thereafter as is convenient to the Court for an order compelling arbitration pursuant to the terms of the Agreements. This motion will be further supported by such memorandum, facts, argument, and authority as may be offered at the time of the hearing in this matter.

WHEREFORE, Plaintiff respectfully requests that this Court compel Defendants into arbitration as is required by the unambiguous four corners of the Agreements and as agreed to by the parties' attorneys. Also that Plaintiff's attorney's fees and cost be immediately reimbursed by Defendants for their frivolous refusal to arbitrate.

PLEASE BE PRESENT IF SO MINDED!

Respectfully submitted,

BLAND RICHTER, LLP
Attorneys for Plaintiff



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September 30, 2014

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Rajinder Parmar Plaintiff,	)	C/A NO. 2013-CP-40-01288
v.	)	**DEFENDANTS' MOTION TO DISMISS**
Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, Defendants.	)	

RICHLAND COUNTY
FILED
2014 OCT 24 PM 2:20
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Pursuant to Rule 12 of the South Carolina Rules of Civil Procedure, Defendants Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, ("Defendants") move this Honorable Court for an Order dismissing the Complaint of Plaintiff Rajinder Parmar. Defendants respectfully maintain this Court lacks the jurisdiction and authority to award the relief sought by Plaintiff, which is to compel the parties to engage in binding arbitration before the American Health Lawyers Association.

FACTS/PROCEDURAL BACKGROUND

Plaintiff and Defendant Minhas, both physicians, were joint owners of two medical practices, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC. This relationship ended on May 31, 2014. Ancillary disputes pertaining to the termination of this relationship remain.

On September 16, 2014, Plaintiff filed a "Demand for Arbitration" with the American Health Lawyers Association. Defendants do not consent to arbitration. Plaintiff thereafter commenced a declaratory judgment action in this Court, seeking an order to compel arbitration. Defendants have timely answered and counterclaimed. Additionally, Defendants seek dismissal of Plaintiff's action to compel arbitration.

LAW/ANALYSIS

Defendants maintain they are under no compulsion to arbitrate their dispute(s) with Plaintiff and are instead entitled to a jury trial as guaranteed by the Seventh Amendment to the United States Constitution. Defendants therefore maintain Plaintiff's declaratory judgment action should be dismissed. This motion is based upon the following grounds, which are based on undisputable facts and evinced within the various agreements executed by the parties:

1. The American Health Lawyers Association has nothing to do with the parties, their dispute, or the instant lawsuit.
2. There is no binding contractual provision requiring arbitration of any dispute among these parties. Defendant Minhas is presently the sole member of Defendant Midlands Endoscopy Center, LLC. Defendant Minhas is also the sole shareholder of Defendant Midlands Gastroenterology, PC.
3. Plaintiff and Defendant Minhas decided to practice medicine together in June 2011. They executed an Agreement for Sale of Limited Liability Company Interest dated June 30, 2011, wherein Plaintiff acquired an ownership interest in Defendant Midlands Endoscopy Center, LLC. This Agreement contains no arbitration clause. To the contrary it provides in Paragraph 14:

> This Agreement shall be interpreted, construed and enforced in accordance with the laws of South Carolina. **Any dispute** arising between any of the parties hereto regarding the subject matter of this Agreement **shall be subject to the exclusive jurisdiction of the federal and state courts within the State of South Carolina**.

(Emphasis added)

4. Also on June 30, 2011, Plaintiff and Defendant Minhas executed a Shareholders Agreement wherein Plaintiff became a shareholder of Defendant Midlands Gastroenterology. While Paragraph 8.11 of this Shareholders Agreement includes an arbitration clause, that provision is no longer applicable because, as of May 30, 2014, Plaintiff sold his entire interest in Defendant Midlands Gastroenterology and is therefore no longer a shareholder. The documents Plaintiff executed on May 30, 2014, in the presence of his lawyer, and with the advice of his lawyer, specifically invalidated this June 30, 2011, agreement.

5. After practicing medicine together for nearly three years, Plaintiff decided to sell his ownership interest in Defendant Midlands Endoscopy Center, LLC and Defendant Midlands Gastroenterology.

6. In connection with this sale, Plaintiff and Defendant Minhas executed an "Agreement for Sale of Limited Liability Company Interest" (regarding Defendant Midlands Endoscopy Center, LLC) on May 30, 2014. A copy of this Agreement for Sale is attached hereto as Exhibit 1.

This agreement contains no arbitration clause. To the contrary, the agreement provides in Paragraph 8:

> This Agreement shall be interpreted, construed and enforced in accordance with the laws of South Carolina. **Any dispute** arising between any of the parties hereto regarding the subject matter of this Agreement **shall be subject to the exclusive jurisdiction of the federal and state courts within the State of South Carolina**.

See Exhibit 1. (Emphasis added).

7. On May 30, 2014, Plaintiff and Defendant Minhas executed a "Stock Sale Agreement," (regarding Defendant Midlands Gastroenterology, PC), which contains no arbitration clause. To the contrary, the agreement states in Paragraph 10:

> This Agreement shall be interpreted construed and enforced in accordance with the laws of South Carolina. **Any dispute** arising between any of the parties hereto regarding the subject matter of this Agreement **shall be subject to the exclusive jurisdiction of the federal and state courts within the State of South Carolina**.
>
> (Emphasis added).

See Exhibit 2.

Most importantly, Paragraph 4 of the Stock Sale Agreement states:

> This Agreement is the entire agreement among the parties hereto with respect to the transaction contemplated hereby and **supersedes all other prior or contemporaneous agreement or understandings, whether written or oral, among the parties, or any of them, with respect to the subject matter hereof**.

Id. (Emphasis added).

This provision of the most recent agreement between Plaintiff and Defendant Minhas clearly invalidated the Shareholders Agreement of June 30, 2011, containing the arbitration clause.

8. In his declaratory judgment complaint, which contains his demand for arbitration, Plaintiff references the Operating Agreement of Midlands Endoscopy Center, LLC, dated April 23, 2003, which contains an arbitration clause. Contrary to Plaintiff's contentions, this agreement is not operative because Paragraph 4 of the May 30, 2014, Stock Sale Agreement supersedes and invalidated "all prior agreements."

In South Carolina, a written agreement to submit any existing controversy to arbitration, or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties, is valid, enforceable and irrevocable, except upon such grounds as exist for the revocation of any contract. 2 S.C. Jur. Arbitration § 7 (citing S.C. Code Ann. § 15-48-10(a)). Notice that a contract is subject to arbitration under the South Carolina Uniform Arbitration Act[1] must be typed in underlined capital letters, or prominently rubber stamped, on the first page of the contract. Id. Without such notice, a contract is not subject to arbitration. Id. Where there has been no agreement to arbitrate, a party cannot be forced into compulsory arbitration. Id. (citing Hilton Head Resort Four Seasons Ctr. Horizontal Property Regime Council of Co-Owners v. Resort Inv. Corp., 311 S.C. 394, 429 S.E.2d 459 (Ct. App. 1993)).

The Declaratory Judgments Act provides that "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20. "Any person ... whose rights, status, or other legal relations are affected by a ... contract ... may have determined any question of construction or validity arising under the ... contract ... and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. § 15-53-30; see also Rule 57, SCRCP.

In the case at bar, contrary to Plaintiff's asseverations, there is not and never was an arbitration agreement, which gave rise to such a right between Plaintiff and Defendant Midlands Endoscopy Center, LLC. Further, the earlier Shareholders' Agreement of June 30, 2011, relating to Defendant Midlands Gastroenterology, which did contain an arbitration clause, has been clearly and unequivocally invalidated and replaced by the agreements executed on May 30,

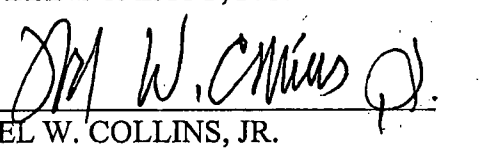
[1] See S.C. Code Ann. §§ 15-48-10 to -240.

2014. These later agreements contain no arbitration clause, and in fact specifically designate the federal or state courts of South Carolina to resolve any dispute. There is no subsequent written agreement between Plaintiff and Defendant Minhas, individually, containing any provision requiring arbitration. Thus, absent an active valid agreement to arbitrate, Defendants cannot be forced into compulsory arbitration in this matter.

The American Health Lawyers Association has neither consent nor authority to accept this case. For these reasons, Plaintiff's complaint for declaratory judgment, which specifically seeks arbitration by the American Health Lawyers Association, should be dismissed.

Respectfully submitted,

COLLINS & LACY, P.C.

By: 

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ATTORNEYS FOR BALBIR S. MINHAS, M.D., MIDLANDS GASTROENTEROLOGY, PC, AND MIDLANDS ENDOSCOPY CENTER, LLC

DEFENDANTS' MOTION TO DISMISS

Columbia, South Carolina
October 24, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Rajinder Parmar,	)	Civil Action No.: 2014-CP-40-6017
Plaintiff,	)	
vs.	)	**DEFENDANTS' MOTION FOR TEMPORARY INJUNCTION OR, IN THE ALTERNATIVE, FOR A STAY OF ARBITRATION UNDER S.C. CODE § 15-48-20(b)**
Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC ,	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2014 NOV 18 PM 12:10
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, Defendants Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC ("Defendants"), move this Honorable Court for an Order temporarily enjoining Plaintiff Rajinder Parmar from proceeding with arbitration of the parties' dispute pending the outcome of this declaratory judgment action. In the alternative, Defendants request the arbitration proceeding be stayed pursuant to S.C. Code § 15-48-20(b).

FACTS/PROCEDURAL BACKGROUND

The instant dispute arises out of the termination of the business relationship between Plaintiff Parmar and Defendant Minhas. Parmar and Minhas, both physicians, were joint owners of two medical practices, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC. This relationship ended on May 30, 2014, when Parmar sold his interests in the two companies to Minhas. An ancillary dispute arose pertaining to the termination of this relationship.

Minhas and three other physicians entered into a written operating agreement for Midlands Endoscopy dated April 23, 2003. Compl., ex. A. Parmar was not a member of

Midlands Endoscopy at that time or a signatory of the operating agreement. This operating agreement contains an arbitration clause, stating in part:

> In the event of any controversy or claim arising out of or relating to this Agreement, or the breach, termination, or validity thereof, the parties will attempt in good faith to resolve such controversy or claim. If the matter has not been resolved within sixty (60) days of the commencement of such discussions (which period may be extended by mutual agreement), the controversy shall be settled by binding arbitration which shall be conducted by a single arbitrator in accordance with the American Health Lawyers Association Alternative Dispute Resolution Rules for Arbitration ("AHLA Rules").

Id.

Parmar and Minhas decided to practice medicine together in June 2011, and Parmar became a member of Midlands Endoscopy and shareholder of Midlands Gastroenterology. The Shareholders Agreement for Midlands Gastroenterology dated June 30, 2011, to which Parmar is a signatory, contains a similar arbitration clause to the operating agreement for Midlands Endoscopy, stating that "[a]ny controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, which shall be conducted in Columbia, South Carolina, in accordance with the NHLA Alternative Dispute Resolution Service Rules of Procedure for Arbitration . . . ."[1] Compl., ex. B.

At the time their professional relationship ended in May 2014, Parham and Minhas were the only two members of Midlands Endoscopy and shareholders of Midlands Gastroenterology. Parmar sold his stock in Midlands Gastroenterology to Minhas through a Stock Sale Agreement dated May 30, 2014, which provides that this "Agreement is the entire agreement among the parties hereto with respect to the transaction contemplated hereby and supersedes all other prior or contemporaneous agreements or understandings, whether written or oral, among the parties, or

[1] It is not clear what "NHLA" means and whether the parties meant "AHLA" rules.

any of them, with respect to the subject matter hereof." Answer, ex. 1. The May 30, 2014 Stock Sale Agreement also contains the following clause regarding governing law and disputes:

> Governing Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of South Carolina. Any dispute arising between any of the parties hereto regarding the subject matter of this Agreement shall be subject to the exclusive jurisdiction of the federal and state court within the State of South Carolina.

Id.

In addition, Parmar sold his membership interest in Midlands Endoscopy through an Agreement for Sale of Limited Liability Company Interest dated May 30, 2014, which contains a similar clause to the Stock Sale Agreement regarding governing law and disputes:

> Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of South Carolina. Any dispute arising between any of the parties hereto regarding the subject matter of this Agreement shall be subject to the exclusive jurisdiction of the federal and state courts within the State of South Carolina.

Answer, ex. 2.

There is no arbitration clause in either of the agreements signed by the parties on May 30, 2014. Rather, there are identical explicit provisions calling for any dispute to be resolved in a court of law.

Along with the Agreement for Sale of Limited Liability Company Interest, Parmar executed an Assignment of Limited Liability Company Interest dated May 30, 2014, which provides that Parmar "grants, transfers, and assigns to [Minhas] . . . all of [Parmar]'s right, title, and interest of any nature whatsoever" in his fifty percent interest in Midlands Endoscopy. Id.

The dispute which arose after May 30, 2014, involves the accounts receivable, funds on deposit in bank accounts, Parmar's retirement account, and a dispute over the ownership of a Nissan Murano automobile which belongs to Midlands Gastroenterology. Parmar alleges in the

complaint that the parties agreed to resolve these disputes through "mediation or arbitration." Compl. ¶ 13.

Clearly, there is no such written agreement. Rather the agreement calls for any dispute to be resolved in a court of law. In addition, the Stock Sale Agreement states it "is the entire agreement among the parties hereto with respect to the transaction contemplated hereby and **supersedes all other prior or contemporaneous agreements or understandings, whether written or oral, among the parties, or any of them, with respect to the subject matter hereof.**" Answer, ex. 1 (emphasis added).

Parmar also alleges that Minhas' current attorney indicated in a July 15, 2014, letter a preference to arbitrate rather than mediate. This allegation mischaracterizes the July 15, 2014 letter, as it states, "**While my client has made no firm and final decision**, we are **interested** in exploring with you the possibility of having an arbitration proceeding rather than a mediation." Compl., ex. E (emphasis added).

In a letter dated August 26, 2014, Minhas' current counsel, who had just recently been retained in the case, cancelled a mediation scheduled for September 29, 2014, so that he could complete an investigation into the matter. Compl., ex. F. Parmar filed a demand for arbitration with the AHLA on or about September 16, 2014. Compl., ex. G. Minhas declined to accept service of the arbitration demand. Compl., ex. H.

Parmar filed this action on September 30, 2014, seeking a declaratory judgment that there is a binding arbitration agreement between the parties. Parmar moved to compel arbitration on the same date. Defendants have answered, counterclaimed, and moved to dismiss.

LEGAL STANDARD

Rule 65(a), SCRCP provides that "[n]o temporary injunction shall be issued without notice to the adverse party." "A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010). There is no separate requirement that the trial court "balance the equities," as such balancing is "neither necessary nor appropriate in a preliminary injunction case" and "is subsumed by the irreparable harm and inadequate remedy at law components of the three-part test." Id.

LAW/ANALYSIS

A. Irreparable Harm

When the existence of an agreement to arbitrate is challenged, "'the issue must be settled by a court before the arbitrator may proceed.'" MBNA Am. Bank, N.A. v. Christianson, 377 S.C. 210, 215, 659 S.E.2d 209, 212 (Ct. App. 2008) (quoting MBNA Am. Bank, N.A. v. Credit, 132 P.3d 898, 900 (Kan. 2006) ("Under both federal and state law, Credit's objection to the arbitrator meant the responsibility fell to MBNA to litigate the issue of the agreement's existence. Neither MBNA, as the party asserting existence of an arbitration agreement, nor the arbitrator was simply free to go forward with the arbitration as though Credit had not challenged the existence of an agreement to do so.")). Parmar has chosen to proceed with arbitration despite the fact Defendants have challenged the arbitrability of their dispute and the fact he has not yet obtained a ruling from this Court that there is a binding arbitration agreement between the parties. If the arbitration moves forward while this Court considers this issue, the parties will

expend valuable and significant resources in proceeding with the arbitration before there is even a ruling on the threshold question of arbitrability. Defendants will suffer irreparable harm in the form of wasting valuable resources and incurring significant legal expenses arbitrating in one forum while another forum considers the issue of whether they are required to arbitrate if this Court ultimately rules in Defendants' favor in the declaratory judgment action before it.

B. Likelihood of Success on the Merits

Defendants have demonstrated a likelihood of success on the merits of the issue of whether there is a binding arbitration agreement. "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009). Arbitration is "a matter of consent, not coercion," Volt Info. Sciences, Inc. v. Bd. of Trustees of the Leland Stanford Junior Univ., 489 U.S. 468, 479 (1989), as it deprives a party of his right to a jury trial under the Seventh Amendment of the United States Constitution and article 1, section 14, of the South Carolina Constitution.

In connection with selling his interest in Midlands Endoscopy, Parmar executed an Assignment of Limited Liability Company Interest dated May 30, 2014, which provides that Parmar "grants, transfers, and assigns to [Minhas] . . . all of [Parmar]'s right, title, and interest of any nature whatsoever" in his fifty percent interest in Midlands Endoscopy. Answer, ex. 2. "A valid assignment transfers to the assignee exclusive ownership of all of the assignor's rights to the subject assigned and extinguishes all of those rights in the assignor." Mall v. LaBow, 635 A.2d 871, 873 (Conn. App. Ct. 1993). Parmar assigned all of his right, title, and interest in Midlands Endoscopy to Minhas. Consequently, this assignment included any right Parmar had

to enforce the arbitration clause in the 2003 operating agreement, and there is thus no binding agreement to arbitrate disputes related to this company.

Likewise, the Agreement for Sale of Limited Liability Company Interest dated May 30, 2014, provides that Parmar sold to Minhas all of Parmar's "right, title, and interest of any nature whatsoever" in Midlands Endoscopy. Answer, ex. 2. This Agreement also states that "[a]ny dispute arising between any of the parties hereto regarding the subject matter of this Agreement shall be subject to the exclusive jurisdiction of the federal and state court within the State of South Carolina." Id. This Agreement does not meet the requirements of S.C. Code § 15-48-10(a) to constitute a contract subject to arbitration. See S.C. Code § 15-48-10(a) ("Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration."). There is no such notice in the May 30, 2014 Agreements. The Agreement of May 30, 2014, supersedes any prior agreements that contained an arbitration clause.

With respect to Midlands Gastroenterology, the May 30, 2014 Stock Sale Agreement states that it "is the entire agreement among the parties hereto with respect to the transaction contemplated hereby and supersedes all other prior or contemporaneous agreements or understandings, whether written or oral, among the parties, or any of them, with respect to the subject matter hereof." Answer, ex. 1. This language renders irrelevant any argument by Parmar that the July 15, 2014 letter from Minhas' counsel somehow created some agreement to arbitrate. The Stock Sale Agreement also states that "[a]ny dispute arising between any of the parties hereto regarding the subject matter of this Agreement shall be subject to the exclusive jurisdiction of the federal and state court within the State of South Carolina." Id. As a result, the

Stock Sale Agreement, which contains no arbitration clause and does not comply with the requirements of S.C. Code § 15-48-10(a) for contracts subject to arbitration, constitutes the entire agreement between the parties and supersedes any earlier agreements containing arbitration clauses. Therefore, Defendants are not bound to arbitrate disputes related to Midlands Gastroenterology and may properly litigate such disputes in a judicial forum in South Carolina.

C. No Adequate Remedy at Law

If Defendants are forced to proceed with the arbitration while at the same time litigating the issue of the existence of a binding arbitration agreement and this Court rules in their favor on this issue, Defendants will be without an adequate remedy at law to compensate them for the resources they waste in the arbitration proceeding.[2]

STAY OF ARBITRATION PROCEEDING UNDER S.C. CODE § 15-48-20(b)

Parmar has moved to compel arbitration, presumably under S.C. Code § 15-48-20(a). Pursuant to S.C. Code § 15-48-20(b), "[o]n application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party."

---

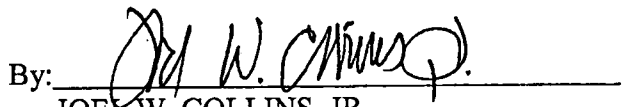
[2] In Strategic Resources Company v. BCS Life Insurance Company, the South Carolina Supreme Court held that the ability to appeal the results of an arbitration constituted an adequate remedy at law in that case. 367 S.C. 540, 545, 627 S.E.2d 687, 689 (2006). However, the facts of Strategic Resources are different than this case. In Strategic Resources, a party who disagreed with an arbitrator's ruling on a particular issue initiated an action in state court and sought an injunction against the arbitrator. In this case, the issue of whether there is a binding arbitration agreement is not subject to arbitration. See Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 83, 123 S. Ct. 588, 591, 154 L. Ed. 2d 491 (2002) ("The question whether the parties have submitted a particular dispute to arbitration, *i.e.*, the 'question of arbitrability, is 'an issue for judicial determination [u]nless the parties clearly and unmistakably provide otherwise.'"(quoting AT & T Technologies, Inc. v. Communications Workers, 475 U.S. 643, 649 (1986))); MBNA Am. Bank, N.A. v. Christianson, 377 S.C. 210, 212, 659 S.E.2d 209, 210 (Ct. App. 2008) ("Unless the parties otherwise provide, the question of the arbitrability of a claim is an issue for judicial determination.").

If this Court is not inclined to grant a temporary injunction, Defendants, in the alternative, request that this Court find, for the reasons set forth in this motion, that there is no agreement to arbitrate and stay the arbitration proceeding.

CONCLUSION

For the reasons set forth herein, Defendants request this Honorable Court temporarily enjoin Parmar from proceeding with arbitration pending a ruling on whether there is a binding agreement to arbitrate or, in the alternative, that the arbitration proceeding be stayed under S.C. Code § 15-48-20(b).

Respectfully Submitted,
COLLINS & LACY, P.C.

By: 

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ATTORNEYS FOR DEFENDANTS BALBIR S. MINHAS, MIDLANDS GASTROENTEROLOGY PC, AND MIDLANDS ENDOSCOPY CENTER, LLC

DEFENDANTS' MOTION FOR TEMPORARY INJUNCTION OR, IN THE ALTERNATIVE, FOR A STAY OF ARBITRATION UNDER S.C. CODE § 15-48-20(b)

Columbia, South Carolina
November 17, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO.: 2014-CP-40-6017
Rajinder Parmar,	)	
	)	
Plaintiff,	)	**PLAINTIFF'S REPLY TO DEFENDANTS' MOTION TO DISMISS**
	)	
vs.	)	
	)	
Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC,	)	
	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2014 DEC -3 PM 2:18
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Defendants' (Dr. Minhas) October 24th motion to dismiss Plaintiff's (Dr. Parmar) declaratory judgment action demanding arbitration is at best a disingenuous game of bait and switch being played on the Court.

In his filing Dr. Minhas attempts to convert the unambiguous May 30, 2014, "Agreement for Sale of Limited Liability Company Interest" (Agreement) into a shield against the quick justice of arbitration. He attempts this sleight of hand by contorting the parameters of this **limited** Agreement. In the Agreement it states that "the parties now desire to enter into this Agreement to memorialize the transfer of the Interest..." Interest is a capitalized defined term and means Dr. Parmar's 50% ownership of the Company's Class A units. In other words, this Agreement **ONLY** concerns Dr. Parmar's sale of his "Interest" in Midlands Endoscopy Center, LLC (MEC) to Dr. Minhas. This is an undisputed matter of fact as evidenced by the four corners of the Agreement.

Pursuant to paragraph 8 of the Agreement only matters "regarding the **subject matter of this Agreement**" are subject to state court jurisdiction. (Emphasis supplied.) Dr. Parmar's demand for arbitration has nothing to do with his Interest in the ownership of MEC's Class A units but instead has everything to do with ancillary matters related to MEC. **Dr. Parmar does**

not want his MEC membership interest back. Dr. Parmar wants nothing to do with Dr. Minhas.

Dr. Parmar wants the ancillary matters concerning MEC resolved, and Dr. Parmar's rights and remedies for the ancillary matters fall under MEC's Operating Agreement. MEC's Operating Agreement contains a mandatory arbitration clause. This is a fact.

Dr. Parmar fully believes that if he would have initially sued in South Carolina Circuit Court Dr. Minhas would have filed for arbitration as per MEC's Operating Agreement's mandatory arbitration clause. Dr. Parmar believes this fact because **AFTER** Dr. Minhas "tendered the full amount required" by the Agreement, MEC's general corporate counsel sent an email stating as much.

On May 30, 2014, at 3:36 PM, MEC's general corporate counsel, Edward White, Esquire, practicing with the venerated law firm of Nelson, Mullins, Reilly & Scarborough, LLP (NMRS), emailed Dr. Parmar's counsel stating, "[t]he Companies are not willing to amend any of the present agreements and will have the **issues** mediated/**arbitrated** with the documents as the parties signed them." (Emphasis supplied and please see the May 30, 2014, email attached as **Exhibit A** and incorporated by reference.)

With regards to MEC in this sentence, the "agreement(s)" is the Agreement and the "document(s)" are the Operating Agreement.[1] This is the *only* interpretation because *only* the Operating Agreement contains an arbitration clause. Once again, this statement by MEC's general corporate counsel occurred after the money was tendered and as such this written admission was not merged in the Agreement. Furthermore, even NMRS recognizes that this

[1] The terms "agreements" and "documents" are plural in this email because, as will be explain later in greater detail, this admission is also binding on the other entity involved in this matter, Midlands Gastroenterology, PC. NOTE: For copies of the two contracts containing the *mandatory arbitration clauses* discussed herein, please refer to the Exhibits A and B attached to Plaintiff's declaratory judgment complaint.

admission could not have merged in the Agreement because the Agreement on its face only applies to the Interest and **NOT** the other outstanding "issues."

It is also critical to note that this pivotal May 30, 2014, email was written by corporate counsel AFTER Dr. Parmar specifically rejected a more detailed transfer agreement in which Dr. Minhas attempted to release all of Dr. Parmar's claims. Dr. Parmar rejected the *proposed global release* which is why corporate counsel wrote in the May 30th email **"All other issues are issues are still open between the parties."** (Emphasis supplied.) Once again, this is an admission by the corporate counsel that the Agreement he drafted specifically does not do what Dr. Minhas is now claiming it does. This is an admission that the Agreement is NOT a global release and therefore does not release all of Dr. Parmar's "open" issues and was intended for Dr. Parmar and his counsel to rely to their detriment in proceeding with the closing that day.

Corporate counsel went further and in the same May 30th email wrote, "Cory Manning, in our firm, will take the lead on the mediation and, if necessary, **the arbitration** of these issues with me assisting as necessary." (Emphasis supplied.) Attorney White's statements are a corporate admission that Dr. Parmar's issues are still "open", and if the issues are open, they must be resolved in "arbitration". Further, such statements are an admission that the Agreement is NOT a global release dissolving Dr. Parmar's right to arbitration.

The law is clear that MEC's general corporate counsel can bind MEC. The Courts have held that lawyers can make admissions in nearly any circumstance, including letters. *Hanson v. Waller*, 888 F.2d 806 (11th Cir. 1989). Furthermore, pursuant to the South Carolina Rules of Evidence, lawyers can make admissions on behalf of their clients under an agency theory per Rules 801(d)(2)(C) and (D). Rule 801(d)(2)(C) and (D) state as follows:

> (d) Statements Which Are Not hearsay. A statement is not hearsay if --
>
> (2) Admission by Party-Opponent. The statement is offered against a party and is ...

> (C) a statement by a **person authorized** by the party to make a statement concerning the subject, or
>
> (D) a statement by the **party's agent** or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship ... (Emphasis supplied.)

"It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority." *See Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 SC 306, 257 S.E.2nd 496 (1979). As such, notice to or knowledge of an attorney may be imputed to his client. *See also Dorman v. Campbell*, 331 S.C. 179, 185-186, 500 S.E.2d 786 (Ct. App. 1998).

In accordance with Exhibit A, there is no doubt that MEC's attorney was acting within his scope of authority when he made the statement concerning arbitration and the issues remaining open. Also, there is no doubt that MEC's attorney was the agent for the company and was acting in his scope of employment as the company's legal counsel. Therefore, corporate counsel's written "arbitration" admission is imputed onto Dr. Minhas. If Dr. Minhas has an issue with Edward White's "arbitration" admission, he is free to pursue a legal malpractice claim against NMRS. However, Dr. Minhas cannot retract that admission.

South Carolina's ethics laws are equally clear that attorneys have the duty of candor and fair dealing to opposing counsel. (For example, please see Rule 3.4: Fairness to Opposing Party and Counsel and Rule 4.1 Truthfulness in Statements to Others.) Attorney White sent the May 30, 2014 email to Dr. Parmar's attorney and has been woefully silent during this dispute.

Also, South Carolina case law and ethical rules are crystal clear when it comes to general corporate counsel's ethical duties and responsibilities to all of the members of a limited liability company. (For example, please see Rule 1.13 Organization as Client.) Attorney White's testimony concerning this Agreement and his subsequent May 30th email should be enlightening one way or another for all involved. Unfortunately, Dr. Minhas' current counsel has ignored this

legally binding arbitration admission and in so doing so has filed this frivolous motion. Dr. Minhas should be held accountable for his fast and loose filing and his failure to honor MEC's general corporate counsel's guarantees and admissions.

The May 30, 2014, "Stock Sale Agreement" for the other entity involved in this matter, Midlands Gastroenterology, PC's (MG), is just as definitive as the Agreement. Paragraph four of the Stock Sales Agreement states that, "[t]his Agreement is the entire agreement among the parties hereto with respect to the **transaction contemplated herby** and supersedes all other prior or contemporaneous agreement or understandings, whether written or oral, among the parties, with respect to the **subject matter hereof.**" (Emphasis supplied.) The "transaction contemplated" herein is seen in the very title of the contract which is a "stock sale." Without question, the sole subject matter of this contract concerns the sale of Dr. Parmar's stock to Dr. Minhas.

Once again, pursuant to Exhibit A, after the money for this stock sale was tendered by Dr. Minhas, MG's general corporate counsel agreed that all other "issues" would be arbitrated pursuant to the "documents." MG's controlling document is a June 30, 2011, Shareholders Agreement which also contains a mandatory arbitration clause. As with the Agreement, Dr. Parmar's demand for arbitration only deals with the other MG issues and not his stock sale to Dr. Minhas. **Dr. Parmar does not want his MG stock back.** Dr. Parmar wants nothing to do with Dr. Minhas. Dr. Parmar only wants the other "issues" heard in arbitration so he can get Dr. Minhas out of his life as quickly as possible.

Dr. Parmar believes that both the Agreement and Stock Sale Agreement's language is unambiguous. His interpretation is diametrically opposed to Dr. Minhas' interpretation of the same exact language. In addition, Dr. Minhas erroneously believes that his interpretation of the same language is equally unambiguous. If after the Court reviews both contracts and is unable to

determine which position is correct, then a review of parole evidence connected to the contracts is the next step. Fortunately for the Court, there is but one simple key piece of parole evidence to resolve the matter, and it is attached as Exhibit A. Once again, Exhibit A is both entities' General Corporate Counsel's unmitigated admission that all "issues" would be "arbitrated." Those are the exact written words of Attorney Edward White of NMRS and as such are binding on Dr. Minhas, MEC, and MG.

The time has come for an end to these games. It is time for Dr. Parmar to have his case heard by an arbitrator. Right or wrong on the other "issues", Dr. Parmar is 100% right on the issue that this matter belongs in arbitration.

CONCLUSION

For the reasons stated herein Dr. Parmar respectfully requests that the Court deny Dr. Minhas' motion to dismiss and order Dr. Minhas into immediate arbitration with the American Health Lawyers Association.

Respectfully submitted,

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Columbia, South Carolina

December 3, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC,	)	C/A No. 2014-CP-40-06017
Applicants.	)	**AMENDED APPLICATION TO VACATE, OR IN THE ALTERNATIVE, MODIFY OR CORRECT ARBITRATION AWARD AND MEMORANDUM IN SUPPORT**
v.	)	
Rajinder Parmar,	)	
Respondent.	)	

RICHLAND FILED 2016 AUG 16 AM 10: 2 CLERK OF COURT C.C.P. & G.S.

TO: THE PRESIDING CIRCUIT JUDGE OF THE FIFTH JUDICIAL CIRCUIT:

Pursuant to, inter alia, S.C. Code Ann. §§ 15-48-130 and -140, Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC ("Applicants") respectfully apply to this Honorable Court for an order vacating an arbitration award to Rajinder Parmar ("Respondent"), or in the alternative, an order modifying or correcting the same. An order of this Court compelled arbitration of the parties' dispute to be conducted according to the AHLA Rules of Procedure, as specified in the Midlands Gastroenterology, P.C. contractual agreement signed by both parties on June 30, 2011.

Applicants bottom and premise their motion upon the following grounds:

(1) This matter is not ripe disposition of as, inter alia, Applicants' petition seeking the removal of the current arbitrator, James P. Kelly, from the instant matter pursuant to AHLA Rule 4.5(c) and replacing an arbitrator to conduct a de novo arbitration (AHLA Rule 4.6), and request for Review Board (AHLA Rule 4.4) remains pending with AHLA.

(2) The Arbitrator's Order # 7 (issued May 17, 2016) does not qualify as a Final Award per AHLA Rule 7.10. ("A final award fully and finally resolves **all** claims and counter claims presented in arbitration. An award may be entered and enforced in any state or federal court with jurisdiction over a case."). See Exhibit 1. (emphasis added). The Arbitrator's Order # 7 does not meet the above definition because of the following reasons:

(a) The Arbitrator did not address the matter of costs in accordance with the Operating Agreement of Midlands Gastroenterology, P.C. in Order #7. Order #7 is silent concerning the matter despite unambiguous language in Midlands Gastroenterology Operating agreement concerning costs of arbitration. The parties were compelled to brief that issue post-order (contrary to AHLA Rule 7.10). The Arbitrator continued to adjudicate the costs portion of the claim post since the issuance of Order #7. The matter of costs has still not been decided despite briefing on that issue was submitted June 10, 2016. Further, Applicants note AHLA Rules do not permit post-final award motion for costs

(b) The Arbitrator did not dispose of automobile counterclaim until June 3, which was after issuing the initial award on May 17, 2016 (Order # 7).

(3) Vacation of the arbitration award is also warranted due to procedural irregularities and errors with regard to several AHLA Rules; specifically, Rules 4.3, 7.1; 7.5, 7.6, 7.9 and 7.10 (See Exhibit 2).

(a) The Arbitrator's disposition of the matter with finality was delayed without explanation and without the grant of extension. Per AHLA Rule 7.1, the award

was arguably to be made on or about January 21, 2016 ("30 days after the hearing is closed unless the Arbitrator and all parties agree to extend this deadline."). The parties were neither asked nor did they consent to an extension in the proceedings (AHLA Rule 9.6).

(b) AHLA Rule 4.3(a) states: "An Arbitrator should issue a final award within 8 months after being appointed." Applying the initial conference date of August 20, 2015, the 8 month timeframe contemplated by Rule 4.3 expired on or about April 20, 2016. Hence, the Arbitrator's delay automatically divested him of jurisdiction in the case at bar. The May 17, 2016, initial award of the Arbitrator, along with his subsequent rulings and awards are void as a matter of law.

(4) Notwithstanding Applicants' jurisdictional arguments, the Arbitrator exceeded his power and authority. The Arbitrator's initial award, which is found within Order #7 (dated May 17, 2016), is not in accordance with AHLA Rules 7.2 (Basis) and 7.5 (Scope of Relief). These rules require an award/relief to be based on evidence presented at hearing and authorized by contract or applicable law. The relief granted by the Arbitrator in his award, Order #7 is not authorized by the contract the parties signed and/or applicable law as per AHLA Rule 7.5 "Scope of Relief." The exchange between the parties and the Arbitrator, as well as the Arbitrator's Order No. 8 ("Mr. Bland has brought to my attention a clause which may represent an agreement between the parties on allocation of costs of the arbitration. If it is such an agreement, then AHLA rules require that the agreement be followed") appears to make clear that provisions concerning cost (as well

as many other provisions of Midlands Gastroenterology and Midlands Endoscopy Center) had not been reviewed by the Arbitrator during consideration regarding disposition of this and other issues.

(5) Alternatively, the Arbitrator's decision was procured by undue and unreasoned means. Respondent's trial counsel misrepresented provisions of Midlands Gastroenterology, P.C. agreement, assembled and comingled Midlands Gastroenterology, P.C. and Midlands Gastroenterology Center, LLC bank accounts and accounts receivable), and referenced various cases including a prior MLG, LLC dispute during the December 8-9, 2015, arbitration hearing as a basis for an inappropriate argument that Dr. Minhas is a litigious person who is unable to get along with his partners. Dr. Minhas took exception to the reference to this case and this argument due to the fact, inter alia, the settlement was to have been confidential.

(6) As a further alternative, there was an evident miscalculation of figures by the Arbitrator when arriving at his award to Respondent.

STANDARD OF REVIEW

Sections 15-48-130 and 15-48-140 provide the exclusive procedures for vacating or modifying arbitration awards where arbitrators exceed their powers or award upon a matter not properly submitted to them.

Specifically, § 15-48-130, which pertains to the vacation of arbitration awards, states:

(a) Upon application of a party, the court shall vacate an award where:

(1) **The award was procured by corruption, fraud or other undue means;**

(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the Arbitrators or misconduct prejudicing the rights of any party;

(3) **The Arbitrators exceeded their powers**;

(4) The Arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 15-48-50, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 15-48-20 and the party did not participate in the arbitration hearing without raising the objection;

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in item (5) of subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with § 15-48-30, or, if the award is vacated on grounds set forth in items (3) and (4) of subsection (a) the court may order a rehearing before the Arbitrators who made the award or their successors appointed in accordance with § 15-48-30. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

(emphasis added).

Section 15-48-140 governs the modification of arbitration awards and provides:

(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) **There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award**;

(2) The Arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

(emphasis added).

FACTS/PROCEDURAL BACKGROUND

The instant dispute arises out of the termination of the business relationship between Applicants and Respondent. Respondent and Dr. Minhas, both physicians, were joint owners of two medical practices, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC. This relationship ended on May 30, 2014, when Respondent sold his interests in the two entities to Dr. Minhas. An ancillary dispute arose pertaining to the termination of this relationship.

The dispute, which arose after May 30, 2014, involved, in pertinent part, the division the accounts receivable and division of funds on deposit in bank accounts. Stated succinctly, Respondent averred he was entitled to 50% of the accounts receivable as well as 50% of the

deposit in bank accounts in addition to the sums Respondent realized from Respondent's sale of his interests in the two entities. As per Midlands Gastroenterology, P.C. Operating Agreement Section 3.8(ii), Applicants maintain Respondent was not entitled to these funds because Respondent departed before the end of 3 years with the entities. Applicants maintain Respondent was not entitled to these funds (in addition to the sums Respondent realized from Respondent's sale of his interests in the two entities).

Respondent filed an action in this Court on September 30, 2014, seeking a declaratory judgment that there was a binding arbitration agreement between the parties. Respondent moved to compel arbitration on the same date. Applicants answered, counterclaimed, and moved to dismiss. On September 16, 2014, Respondent filed a "Demand for Arbitration" with the American Health Lawyers Association. Applicants Balbir. S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC alleged numerous counterclaims in response to the same.

Pursuant to Rule 65, SCRCP, Applicants moved for an order temporarily enjoining Respondent from proceeding with arbitration of the parties' dispute pending the outcome of this declaratory judgment action. In the alternative, Applicants requested the arbitration proceeding be stayed pursuant to § 15-48-20(b).

Following a hearing on the matter, the presiding circuit judge denied Applicants' pursuit of injunctive relief, or in the alternative, stay of the arbitration proceedings.

With the matters in the Circuit Court decided upon, the dispute moved towards arbitration. The parties conferenced the case with the appointment arbitrator, James P. Kelly, of

Atlanta via telephone on August 20, 2015. That same day, the Arbitrator issued an order, which created a schedule in the case that included a hearing date of December 8, 2015.

Testimony and argument was presented during December 8 and 9, 2015. Upon completion of final arguments on December 9, the matter was submitted for disposition. Companion with the matter's submission for disposition was the Arbitrator's inquiry regarding whether the parties desired a reasoned or summary decision. Desirous of resolution as soon as possible and believing that a summary decision would result in the same, Applicants selected that mode with regard to disposition.

By order dated May 17, 2016—five months after the close of the proceedings at the hearing–Arbitrator James P. Kelly awarded certain relief to Respondent and denied counterclaims pursued by Applicants. See Exhibit 1.

At the arbitration hearing, Applicants averred Respondent was owed nothing else monetarily. Respondent had been paid for his shares and interest in Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC. Furthermore, Applicants maintained Respondent had substantially damaged them monetarily, which Applicants sought to recover. Notwithstanding Applicants' presentation and arguments, the Arbitrator made the following determinations concerning disposition:

[Respondent] is awarded:

1.	½ of operating accounts	$179,104.98
2.	½ of trailing accounts receivable:	$78,463.50
3.	2013 MG variance:	$53,000.00
4.	2014 MG variance:	$29,000.00

[Respondent] is denied:

1.	MEC Account Receivable Differential (posted vs. actual Collection):	$7,225.50
2.	2012 & 2013 VA weekend:	$8,900.00
3.	Profit Sharing:	$7,100.00
4.	Prejudgment interest	
5.	The Nissan automobile; and	

[Applicants'] counterclaims are denied.

Pursuant to Rule 7.9 of the AHLA Rules of Procedure for Arbitration, Applicants sought an order from the Arbitrator correcting various errors—particularly computational errors–extant in the instant award. This motion, however, was denied.

This application to vacate, or in the alternative, to modify or correct follows.

SUMMARY OF ARGUMENT

Applicants maintain there are multiple bases for vacation of the subject arbitration award. Specifically, Applicants state:

- This matter is not ripe as disposition of , inter alia, Applicants' petition seeking the removal of the current arbitrator, James P. Kelly, from the instant matter pursuant to AHLA Rule 4.5(c), replacing an arbitrator to conduct de novo arbitration (AHLA Rule 4.6), and request for Review Board (AHLA Rule 4.4) remains pending with AHLA.
- The Arbitrator's Order # 7 does not qualify as a Final Award as per AHLA Rule 7.10. ("A final award fully and finally resolves **all** claims and counter claims presented in arbitration. An award may be entered and enforced in any state or federal court with jurisdiction over a case.") (emphasis added).
- Vacation of the arbitration award is warranted due to procedural irregularities and error. The Arbitrator's disposition of the matter with finality was delayed without explanation and without the grant of extension by Applicants. The Arbitrator's delay without any explanation and without any extension granted by the parties automatically divested him of jurisdiction in the case at bar. The May 17, 2016, initial award of the Arbitrator, along with his subsequent rulings and awards are void as a matter of law; and regarding the scope of relief, the May 17, 2016, award does not draw its essence from the Midlands

Gastroenterology, P.C agreement parties signed and is therefore impermissible per AHLA Rule 7.5.

- Regarding the award for accounts receivable and operating accounts, error exists because § 8.1(A) of Midlands Endoscopy Center operating agreement strictly (e.g., "shall not be distributed") prohibits distribution to its shareholders without having reserves for 4 months of operating expenses (required $260,000.00).[1] The distribution to Respondent of 1/2 of the operating accounts in sum of $179,104 does not account for or leave the required balance in the Midlands Endoscopy Center operating account. Respondent received $37,058.04 + $6,176.00 (as interest) plus the principal amount ($300,000 + $50,000) for his shares/interest in Midlands Endoscopy Center and Midlands Gastroenterology as a result of the parties' May 30, 2014, transaction. If 50% of operating accounts ($179,104.98) is ultimately awarded to Respondent, this award is not only duplicative for the interest amount, but § 3.8 (ii) of Midlands Gastroenterology agreement does not entitle Respondent 50% of operating accounts and /or accounts receivables.
- Midlands Endoscopy Center and Midlands Gastroenterology have entirely different compensation formulas; however, the Arbitrator completely ignored that fact and inappropriately combined accounts receivables and bank accounts of these two independent entities

[1] See Exhibit 3.

- The award of $78,463.50, which was half of the trailing accounts receivables amount, is incorrect. This award does not subtract half of the accounts payables, including but not limited to accounting fees for financial analysis which was mandated by Respondent, and calculation of productivity variance, legal fees, and other expenses.
- Concerning Midlands Gastroenterology, there is error as the formula used for calculation in § 3.15 of the Midlands Gastroenterology shareholder agreement brings to the total amount of $12,124.00 (vs. the $82,000.00 actually awarded).
- The sums awarded in §§ 3 and 4 of the Arbitrator's May 17, 2016, order are already included in the operating accounts ($179,104.98) and trailing accounts receivables ($78,463.50).
- In the May 17, 2016, arbitration order, it was determined: "Respondent is denied ... the Nissan automobile." The Arbitrator failed to recognize that automobile was not claimed by Respondent. Respondent had abandoned any claim to the automobile prior to the arbitration and reiterated this abandonment at the beginning of the arbitration hearing. Nevertheless, Arbitrator "denied" the automobile to Respondent in Order #7, but did not ascertain or effectuate its disposition till June 3, 2016. Respondent kept the subject vehicle in his possession for 2 years since his departure from the entities, though he had no legal right to keep it. The vehicle is titled to

Midlands Gastroenterology. Midlands Gastroenterology sustained a loss of use of the vehicle since May 30, 2014. Moreover, Midlands Gastroenterology paid the property taxes and insurance on the car in the interim. The Arbitrator's May 17, 2016, award contained no disposition as it pertains to the automobile. Furthermore, Respondent drove this automobile for about 6000 miles after May 30, 2014, while Midlands Gastroenterology paid for insurance and taxes the order was without any award as it pertains to value, loss of use, taxes, insurance, etc,, which are owed to Midlands Gastroenterology. Applicants maintain this omission was inadvertent typographical error and/or computational error and should be corrected.

- The Arbitrator failed to fulfill two primary objectives of efficiency and cost effectiveness of ADR by conducting arbitration proceedings in a sub optimal manner by undue delay and continued adjudication of lingering issues after declaring his award in Order #7 on May 17, 2016.

LAW/ANALYSIS

I. Vacation of the Arbitration Award is Warranted Due to Procedural Irregularity/Impropriety

On September 30, 2014, Respondent filed a declaratory judgment action, seeking an order requiring the parties to arbitrate their dispute. On the same day, Respondent also filed a motion to compel arbitration. Applicants responded by filing an answer with counterclaims and a motion to dismiss the action on October 24, 2014, averring the Court lacked the jurisdiction

and authority to award the relief sought by Respondent, which was to compel the parties to engage in arbitration before the American Health Lawyers Association. On November 17, 2014, Applicants supplemented their existing pleadings with a motion for temporary injunction or, in the alternative, for a stay of arbitration under S.C. Code Ann. § 15-48-20(b).[2]

The parties argued their respective motions to the Circuit Court on January 5, 2015. Following argument, the Court took the matter under advisement. Thereafter, the Court issued an order granting Respondent's motion to compel arbitration and denied Applicants' motions for temporary injunction, or in the alternative, for a stay and to dismiss the complaint. On July 22, 2015, the Circuit Court issued an order denying Applicants' motion for reconsideration of its previous order. Accordingly, although over Applicants' objections, the instant dispute (including Applicants' counterclaims) was set for disposition via arbitration.

With the matters in the Circuit Court decided upon, the dispute moved towards arbitration. The parties conferenced the case with the appointment arbitrator, James P. Kelly, of Atlanta via telephone on August 20, 2015. That same day, the Arbitrator issued an order, which created a schedule in the case that included a hearing date of December 8, 2015. The scheduling

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[2] S.C. Code Ann. § 15-48-20(b) states:

> On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

in the case was never altered or amended and the arbitration hearing in this matter did in fact commence on December 8, 2015.

Testimony and argument was presented during December 8 and 9, 2015. Upon completion of final arguments on December 9, the matter was submitted for disposition. Companion with the matter's submission for disposition was the Arbitrator's inquiry regarding whether the parties desired a reasoned or summary decision. Desirous of resolution as soon as possible and believing that a summary decision would result in the same, Applicants selected that mode with regard to disposition.

Weeks and months passed, but without any decision. Applicants were disappointed with the delay. On March 7, 2016, the Arbitrator emailed the parties that a decision was forthcoming within 7 days. Upon information and belief, March 7, 2016, was still inside the 8 month window. However, an order disposing of the arbitration did not in fact come.

Finally, on May 17, 2016, the Arbitrator issued Order #7 as disposition of the parties' dispute. However, despite it being called the "Final Order," the order was incomplete inasmuch as several of the matters forwarded for disposition remained unresolved.

Subsequent to the issuance of Order #7, Respondent inquired by email to the Arbitrator concerning the matter of costs. See Exhibit 4. In response, the Arbitrator related that absent any agreement to the contrary, all parties were to bear their own costs, referencing (though not specifically citing) Rule 7.6(b) of the AHLA Rules of Procedure.[3] See Exhibit 5.

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[3] Rule 7.6(b) of the AHLA Rules of Procedure states:

On May 18, 2016, Respondent's counsel emailed the Arbitrator again and asserted section 8.11 of the Midlands Gastroenterology Shareholders Agreement—which was in evidence in the record from the hearing and presumably reviewed by the Arbitrator prior to the issuance of Order #7–contemplated the award of costs to the prevailing party. Respondent maintained the disposition in Order #7 made him the prevailing party; accordingly, Respondent was aggrieved Order #7 did not award him costs in addition to the other awards. Stated specifically, Respondent's counsel averred:

> Arbitrator Kelly. Pursuant to your email of last evening regarding attorney's fees and costs requested by the Petitioner, please see section 8.11 of the June 30, 2011 signed Midlands Gastroenterology Shareholders Agreement. I have highlighted the relevant portion. While it is arguable that attorney's fees are sometimes not considered "costs", it is clear that my client is entitled to recover all of its "costs" from the arbitration. These include but are not limited to filing fees, arbitration fees, court reporter costs, etc. and others. This is not discretionary on the panel's part. It is mandatory. The language that "all costs shall be borne by the party against whose interest the arbitration is adversely determined" could not be more clear. It is not debatable that my client was the prevailing party and that the Respondents were not. You awarded my client over 90% of the entire monetary relief he requested in his demand for arbitration. The Respondents' counterclaims were denied in their entirety. Please let us know whether you want us to submit an affidavit itemizing the costs and provide the invoices and payments for the. Thank you. Eric Bland

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> (b) STANDARD ALLOCATION: Except as is set forth in subsection (c) below, if the parties have not specified how fees and expenses should be allocated, an arbitrator will:
>
> (1) require the parties to pay their own attorney's fees and the expenses of the witnesses they produce; and
>
> (2) split the costs of the arbitration process, including the arbitrator's fees and expenses, evenly between the parties.

> Section 8.11 Disputes. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, which shall be conducted in Columbia, South Carolina, in accordance with the NHLA Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the arbitration, shall be binding not only on all parties to the Agreement, but on any other entity controlled by, in control of or under common control with the party to the extent that such affiliate joins in the arbitration. Judgment upon the award rendered by the Arbitrators may be enforced in any court having jurisdiction thereof and all costs shall be borne by the party against whose interest the arbitration is adversely determined.

See Exhibit 6.[4]

In response, the Arbitrator issued Order #8 on May 18, 2016, after advising the parties "Mr. Bland has brought to my attention a clause which may represent an agreement between the parties on allocation of costs of the arbitration. If it is such an agreement, then AHLA rules require that the agreement be followed." See Exhibit 7. To that end, "[t]o flesh out this matter," the Arbitrator ordered:

> 1. Respondents to respond, by midnight, Thursday, May 26, 2016, in writing to Petitioner's positions on (a) application of the MG Shareholders Agreement to allocation of costs, (b) whether in this case costs include attorney fees, and (c) determination of the prevailing party when the Award split as did Order No. 7. Petitioner will have seven calendar days after receipt of Respondents response to reply to that response;
>
> 2. Petitioner to submit, by midnight, Thursday, May 26, 2016, an affidavit itemizing the costs with attached invoices and evidence of Petitioner's payments for the costs of the arbitration.

[4] While not expressly characterized as such, Applicants maintain Respondent sought correction of Order #7 pursuant to Rule 7.9 due to the matter of the award of costs being absent from the original disposition.

See id.

The parties prepared responses concerning the matter of costs in accordance with the directive of Order #8. Since Order #8 continued adjudication of the matter (as it related to costs), the Arbitrator by his own action, while ignoring AHLA Rules, made any "finality" found within of Order #7 null and void. The matter of costs remains pending without any disposition. Thus, there has not any "final" order issued in this case, which finally disposes of all of the purported issues and relief sought by the parties in the original action.

Due to the fact that there had not been any final order issued in this case, on June 27, 2016, Applicants filed a written objection to any award ultimately issued (along with previous companion rulings) in the instant case as null and void inasmuch as the disposition of this matter is untimely. Applying Rules 4.3(a)[5] and 7.1[6] (and 7.9)[7] of the AHLA Rules of Procedure, Applicants asserted the Arbitrator was divested of jurisdiction.

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[5] Rule 4.3(a) of the AHLA Rules of Procedure states:

> 4.3 Case Management
>
> (a) DEFAULT TIMELINE. Except as provided below [in subsections (b) and (c), which are not applicable in the instant case], an arbitrator should issue a final award within eight (8) months after being appointed. Arbitrators should schedule pre-hearing proceedings and hearings accordingly.

[6] Rule 7.1 of the AHLA Rules of Procedure states:

> 7.1 Deadline
>
> An arbitrator **must** issue an award within 30 days after the hearing is closed unless the arbitrator and all parties agree to extend the deadline.

(emphasis added).

More than 8 months have elapsed since the arbitration was convened. The initial award (Order #7) was issued following the elapse of 8 months. See Rule 4.3(a) of the AHLA Rules of Procedure. There was/has been no extension sought by the Arbitrator. [8] See Rule 9.6 of the AHLA Rules of Procedure.[9]

The hearing was closed in the instant case on December 8, 2015. The initial award was issued on May 17, 2016. A final order, disposing of all issues forwarded for disposition in the case at bar has still not been issued.

[7] Rule 7.9 of the AHLA Rules of Procedure states:

> 7.9 Corrections
>
> Within 15 days after receiving an award, a party may request the arbitrator to correct clerical, typographical, or computational errors in the award. The other parties will have 15 days to respond to this request. The arbitrator must respond within 30 days after receiving the request. An arbitrator may not reconsider the merits of an award after it has been issued. He or she may alter the award only after it has been issued. He or she may alter the award only to correct inadvertent mistakes.

[8] While Respondent may have unilaterally initiated the arbitration in November 2014, the proceedings did not commence at that time because there was not bilateral approbation. Applicants objected to the arbitration. This objection was litigated in the Circuit Court via a declaratory judgment action initiated by Respondent. In the interim, any arbitration of the matter had not commenced, or in the alternative, was in abeyance. It was not until after disposition of the objection by the circuit judge did the arbitration begin in earnest in August 2015. It was at that time a schedule for disposition was created. It was at that time the 8 month clock began to run.

[9] Rule 9.6 of the AHLA Rules of Procedure states:

> 9.6 Extension of Appointment
>
> After an arbitrator rules on a petition, the parties may agree to extend the arbitrator's appointment for the duration of the case. If the parties do not agree on

As a matter of axiomatic law, jurisdiction can be raised at any point of the proceedings. Therefore, Applicants assert there is and was no waiver when they objected to jurisdiction and averred the Arbitrator had been divested of the same due to his delay after having exceeded timelines and scope prescribed by the AHLA Rules.)

Applicants maintain the expiration of the 8 months operated as an automatic terminus by default of the proceedings. Thus, Applicants assert jurisdiction in this matter was automatically divested upon the 8 month mark. See Rules 4.3(a) and 7.1 (and 7.9) of the AHLA Rules of Procedure.[10]

II. Regarding the Merits Arbitrator Exceeded His Power and Authority with His Awards to Respondent. Alternatively, the Arbitrator's Decision Was Procured by Undue and Unreasoned Means. As a Further Alternative, There Was an Evident Miscalculation of Figures by the Arbitrator When Arriving at His Award to Respondent.

As noted above, in his May 17, 2015, order, the Arbitrator made the following determinations concerning disposition:

(A) [Respondent] is awarded:

5.	½ of operating accounts	$179,104.98
6.	½ of trailing accounts receivable:	$78,463.50
7.	2013 MG variance:	$53,000.00

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an extension, or the arbitrator declines to accept it, the Administrator will appoint an arbitrator in accordance with Rule 3.2.

[10] In a return filed by Respondent subsequent to Applicants' objection based on jurisdiction, Respondent averred Applicants' made a "mockery" of the AHLA. To the contrary, Applicants have reviewed the rules governing the arbitration process, reviewed the various contemplated timelines articulated therein, and sought to assert what they believe are their rights concerning timely and complete disposition and the parameters of the arbitrator's jurisdiction.

8.	2014 MG variance:	$29,000.00

(B) [Respondent] is denied:

6.	MEC Account Receivable Differential (posted vs. actual Collection):	$7,225.50
7.	2012 & 2013 VA weekend:	$8,900.00
8.	Profit Sharing:	$7,100.00
9.	Prejudgment interest	
10.	The Nissan automobile; and	

(C) [Applicants'] counterclaims are denied.

As argued below, notwithstanding Applicants' jurisdictional arguments, the Arbitrator exceeded his power and authority with his award to Respondent. Alternatively, the Arbitrator's decision was procured by undue and unreasoned means. As a further alternative, there was an evident miscalculation of figures by the Arbitrator when arriving at his award to Respondent.

Section 3.8 of the Shareholder Agreement states, in pertinent part, what Respondent would be entitled to monetarily with regard to any and all interests he possessed in the entities in the event of his exit:

> Founding Shareholder Protection Provisions. As the founding shareholder of the Company, the following provisions shall apply to Balbir S. Minhas for so long as he remains a Shareholder of the Company:
>
> ii. **From the period beginning one (1) year from the Effective Date and ending [three] (3) years from the Effective Date, in the event of a dispute that cannot be resolved by the Shareholders after good faith efforts, Balbir S. Minhas shall be entitled to elect in writing to purchase all of the Shares owned by Rajinder Parmar for the sum of $50,000 plus interest**

computed from the Effective Date at a per annum rate of Four and No/100 Percent (4.00%) with a closing to occur within ninety (90) days of the election with [Respondent] making the representations contained in Section 4.6.3 and subject to the conditions in Seciton 4.6.4.

See id. (emphasis added).

As well, Section 3.9 of the Shareholder Agreement states:

New Shareholder Protection Provision. As the new shareholder of the Company, the following provisions shall apply to [Respondent] for aso long as he remains a Shareholder of the Company:

ii. **From the period beginning one (1) year from the Effective Date and ending [three] (3) years from the Effective Date[,] [Respondent] shall be entitled to elect in writing to sell of his shares to Balbir S. Minhas for the sum of $50,000 plus interest computed from the Effective Date at a per annum rate of Four and No/100 Percent (4.00%) with a closing to occur within ninety (90) days of the election with [Respondent] making the representations contained in Section 4.6.3 and subject to the conditions in Seciton 4.6.4.**

Respondent departed both entities by selling his shares before the end of three years.

At no time did Respondent object to this exit clause. His signature on the agreement evinces the same as a matter of law. There is no mention of any right to one-half of the operating accounts or one-half of the accounts receivable.

With regard to what he purchased, Respondent was gifted both a generous and gentle entrance into the practice of medicine in South Carolina. For $300,000 and $50,000 respectively, Respondent purchased a 50% percent interest in Midlands Endoscopy, LLC and a

50% share in Midlands Gastroenterology, PC.[11] The $300,000 purchase price for the Midlands Endoscopy, LLC interest was fronted to him by Midlands Endoscopy Center—interest free–over the course of 3 years (i.e., there was no upfront out-of-pocket expense incurred by Respondent for Midlands Endoscopy Center in connection with joining this as a full partner). Payment for the Midlands Endoscopy, LLC interest by Respondent was via **pretax** dollars by way of periodic distributions.

Additionally, irrespective of the amount of procedures he was performing on the endoscopy side, Respondent enjoyed essentially passive income of 50% of the profits of Midlands Endoscopy, LLC, which was not an insignificant sum. Respondent was compensated generously and on par with Applicant Minhas during his time in the practices.

After practicing medicine together for nearly three years, Respondent articulated his desire to sell his ownership interest in both entities during the late winter/early spring of 2014. Accordingly, Applicant Minhas elected to purchase Respondent's interests in both entities—as was his right to do so–in March 2014.

In connection with this sale, Respondent and Applicant Minhas ultimately executed an "Agreement for Sale of Limited Liability Company Interest" regarding Midlands Endoscopy Center, LLC on May 30, 2014. See Exhibit 8. Also on May 30, 2014, Respondent and Applicant Minhas executed a Stock Sale Agreement, regarding Midlands Gastroenterology, PC. See Exhibit 9.

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[11] Respondent's purchase of his interest in Midlands Endoscopy, LLC and a 50% share in Midlands Gastroenterology, PC **did not include purchase of any existing accounts receivable or cash in the bank. This was at the express direction of Petitioner**.

Pursuant to the parties' 2011 agreement outlining sale price, Respondent received $337,058.04 (principal + 4% interest) for his interest in Midlands Endoscopy, PC and $56,176.34 (principal + 4% interest) for his shares in Midlands Gastroenterology, PC. These amounts constituted the complete aegis of what Respondent was entitled to. No other written agreement—executed by the parties–was created that entitled Respondent to any other sum.[12] The sale documents Respondent executed on May 30, 2014, were done so in the presence of his lawyer and with the advice of counsel.

Upon the sale of Respondent's interest, Applicant Minhas became the sole member of Midlands Endoscopy Center, LLC and the sole shareholder of Midlands Gastroenterology, PC.

Though the written sales agreements are completely silent regarding any additional amounts due and owing to him, Respondent maintained he was entitled, inter alia, to one half of the accounts receivable and one half of the cash on hand for both entities at the time of his departure. Prior to the hearing in the instant case, Respondent asserted he was entitled to an additional $405,195.53.

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[12] See also, e.g., Paragraph 4 of the Stock Sale Agreement regarding Respondent's sale of his shares of Midlands Gastroenterology, PC, which states:

> Entire Agreement. This Agreement is the entire agreement among the parties hereto with respect to the transaction contemplated hereby and supersedes all prior or contemporaneous agreements or understandings, whether written or oral, among the parties, or any of them, with respect to the subject matter hereof.

See Exhibit 9.

In his disposition, the Arbitrator elected to award Respondent one half of the accounts receivable and one half of the cash on hand for both entities. The Arbitrator calculated these sums to be $179,104.98 and $78,463.50, respectively. As well, Respondent was awarded $53,000.00 and $29,000.00 in alleged Midlands Gastroenterology shareholder compensation variance for years 2013 and 2014, respectively. As explicated below, Applicants aver these awards were the product of computational error, which should be corrected.

A. Accounts Receivable and Operating/Bank Accounts: (Section A, Subsections 1 & 2 of Arbitration Order)

In his order, the Arbitrator awarded Respondent one half of the operating accounts ($179,104.98) and one half of the accounts receivable ($78,463.50) of Midlands Gastroenterology and Midlands Endoscopy Center as of May 30, 2014. This was the exact sum sought by Respondent in his pre-hearing brief.

Applicants aver this award was the product of a computational error, which requires correction. Applicants reason/argue their position upon the following, among other reasons:

- There is no mention of bank accounts and/or accounts receivable to be given to Respondent in the agreements Respondent signed on June 30, 2011, or the sale documents Respondent signed on May 30, 2014.

- The calculations of accounts receivable and reconciled bank accounts for both Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC **ignore** both the realities of overhead **and** the calculations by accountant Donny Burkett post May 30, 2014. Assuming, arguendo, Respondent was entitled to anything post May 30, 2014, dollars, it would be net rather than gross. Respondent received a windfall to which he was not entitled.[13]

[13] Notwithstanding Applicants' assertion that Respondent is not entitled to one half of the operating accounts and one half of the accounts receivable, the award to Respondent overlooks the existence of accounts payable. Respondent seeks all the benefit without any of the obligation

Moreover, the subject bank accounts and accounts receivable belong to the entities. Respondent did not buy any interest in the bank accounts and accounts receivable at the time of purchasing shares of Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC. During his tenure with Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC Respondent was not expecting any more than what he paid for those shares. Respondent received 4% interest on the original amounts he paid for Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC. In fact, for Midlands Endoscopy Center, LLC, since Respondent obtained ownership of 50% shares on day one, in essence, Midlands Endoscopy Center, LLC loaned $300,000 to him. Contrary to normal convention, Respondent, as a borrower, received 4% interest on borrowed money (from Midlands Endoscopy Center, LLC) on May 30, 2014 when he forced Applicant Minhas to personally buy the Midlands Endoscopy Center, LLC shares back. That was all that was contemplated, **just to avoid the very dispute that Applicants have been dragged into right now**, if the sale occurred after first year but before the third anniversary of June 30, 2011. There is no mention of bank accounts and/or accounts receivable to be given to Respondent in the agreements Respondent signed on June 30, 2011, or the sale documents Respondent signed on May 30, 2014.

Further, Respondent bought shares of Midland Gastroenterology and Midlands Endoscopy Center in 2011. The value of these shares did not include bank accounts and accounts receivable. That fact is undeniable and indisputable. Applicant Minhas merely acted as

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attendant to operating these entities. An award without such a consideration constitutes a miscalculation and computational error.

officer of the entities to complete the transactions. The shares are integral and inherent part of the entities. Applicant Minhas is not the "shares." Respondent's sale agreement on May 30, 2014, returned his shares to the entities and he received the amount in return, which he bargained for in 2011. By referring to provisions 3.8(ii) and 3.9(ii) of the Midlands Gastroenterology Shareholder Agreement,[14] Respondent forced Applicant Minhas to personally buy the shares because there was an error recognized by both parties in the drafted agreement where "Dr. Balbir S. Minhas" name was inserted instead of "[Midlands Gastroenterology/]Midlands Endoscopy Center." This is well documented in the April 7, 2014, meeting where Respondent agreed that the entities could buy his shares. Had the entities paid the $393,234.34—the amount Applicant Minhas was forced to personally pay–for the shares/interests, there would have been much less money in the entities. **The order, therefore, computes incorrectly to award the Respondent "sale amount" twice.**[15]

The same provisions 3.8(ii) and 3.9(ii) within the Midlands Gastroenterology Shareholder Agreement that were used by Respondent to demand and successfully get payment for his shares personally from Applicant Minhas also specifically lack mention of bank accounts and accounts receivable. The buy-sell provisions 3.8(ii) and 3.9(ii) are clearly worded and **unambiguous**

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[14] See Exhibit 10.

[15] The typographical error using "Balbir S. Minhas" instead of "Midlands Gastroenterology/Midlands Endoscopy Center" is no different than "THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C CODE ANN. 15-48-10, *et seq*." written on the title page of the Midlands Gastroenterology Shareholder Agreement and "NHLA Alternative Dispute Service Rules of Procedure for Arbitration" (Section 8.11) within the Agreement's text. This was also recognized by the Defendant's legal counsel.

because they include 4% interest (unconventionally to be paid by the lender to the borrower) added to the "amount deemed paid to buy shares" by Respondent, but does not include bank accounts and accounts receivable. Whereas, provisions 3.8(iii) and 3.9(iii), which are the buy-sell after 3 years, do not include 4% interest, but include bank accounts and accounts receivable as part of the well-established "Fair market evaluation" determination. Respectfully, the arbitration award contains a computational error with its lack of recognition of this clear distinction between 3.8(ii)/3.9(ii) and 3.8(iii)/3.9(iii) clauses of the shareholder agreement.

Bank accounts and accounts receivable are assets of the companies. This was a buy-sell transaction of shares, and not liquidation of the company assets and distribution of the proceeds to the shareholders.[16]

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[16] Applicants maintain that some sort of (artificial) economic justice has been employed to bring the Midlands Gastroenterology and Midlands Endoscopy Center operating accounts and accounts receivable to zero on May 30, 2014, as it was misrepresented by Respondent to be on July 1, 2011. What is being overlooked in the award are the true economic positions of Respondent, Applicants Minhas and Midlands Gastroenterology and Midlands Endoscopy Center on July 1, 2011.

The true economic positions were the following: Respondent paid $50,000.00 for 50% stock of Midlands Gastroenterology. He also gained $300,000.00 worth of Midlands Endoscopy Center 50% shares while contributing nothing to Midlands Gastroenterology and Midlands Endoscopy Center's operating accounts. Combined, Midlands Gastroenterology and Midlands Endoscopy Center had approximately $297,000.00 dollars of Applicant Minhas' money in the operating accounts and accounts receivables. Midlands Endoscopy Center needed to pay Applicant Minhas $300,000 for the shares purchased by Petitioner. The gap between economic positions of Respondent and Applicant Minhas (favorable to Petitioner and unfavorable to Applicant Minhas) was $897,000.00 if Midlands Gastroenterology and Midlands Endoscopy Center had zero money. This economic gap was not dissipated until December 2013. All of this was demonstrated/testified to at the arbitration proceeding.

When Respondent bought shares of Midlands Gastroenterology and Midlands Endoscopy Center, Respondent did not pay any money for his shares for Midlands Endoscopy Center. To

B. 2013 & 2014 Midlands Gastroenterology Shareholder Compensation Variance (Section A, Subsections 3 & 4 of Arbitration Order)

Section 3.15 of the Midlands Gastroenterology Shareholder Agreement governs shareholder compensation. This section states, in pertinent part:

> Shareholder Compensation. Shareholder compensation for physician services provided to the Corporation shall be equal for all Shareholders as long as each Shareholder's production is within ten percent (10%) of each other Shareholder. If a Shareholder's production is not within 10%[,] but is within twenty percent (20%) of each other Shareholder, then Shareholder compensation shall be fifty

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satisfy all mutual financial obligations, Midlands Gastroenterology and Midlands Endoscopy Center could not have been able to conduct their business with no money without a loan. For equal contribution, Respondent could have contributed $297,000 to match the amount Applicant Minhas had in the operating accounts and accounts receivables in Midlands Gastroenterology and Midlands Endoscopy Center, which Respondent did not. Or, as dictated by Midlands Endoscopy Center operating agreement and business rule for Midlands Gastroenterology, a total $365,797.00 (as calculated by Donny Burkett, the entities' accountant) was needed to conduct business of the two entities. To satisfy the Midlands Endoscopy Center obligation to pay $300,000.00 to Applicant Minhas on July 1, 2011, there would have been additional loan needed, making the total amount of money to be borrowed $665,797. Or, Respondent could have borrowed money independently to pay to Midlands Endoscopy Center for his shares. This would have been the fairest economic just configuration to all parties on July 1, 2011. Respondent elected not to opt for any of these options.

Applicants posit the following: Assume Midlands Gastroenterology and Midlands Endoscopy Center had borrowed that amount $665,797 from a lender, such as a bank. Midlands Gastroenterology and Midlands Endoscopy Center would have had the obligation to pay back that amount before distribution of cash to their shareholders (50% for Respondent and 50% for Minhas). Under this scenario, needless to say, had Midlands Gastroenterology and Midlands Endoscopy Center paid its debt in full on May 30, 2014, there would be no remaining amount for distribution without making Midlands Gastroenterology's and Midlands Endoscopy Center's operating accounts go to less than zero.

In reality, Applicant Minhas was the "lending party," but did not compel Defendant to pay half of the loan. Respondents again maintain that this is the reason Section 3.8(ii) and 3.9(ii) do not have bank accounts and accounts receivable. Defendant—with full knowledge–signed the Shareholder Agreement, as drafted.

percent (50%) equal and fifty (50%) based upon personal production of each Shareholder . . . .

In the arbitration award, Respondent was awarded $53,000.00 and $29,000.00 in alleged Midlands Gastroenterology shareholder compensation variance for years 2013 and 2014, respectively. As explicated below, this award was incorrect.

In the award, the Arbitrator misapprehended or overlooked the following when calculating variances:

Year 2013: For 2013, the productivity numbers were $590,968.00 for Respondent and $469,237.00 for Applicant Minhas. The variance was $121,731.00, which was a percentage difference of 11.48% in favor of Respondent.

With 50% overhead considered, net distributable income was approximately $61,000.00. Calculated per formula: 50% equal (Respondent $15,250.00) and 50% as per percentage difference (Respondent $18,605.00) equals to a total of $33,855.00 and 50% equal (Applicant Minhas $15,250.00) and 50% as per percentage difference (Applicant Minhas $11,895.00) equals to a total of $27,145.00. Therefore, difference in favor of Dr. Parmar was $6,710.00 (vs. the awarded $53,000.00).

Year 2014: For 2014, the productivity numbers were $281,859 for Respondent and $209,046 for Applicant Minhas. The variance was $72,813.00, which was a percentage difference of 14.83% in favor of Respondent.

With 50% overhead considered, net distributable income was approximately $36,000.00. Calculated as per formula 50% equal (Respondent $9,102.00) and 50% as per percentage difference (Respondent $11,832.00) equals to a total of $20,934.00 and 50% equal (Applicant Minhas $9,102.00) and 50% as per percentage difference (Applicant Minhas $6,418.00) equals to a total of $15,520.00. Therefore, difference in favor of Dr. Parmar was $5,414.00.

These figures add up to a grand total of $12,124.00 ($6,710.00 + $5,414.00) in favor of Respondent for the years 2013 and 2014. In light of the sum that was actually awarded for

production variance ($82,000.00), Applicants respectfully maintain computational error exists, which requires correction.

To the extent, Respondent is entitled to any sums from the accounts receivable or operating/bank accounts, Applicants assert the sums awarded for shareholder compensation variance are contained in the bank accounts and accounts receivables; accordingly, Applicants maintain the sums awarded for shareholder compensation are duplicative and should be subtracted from any award including amounts from accounts receivable or operating/bank accounts.

Applicants further note that to calculate these productivity numbers for purposes of this analysis, Midlands Gastroenterology paid its accountant in excess of $28,000.00 after May 30, 2014. Respondent did not participate at all in paying for that analysis, something he should have done and something that should have been accounted for in the award. In fact, the accountant did all the dispute-related financial analyses before and after May 30, 2014 for both parties. Only Midlands Gastroenterology and Midlands Endoscopy Center paid the accounting fees totaling approximately $70,000.00. As 50% shareholder before May 30, 2014, Respondent should have been responsible for 50% of the accounting fees, and if bank accounts and accounts receivables are not justifiable claims, then almost for 100% of these fees.

C. Nissan Automobile

In the arbitration order, it was determined: "Respondent is denied ... the Nissan automobile." Applicants submit the arbitration award should not deny something Respondent is not asking for.

The 2010 Nissan Murano is titled to Midlands Gastroenterology and has been in Respondent's possession since his departure from the entities. Respondent had no legal basis to keep the vehicle in his possession after he left. Respondent stated in his pre hearing brief that he will return the vehicle. At the time of the hearing, Midlands Gastroenterology did not have the benefit of the use of the automobile for 555 days. The vehicle was not returned until June 4, 2016, which added that much more time the vehicle was outside the possession of Midlands Gastroenterology. Moreover, Midlands Gastroenterology paid the property taxes and insurance on the car in the interim. The Arbitrator's award contained no disposition as it pertains to the automobile; further, the order was without any award as it pertains to loss of use, taxes, etc, which are arguably owed to Midlands Gastroenterology. Applicants maintain this omission was error and should be corrected.

CONCLUSION

For the reasons stated herein, Applicants respectfully request an order of vacating the Arbitrator's award of May 17, 2016, and the orders/awards issued thereafter. In the alternative, Applicants aver modification or correction of the subject award is warranted.

Specifically, Applicants assert the following relief is appropriate:

- Denial of sums/revision of award relating to accounts receivable and operating/bank accounts to Respondent due to the facts that, inter alia: there is no mention of bank accounts and/or accounts receivable to be given to Respondent in the agreements Respondent signed on June 30, 2011, or the sale documents Respondent signed on May 30, 2014; the duplicative award of interest on the principal; and the calculations of

accounts receivable and reconciled bank accounts for both Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC ignore both the realities of overhead and the calculations by accountant Donny Burkett post May 30, 2014.

- A revised award of $12,124.00 ($6,710.00 + $5,414.00) for variance in Midlands Gastroenterology shareholder compensation in favor of Respondent for the years 2013 and 2014 (vs. the awarded $82,000.00); and
- Regarding the 2010 Nissan Murano to Respondent Midlands Gastroenterology, an award of loss of use and diminution of value and reimbursement for property taxes and insurance incurred by Midlands Gastroenterology during Respondent's unauthorized use (more than 5000 miles) and possession of the vehicle.

[SIGNATURE PAGE ATTACHED]

Respectfully submitted,

COLLINS & LACY, P.C.

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ATTORNEYS FOR APPLICANTS BALBIR S. MINHAS, M.D., MIDLANDS GASTROENTEROLOGY, PC, AND MIDLANDS ENDOSCOPY CENTER, LLC

AMENDED APPLICANTS' APPLICATION TO VACATE, OR IN THE ALTERNATIVE, MODIFY OR CORRECT ARBITRATION AWARD AND MEMORANDUM IN SUPPORT

Columbia, South Carolina
August 15, 2016

AHLA Dispute Resolution Service

Rules of Procedure for Arbitration

These rules apply to cases received on or after April 7, 2014.

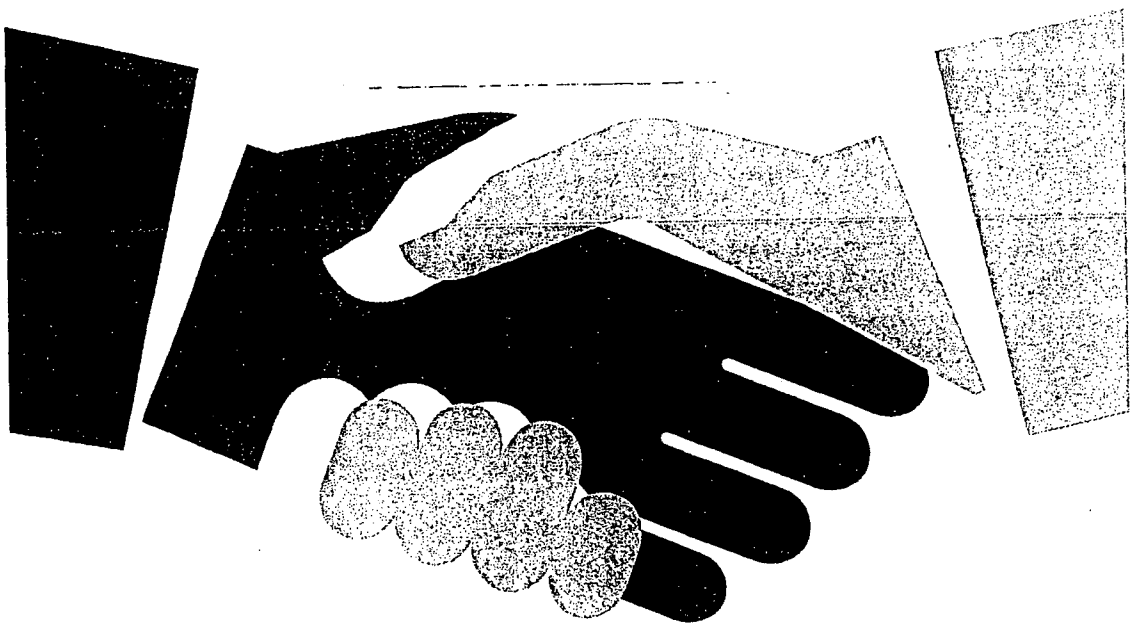

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EXHIBIT

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INTRODUCTION

Arbitration is a centuries-old way for industries to promote commerce through self-regulation. It is particularly well suited for disputes involving health care because of the complex nature of the health care marketplace and its highly regulated nature. Disputes are best resolved by Neutrals who understand the laws and regulations governing the delivery of health goods and services and the context in which they are provided.

Disputes impede the close cooperation needed to deliver quality health care. By resolving claims quickly, arbitration helps the health care system maintain its focus on promoting wellness and treating patients.

For further information about these rules or our dispute resolution program, please contact:

Administrator
American Health Lawyers Association
Dispute Resolution Service
1620 Eye Street, N.W., 6th Floor
Washington, D.C. 20006-4010
drs@healthlawyers.org
Phone and Fax: 202-833-0762

NOTES

SECTION 1: POLICIES

1.1 Applicable Version of Rules

A claim will be arbitrated in accordance with the version of these rules (Rules) posted on the website of the American Health Lawyers Association (AHLA) on the date a Demand for Arbitration is received. Any reference to the Rules of the American Health Lawyers Association Alternative Dispute Resolution Service will be deemed to be a reference to such version of the Rules.

1.2 Electronic Case Management System

(a) APPLICABILITY. Parties, party representatives, the Administrator, and the arbitrator (once appointed), will transmit written messages and documents regarding a case through AHLA's Electronic Case Management System (ECM).

(b) NOTICE. A message is deemed to have been received by the person(s) to whom it is addressed on the next business day after it is sent through the ECM. A party or party representative is deemed to have notice of the contents of any message sent to it through the ECM.

(c) FILING. A document is deemed to have been filed on the day it is transmitted (uploaded) to the ECM.

(d) SERVICE. A document is deemed to have been served one business day after notice is sent to a party at the email address listed for this party in the ECM.

(e) OPTING OUT. A party or party representative may opt out of using the ECM if it agrees to pay all the additional direct and indirect costs associated with communicating through hard copy documents. AHLA will provide a price list upon request, and will consider claims of indigence in applying and/or adjusting such price list.

1.3 Representation

Parties may designate a representative. The Claimant should designate its representative in the Demand for Arbitration. Any party may designate a primary representative, designate additional representatives, change its representative, or withdraw a representative by completing a Designation of Representative Form in the ECM. Unless otherwise required by law, no representative need be an attorney so long as the individual is an officer of the party or an agent properly designated to act on behalf of the party.

1.4 Counting of Days

Unless otherwise indicated, "days" means business days, which do not include Saturdays, Sundays, United States Postal Service holidays, or any other day on which the AHLA main office is officially closed. Prior to the appointment of an arbitrator, the Administrator has discretion to extend the deadlines set forth in the Rules for good cause shown or upon the request of all parties.

1.5 Disclaimer

AHLA and its employees, Board members, agents, volunteers, and Neutrals are not liable for any loss, liability, or damages arising out of an act or omission in connection with any arbitration under the Rules.

SECTION 2: FILING A CLAIM

To file a claim, a party must complete and file the Demand for Arbitration form on the AHLA website and pay the applicable fees listed in **Exhibit 3** and on the form, except as provided below in Sections 10 and 11 for employment and consumer cases. A party must also provide a copy of an agreement to arbitrate or a court order requiring arbitration of the claim under the Rules, and a statement describing the claim or claims to be arbitrated.

NOTES

SECTION 3: APPOINTMENT OF AN ARBITRATOR

3.1 Criteria

If the filing party (Claimant) produces a document that arguably requires arbitration of the claim under the Rules, the Administrator will appoint an arbitrator pursuant to the process described in Section 3. After receiving appropriate evidence and argument, the arbitrator, once appointed, shall have the power to determine his or her jurisdiction and any issues of arbitrability.

3.2 Appointment Process

Unless the parties agree otherwise in writing, the Administrator will appoint a single, neutral arbitrator through the process set forth in the Rules.

(a) NUMBER OF CANDIDATES. In its Demand for Arbitration, the filing party may request and pay for a list of either five (5) or ten (10) proposed arbitrators (candidates). If the filing party requests only five (5) candidates, the responding party may expand the list to ten (10) candidates by paying an additional fee, as established by the Administrator.

(b) RANKING SHEET. Within ten (10) days after receiving a Demand for Arbitration, the Administrator will provide the parties with a list of candidates (Ranking Sheet). The Administrator will select candidates based on information provided by the Claimant in the Demand for Arbitration and any additional information a responding party may choose to provide.

(c) CANDIDATE PROFILES. The Administrator will provide the parties with the profiles and resumes of all candidates. Profiles and resumes are completed by candidates. AHLA does not verify the information in profiles and resumes and does not warrant that they are accurate, current, or complete.

(d) REVIEW OF CANDIDATES. In ranking candidates, parties should carefully assess the candidates' qualifications and experience. Parties may contact candidates directly to inquire about their suitability and their availability for appointment. Such contacts must be in writing, and a copy of any such communication must be provided to the other party(ies). When corresponding with candidates, parties may disclose the general nature of the question in dispute in the case, but may not discuss its merits.

(e) INELIGIBLE CANDIDATES. A candidate is ineligible to arbitrate a claim only if it would be unethical or impossible for him or her to do so. If a party believes a single candidate is ineligible, it should strike him or her. If a party believes two (2) or more candidates are ineligible, it may petition the Administrator to replace them with eligible candidates and provide a new Ranking Sheet. The Administrator will grant such a petition only if it is clearly established, in the sole discretion of the Administrator, why the candidate(s) to be replaced would be ineligible.

(f) RANKING CANDIDATES. Within ten (10) days after receiving a Ranking Sheet and profiles, parties must rank the candidates sequentially in order of preference in the ECM. The most highly desired candidate should be ranked "1," the second choice should be ranked "2", etc. Parties may strike no more than one (1) candidate.

(g) SELECTION PROCESS. After removing any candidate struck from the list by a party, the Administrator will select the candidate with the lowest combined score from Ranking Sheets completed on time. The process used in the event of a tie score is illustrated in **Exhibit 1**.

3.3 Acceptance of Appointment

Within five (5) days after receiving an offer of appointment from the Administrator, a candidate who has been selected must complete the Arbitration Disclosure Checklist and decide whether or not to accept the appointment.

A candidate accepts an appointment by completing an Arbitrator's Acceptance Form in the ECM. If a candidate does not accept the appointment within the five (5) day period, the Administrator will offer it to the candidate with the next lowest ranking. The Administrator will repeat this process until an arbitrator is appointed.

3.4 Appointment Date

The date on which the Administrator notifies the parties of an arbitrator's appointment through the ECM is deemed the Appointment Date.

3.5 Arbitration Panels

Parties may agree to appoint a panel of three (3) arbitrators. Unless they specify otherwise, parties will each select a single arbitrator from a list of five (5) or ten (10) candidates provided by the Administrator, and these two (2) arbitrators will select a third arbitrator from this same list of candidates. If the two (2) selected arbitrators cannot agree on a third arbitrator, the Administrator will appoint a third from the list of candidates. All three (3) arbitrators are presumed to be neutral. The third arbitrator will serve as the

lead arbitrator and panel chair (Chair). The Chair manages the arbitration process and presides at the hearing. The panel will decide all matters by majority vote unless the parties agree to have the Chair serve as the sole arbitrator of pre-hearing disputes regarding discovery or other matters.

3.6 Alternative Selection Processes

If the parties agree in writing to an alternative process for selecting an arbitrator, and the validity and interpretation of this agreement are not in dispute, the Administrator will not permit a party to delay or avoid arbitration by failing to abide by this agreement.

Illustration: Party A and Party B agree to appoint an arbitrator directly (on their own) from a list of ten (10) candidates provided by the AHLA, and they agree that their direct appointments will select a third arbitrator from this list. Party A fails to appoint an arbitrator within the prescribed period.

The Administrator will offer appointments to the arbitrators ranked 1 and 2 by Party B. These two arbitrators will select the third.

NOTES

SECTION 4: ARBITRATORS

4.1 Conduct

(a) POWERS AND DUTIES. An arbitrator has the power to:

(1) determine his or her powers and duties under an arbitration clause;

(2) interpret the Rules to the extent that they relate to his or her powers or duties;

(3) sanction parties for failing to comply with orders of the arbitrator or any obligations under the Rules;

(4) stay or dismiss proceedings for good cause, which may include agreement of the parties; and

(5) take any actions and make any decisions that are necessary and proper to conducting a fair and efficient arbitration under the Rules.

(b) ETHICS. Arbitrators must comply with the Code of Ethics for Arbitrators in Commercial Disputes posted on AHLA's website.

(c) SETTLEMENT AND MEDIATION. Arbitrators should encourage parties to discuss settlement on their own or with the assistance of a mediator. However, arbitrators should not pressure parties to settle, express a point of view on settlement, or participate in settlement discussions. An arbitrator may mediate only as provided in the *Guidelines for Mediation-Arbitration (Med-Arb) and Arbitration-Mediation (Arb-Med)* set forth in Exhibit 2.

4.2 Ex Parte Communication

(a) GENERAL RULE. Except as provided in subsections (b) and (c) below, once a Neutral is appointed as an arbitrator, he or she may not communicate with a party unless all other parties participate in the conversation or exchange of written messages.

(b) NON-NEUTRAL ARBITRATORS. Parties who have agreed to the use of non-neutral arbitrators may agree to permit ex parte communications with such non-neutral arbitrators. Arbitrators are regarded as non-neutral when all parties expect them to be predisposed toward the party appointing them.

(c) FAILURE TO PARTICIPATE. If, after receiving notice, a party fails to participate in a teleconference or video conference or fails to appear at a hearing, an arbitrator may communicate with the participating parties despite that party's absence.

4.3 Case Management

(a) DEFAULT TIMEFRAME. Except as provided below, an arbitrator should issue a final award within eight (8) months after being appointed. Arbitrators should schedule pre-hearing proceedings and hearings accordingly.

(b) EXPEDITED REVIEW. If the parties jointly request expedited review, the arbitrator should make best efforts to issue a final award within 90 days after the Appointment Date.

(c) EXCEPTIONAL CASES. If an arbitrator determines that a case is unusually complex, or that a delay is necessary for other reasons, the arbitrator may allow more time for either pre-hearing proceedings or a hearing. However, arbitrators should exercise their discretion to permit further delay sparingly.

4.4 Review Board

(a) PURPOSE. The Review Board (RB) and its designated Review Panel(s) will rule on petitions to remove an arbitrator under Rule 4.5.

(b) APPOINTMENT. When the Review Board is initially constituted, the President of AHLA will appoint two Senior Arbitrators to serve two-year terms; two (2) to serve three-year terms; and one (1), who will be appointed as the Review Board Chair (RB Chair), to serve a four-year term. Thereafter, the President will fill vacancies by appointing Senior Arbitrators, including the RB Chair, to three-year terms. Non-chairs serving on the Review Board will be eligible for appointment to serve as RB Chair. Individuals will be eligible to serve multiple terms on the Review Board, provided that three (3) years have elapsed since their last term of service ended.

(c) QUALIFICATIONS. All Senior Arbitrators must be experienced arbitrators of health law disputes who have sat as an arbitrator in at least 20 cases.

(d) REVIEW PANELS. When the Administrator notifies the RB Chair that a petition under Rule 4.5(c) requires review, the RB Chair will designate a panel of three (3) Senior Arbitrators drawn from the current RB. This panel may or may not include the RB Chair. In deciding which Senior Arbitrators to select, the RB Chair may take into account their availability, expertise, actual or perceived conflicts of interest, and any other factors relevant to ensuring a well-reasoned and impartial decision. If the RB Chair is not a member of the panel, the RB Chair will designate a Senior Arbitrator as the lead panelist. The lead panelist will preside and perform all administrative functions. The panel will decide substantive matters by majority vote.

(e) COMPENSATION. Senior Arbitrators will receive no compensation for reviewing petitions under Rule 4.5 (Removing an Arbitrator).

(f) ETHICS. When serving on a Review Panel, Senior Arbitrators must comply with the Code of Ethics for Arbitrators in Commercial Disputes.

4.5 Removing an Arbitrator

A party who believes an arbitrator is unfit to serve because of a conflict of interest, a mental or physical impairment, or conduct that calls his or her fairness or impartiality into question, may pursue the following options:

(a) UNANIMOUS CONSENT. If all of the parties request an arbitrator to withdraw, the arbitrator must do so. (Code of Ethics, Canon II (G)).

(b) WITHDRAWAL. A party may request an arbitrator to withdraw in writing, served upon the Administrator, the Arbitrator and all other parties. In responding to such a request, an arbitrator should be guided by Code of Ethics Canon II (G)(2).

(c) REMOVAL. A party may file a petition with the Administrator requesting the Review Board to remove the arbitrator. Other parties may file a response with the Administrator within 15 days of service. If the petitioner so requests, neither the Review Panel nor any party may inform the arbitrator of the petition. In ruling on the petition, however, the Review Panel will consider the arbitrator's lack of opportunity to respond. If the Review Panel grants a petition, it will inform the arbitrator why he or she was removed. The Review Board will not assess costs and expenses for reviewing a petition for removal unless it determines the petition was frivolous.

4.6 Replacing an Arbitrator

If an arbitrator is removed pursuant to Rule 4.5, or an arbitrator becomes unable or unwilling to serve, the Administrator will replace the arbitrator as follows:

(a) The Administrator will ask the parties whether they can agree on a replacement.

(b) If the parties cannot agree, and the original arbitrator was chosen from a Ranking Sheet (see Rule 3.2), the Administrator will select the candidate with the next lowest combined score, and, if necessary use the tie-breaking procedures set forth in Exhibit 1.

(c) If no Ranking Sheet is available, the Administrator will create a new one based on the parties' preferences and request the parties to complete the new Ranking Sheet.

(d) Generally, a replacement arbitrator will conduct an arbitration de novo. However, the parties may agree to alternative arrangements.

NOTES

SECTION 5: PRE-HEARING PROCESS

5.1 Objections, Answers, and Counterclaims

A responding party may object to arbitration of a claim, may file an answer to a claim, and may file a counterclaim, within 15 days after the Appointment Date. The arbitrator (or arbitration panel) may extend this deadline for good cause.

5.2 Preliminary Awards

(a) ARBITRABILITY. Once appointed, the arbitrator may issue a preliminary award that addresses whether the arbitration clause is valid, and whether it applies to the claims or counterclaims raised by the parties.

(b) INTERIM RELIEF. An arbitrator may issue interim relief, including an injunction, to maintain the status quo in the dispute until a final award is issued. Interim relief will not prejudice the rights of the parties or affect the final determination of the dispute. An interim award may assess costs, fees, and interest associated with the relief awarded.

5.3 Deposits

After consulting with the arbitrator, the Administrator may require the parties to deposit in advance sufficient funds to cover the costs of the arbitration, including the arbitrator's fees and expenses, except in cases under Sections 10 and 11 where requiring deposits would preclude a party's access to arbitration. If the Administrator does not receive the required amount, the arbitrator may suspend or terminate proceedings. The Administrator may require the parties to provide additional funds whenever the amount on deposit appears to be insufficient to cover anticipated costs, and the arbitrator may suspend proceedings pending receipt of these additional funds.

5.4 Status Conference

Once appointed, an arbitrator will schedule a status conference with the parties as quickly as possible. This conference may be held in person, by telephone, or by videoconference. During the conference the arbitrator will discuss:

(1) challenges to the arbitrator's jurisdiction;
(2) discovery and motions;
(3) the date, time, and place of the hearing;
(4) witnesses and exhibits;
(5) the treatment of confidential information and documents;
(6) the scope and form of the final award; and
(7) any other matters the arbitrator deems it appropriate to consider.

The arbitrator will post a scheduling order within five (5) days after the status conference.

5.5 Discovery

To promote speed and efficiency, the arbitrator, in his or her discretion, should permit discovery that is relevant to the claims and defenses at issue and is necessary for the fair resolution of a claim. Expert discovery shall be specifically addressed and the disclosure of expert witnesses shall be sequenced in a fashion that will allow fair discovery to proceed.

5.6 Motions

The arbitrator may allow motions, including motions for summary adjudication, motions in limine and other motions, which the Arbitrator, in his or her sole discretion, determines will add to the fair and efficient resolution of the case.

Illustration: In the status conference, Party B makes a strong argument that several of Party A's claims can be resolved without an evidentiary hearing. The arbitrator may permit Party B to move for summary judgment on these claims.

5.7 Date, Time, and Location of the Hearing

Unless the parties agree otherwise, the arbitrator will convene an in person hearing. The parties may authorize the arbitrator to conduct the hearing by telephone or videoconference, or to render an award based solely upon a written record. Alternatively, the parties may agree to an in person hearing in which sworn statements are submitted in lieu of live testimony.

If the agreement to arbitrate does not specify where or when the hearing will take place, and if the parties cannot agree on a date, time, or location for the hearing acceptable to the arbitrator, the arbitrator, in his or her sole discretion, will determine an appropriate date, time, and location.

5.8 Subpoenas

(a) ISSUANCE. To the extent authorized by law, an arbitrator may issue subpoenas for the attendance of witnesses or the production of documents. Parties are expected to produce witnesses who are in their employ or otherwise under their control without a subpoena.

(b) OBJECTIONS. A subpoenaed person may object to the issuance of a subpoena. An arbitrator will promptly rule on an objection by weighing the burden on the objector of complying with the subpoena against the potential value of the subpoenaed witness or documents to ensuring a fair hearing.

5.9 Inspection or Investigation

If all parties agree or an arbitrator determines that an inspection or investigation of a physical site is necessary, the arbitrator will provide the parties with 20 days advance notice of the date, time, and location of the inspection or investigation. All parties and representatives have the right to attend. An inspection or investigation must comply with all applicable laws regarding privacy and confidentiality.

NOTES

SECTION 6: HEARINGS

6.1 Exchange of Information

At least 20 days prior to the hearing, the parties must exchange copies of all exhibits they intend to introduce at the hearing and furnish a list of all witnesses they intend to call. The arbitrator may permit additional time to furnish rebuttal exhibits or exhibits pertaining to unanticipated issues. An arbitrator may exclude evidence that a party fails to exchange in a timely manner.

6.2 Transcript

If a party wishes to obtain a record of the hearing, it must inform the arbitrator and the other parties of its intention to hire a reporter no less than 10 days prior to the hearing.

The arbitrator may designate a transcript as the official record of the hearing if:

(a) The parties agree to share the costs of producing a transcript, including a copy for the arbitrator;

(b) The parties authorize the arbitrator to allocate the costs of producing the transcript, including a copy for the arbitrator, in the award; or

(c) One party agrees to bear the costs of producing the transcript, including copies for the arbitrator and the other parties.

6.3 Attendance

Arbitrations are not public forums. Generally, only the parties, their authorized representatives, and the reporter (if any) may attend a hearing. Subject to the arbitrator's approval, the parties may agree to allow other participants, and the arbitrator may permit others to attend if their presence would promote the fairness or integrity of the hearing.

If a party so requests, an arbitrator may permit witnesses to attend only while testifying, and may forbid them from discussing their testimony with other witnesses until the hearing is closed.

6.4 Oaths

The arbitrator may require witnesses to testify under an oath administered by the arbitrator or another person qualified to administer oaths.

6.5 Conduct of Hearings

The arbitrator will afford all parties an equal and adequate opportunity to present their case. Generally, the Claimant will present evidence to support claims (and refute any counterclaims), and the Respondent will present evidence to refute these claims (and support any counterclaims). Witnesses will be subject to both direct and cross examination and to questioning by the arbitrator.

The arbitrator may vary the manner in which the hearing is conducted in order to promote the fair and speedy resolution of the dispute.

6.6 Evidence

The parties may offer whatever evidence the arbitrator regards as relevant and material to the dispute. The arbitrator may order the parties to produce additional information he or she regards as necessary to understand the dispute and reach a full and fair resolution.

In determining what evidence to admit, the arbitrator need not follow rules applicable in court proceedings, but should generally permit evidence to be introduced that is relevant, material and will allow for a fair adjudication of the matter. Unless the parties agree otherwise, the arbitrator should not allow them to introduce information that is determined to fall within an applicable evidentiary privilege.

6.7 Failure to Appear

If a party or a party's authorized representative who has been notified of a hearing fails to appear, or fails to request and receive a postponement, the arbitrator must take evidence from whichever parties and representatives are present.

6.8 Close of Hearing

(a) GENERAL RULE. Except as provided in subparagraph (b), when the parties indicate that they have no further evidence to present, or the arbitrator determines that the record is complete, the arbitrator will declare the hearing is closed.

(b) POST HEARING BRIEFS. If the arbitrator sets a schedule for the submission of post-hearing briefs or other documents, the arbitrator will declare that the hearing is closed as of the final due date for such submissions.

SECTION 7: FINAL AWARDS

7.1 Deadline

An arbitrator must issue an award within 30 days after the hearing is closed unless the arbitrator and all parties agree to extend this deadline.

7.2 Basis

Except as provided in Rules 7.3 and 7.4, the award must be based on evidence presented at a hearing. If a party fails to attend the hearing its evidence need not be considered.

7.3 Consent Award

If the parties settle a case before a final award is issued, they may request the arbitrator to issue the terms of the agreement in the form of a consent award. The consent award must set forth how costs and fees associated with the arbitration will be paid, including but not limited to attorneys' fees and the arbitrator's fees and expenses.

7.4 Failure to Prosecute

If, prior to the close of the hearing, a party fails to pursue a claim or counterclaim, the arbitrator may issue a final award dismissing all or part of a case either with or without prejudice.

7.5 Scope of Relief

An arbitrator may award any relief authorized by contract or applicable law that appears to be fair under the circumstances, including specific performance of a contract.

7.6 Fees and Expenses

(a) BY AGREEMENT: If the parties have agreed on the allocation of the arbitrator's fees and expenses, and/or the parties' attorney fees, an arbitrator must implement their agreement unless it is contrary to applicable law.

(b) STANDARD ALLOCATION: Except as is set forth in subsection (c) below, if the parties have not specified how fees and expenses should be allocated, an arbitrator will:

(1) require the parties to pay their own attorney's fees and the expenses of the witnesses they produce; and

(2) split the costs of the arbitration process, including the arbitrator's fees and expenses, evenly between the parties.

(c) MISBEHAVIOR: An arbitrator may require a party to pay the fees and expenses incurred by the arbitrator and/or the attorney fees of other parties, or any portion thereof, as a result of the party's lack of cooperation or abuse of the process.

7.7 Form

An award must be in writing and signed by the arbitrator, in compliance with applicable state and federal law.

7.8 Reasoning

An arbitrator should provide a concise statement of the reasons supporting his or her award unless the parties agree prior to the completion of the arbitration hearing that a reasoned award is not required.

7.9 Corrections

Within 15 days after receiving an award, a party may request the arbitrator to correct clerical, typographical, or computational errors in the award. The other parties will have 15 days to respond to this request. The arbitrator must respond within 30 days after receiving the request. An arbitrator may not reconsider the merits of an award after it has been issued. He or she may alter the award only to correct inadvertent mistakes.

7.10 Effect and Use

A final award or a consent award fully and finally resolves all claims and counterclaims presented in arbitration. An award may be entered and enforced in any state or federal court with jurisdiction over a case. The Administrator and the Arbitrator shall maintain the confidential nature of the arbitration proceeding and any award, except as necessary in connection with a judicial challenge to or enforcement of an award, or unless as otherwise required by law.

SECTION 8: POST AWARD PROCEEDINGS

8.1 Final Accounting

After an award is issued and the arbitrator provides a final invoice, the Administrator will provide the parties a statement listing all costs deducted from the amounts deposited. The Administrator will promptly return any funds on deposit that are not required to cover costs. If the arbitrator's fees or expenses exceed the amount on deposit, the Administrator will invoice whichever party or parties are responsible for paying those costs.

8.2 Release of Documents

The AHLA will not release documents from a case file, including an award, unless:

(1) it is required to do so by a valid court order or other valid legal process; or
(2) a party requests the Administrator to provide copies (certified or not) of documents in its possession and pays appropriate fees.

8.3 Judicial Proceedings

Neither AHLA nor an arbitrator it appoints is a necessary party to any judicial proceedings related to arbitration under the Rules.

NOTES

SECTION 9: EMERGENCIES

9.1 Request for Emergency Relief

To request emergency relief, a Claimant must file: (a) a Demand for Arbitration along with the appropriate filing fee; (b) a petition requesting emergency relief and explaining the basis for this request; and (c) proof that it has notified all parties of the petition or has made a good faith attempt to notify them.

9.2 Emergency Appointment

The Administrator will nominate a Neutral to arbitrate the petition for emergency relief as quickly as possible based on the information provided by the Claimant in the Demand for Arbitration and any additional input other parties may choose to provide.

Based on the Demand for Arbitration, the petition, and any other documents the parties may have provided, the nominee will determine within one (1) business day whether to accept this limited appointment.

9.3 Standard of Review

Once appointed, an arbitrator will determine whether to award emergency relief based on how likely the Claimant is to succeed on the merits; how much irreparable injury the Claimant will suffer without emergency relief; and whether, on balance, the benefits of emergency relief to the Claimant outweigh the burdens such relief would impose on the Respondent. Whenever it is practical to do so, the arbitrator will provide the Respondent an opportunity to respond orally and in writing before ruling on the petition. However, in exigent circumstances, the arbitrator may act on the petition without receiving argument from both sides.

9.4 Deposit

The Administrator shall require an advance deposit equal to eight (8) hours of the arbitrator's time before an arbitrator rules on a petition for emergency relief.

9.5 Relief

Rules 7.2 and 7.5-7.9 apply to an award of emergency relief.

Section 9

9.6 Extension of Appointment

After an arbitrator rules on a petition, the parties may agree to extend the arbitrator's appointment for the duration of the case. If the parties do not agree on an extension, or the arbitrator declines to accept it, the Administrator will appoint an arbitrator in accordance with Rule 3.2.

SECTION 10: EMPLOYMENT CASES

10.1 Interpretation

Section 10 is intended to suspend or modify some of the provisions set forth in previous sections of the Rules and should be interpreted accordingly.

10.2 Definitions

"Employment Case" means a dispute between an organization and an individual arising out of an application for, the course of, or the termination of an employment relationship.

"Mandatory Arbitration Clause" means an agreement to arbitrate Employment Cases that an employer requires employees to sign in order to become or remain employed, or that an employee reasonably perceives to be required and non-negotiable.

10.3 Filing Fee

An employee seeking arbitration of an Employment Case may submit a Demand for Arbitration without paying a filing fee. If a Demand for Arbitration is submitted pursuant to a court order, the normal filing fee applies.

10.4 Interim Award on Case Status

If an employee asserts the agreement to arbitrate is a Mandatory Arbitration Clause and the organization disagrees, the arbitrator will promptly schedule a preliminary hearing on this issue. The arbitrator may conduct the hearing by telephone or video-conference.

Within ten (10) days after this preliminary hearing is closed, the arbitrator will issue an interim award on whether the agreement to arbitrate is a Mandatory Arbitration Clause. If the arbitrator rules in favor of the employee, the arbitrator will order the employer to pay the filing fee. If the arbitrator rules in favor of the employer, the arbitrator will order the employee to pay the filing fee.

10.5 Special Rules Under Mandatory Arbitration Clauses

If the parties stipulate that the agreement to arbitrate is a Mandatory Arbitration Clause, or the arbitrator rules in the employee's favor on this issue under Rule 10.4, the following provisions will apply:

Section 10

(a) FEES AND EXPENSES. Regardless of any contract that states otherwise, the employer will pay the arbitrator's fees and expenses, and any other costs incurred by AHLA to administer the arbitration, unless:

(1) the employee volunteers to pay a portion of these costs; or

(2) the arbitrator determines the employee's claim is frivolous.

(b) DEPOSITS AND DEFAULT JUDGMENT. If, after receiving multiple requests and an opportunity to cure, the employer fails to deposit a reasonable amount to cover the fees and expenses for which it is responsible under paragraph (a) above, the arbitrator may enter default judgment against the employer.

(c) CONFLICTING CONTRACT PROVISIONS. An arbitrator must disregard any contract provision that purports to amend these rules in a manner that unreasonably prejudices the employee.

(d) STATUTORY RIGHTS AND REMEDIES. The arbitrator must disregard any contract provision that purports to limit the employee's statutory rights or remedies, including, but not limited to, any increase in the burden of proof required to prove liability or any cap lower than the applicable statutory cap on the recovery of damages, attorneys' fees, or costs. The final award must explain the basis for any decision on a statutory claim.

(e) HEARING LOCATION. If the arbitrator decides to hold an in-person hearing, and the parties cannot agree on a location, then in determining the location the arbitrator will attempt to minimize the cost and inconvenience to parties and witnesses.

SECTION 11: CONSUMER CASES

11.1 Interpretation

Section 11 is intended to suspend or modify some of the provisions set forth in previous sections of the Rules and should be interpreted accordingly.

11.2 Definitions

"Health Care Entity" includes any provider of health care services, including individuals; any health care or other benefit plan; and any manufacturer, distributor, supplier, or seller of a medical product, including, but not limited to, drugs, devices and/or equipment.

"Consumer" means a current or former patient, resident, or subscriber of a Health Care Entity; a beneficiary of a health plan; the user of a medical product, including, but not limited to, drugs, devices and/or and equipment; the personal representative of a current or former patient, resident, subscriber, beneficiary, or product user; or any parent, spouse, child, executor, administrator, heir, or survivor entitled to bring a survival or wrongful death claim on behalf of a former patient, resident, subscriber, beneficiary, or product user.

"Consumer Case" means a dispute between a Health Care Entity and a Consumer concerning: (a) the delivery of care or treatment by the Health Care Entity; (b) the use of a medical product including, but not limited to, drugs and equipment, and/or (c) payment for such care, treatment, or product.

These definitions shall be construed liberally with any doubts as to whether a case is a Consumer Case to be resolved in favor of providing the protections contained in these rules to the Consumer.

11.3 Right to File in Small Claims Court

Regardless of any contract provision to the contrary, any party to a Consumer Case may opt to file in a small claims court with jurisdiction over a dispute rather than file a claim under the Rules.

11.4 Filing Fee

A Consumer seeking arbitration of a Consumer Case may submit a Demand for Arbitration without paying a filing fee. If a Demand for Arbitration is submitted pursuant to a court order, the normal filing fee applies.

11.5 Requirements for Administration by AHLA

If the agreement to arbitrate was signed before the events giving rise to the claim occurred, the agreement must:

(a) be a separate document conspicuously identified as an agreement to arbitrate;

(b) include the following notice, or substantially similar language, in a conspicuous location:

> **Voluntary Agreement to Arbitrate**
> THIS AGREEMENT GOVERNS IMPORTANT LEGAL RIGHTS. PLEASE READ IT CAREFULLY BEFORE SIGNING.
>
> This is a voluntary agreement to resolve any dispute that may arise in the future between the parties under the American Health Lawyers Association's Rules of Procedure for Arbitration. In arbitration, a neutral third party chosen by the parties issues a final, binding decision. When parties agree to arbitrate, they waive their right to a trial by jury and the possibility of an appeal.

(c) state conspicuously that the health care entity will provide the same care or treatment, without delay, if the agreement is not signed; and

(d) state conspicuously that the agreement to arbitrate may be revoked within 10 days after being signed (unless a state law applicable to contracts generally grants a longer period for revocation).

11.6 Hearing on Administration of Arbitration

(a) If a Consumer claims the agreement to arbitrate fails to comply with the requirements listed in Rule 11.5, the arbitrator will promptly schedule a preliminary hearing on this issue. The arbitrator may conduct the hearing by telephone or videoconference.

(b) Within 10 days after the preliminary hearing is closed, the arbitrator will issue an award determining whether the agreement to arbitrate satisfies the requirements set forth in Rule 11.5. If the arbitrator determines that the agreement does not satisfy the requirements, the arbitrator will issue a Final Award terminating the arbitration without prejudice to any claims or defenses. The Final Award may order the Health Care Entity to pay all the costs and fees of arbitration, including the filing fee. If the arbitrator determines the agreement satisfies the requirements, the arbitrator will issue an interim award to that effect. Any determination under this section not to administer the arbitration shall not be considered a determination on the validity of the arbitration agreement, and the parties may arbitrate in another forum if their agreement so provides or if they otherwise agree.

11.7 Special Rules for Consumer Cases

The following special rules apply to a Consumer Case:

(a) FEES AND EXPENSES. Regardless of any contract that states otherwise, the Health Care Entity will pay the filing fee, the arbitrator's fees and expenses, and any other costs incurred by AHLA to administer the arbitration, unless:

(1) the Consumer volunteers to pay a portion of these costs;

(2) the arbitrator determines the Consumer's claim is frivolous; or

(3) the hearing lasts more than three days, in which case the arbitrator may deem it fair to require the parties to split the cost of additional days.

(b) DEPOSITS AND DEFAULT JUDGMENT. If, after receiving multiple requests and an opportunity to cure, the Health Care Entity fails to deposit a reasonable amount to cover the fees and expenses for which it is responsible under paragraph (a) above, the arbitrator may enter default judgment against the Health Care Entity.

(c) DISCOVERY. An arbitrator may depart from any contract provision that is inconsistent with Rule 5.5.

(d) CONFLICTING CONTRACT PROVISIONS. An arbitrator must disregard any contract provision that purports to amend these rules in a manner that unreasonably prejudices the Consumer.

(e) STATUTORY RIGHTS AND REMEDIES. The arbitrator must disregard any contract provision that purports to limit the Consumer's statutory rights or remedies, including, but not limited to, any increase in the burden of proof required to prove liability or any cap lower than the applicable statutory cap on the recovery of damages, attorneys' fees or costs. The final award must explain the basis for any decision on a statutory claim.

(f) HEARING LOCATION. If the arbitrator decides to hold an in-person hearing, and the parties cannot agree on a location, then in determining the location the arbitrator will attempt to minimize the cost and inconvenience to parties and witnesses.

NOTES

SECTION 12: CLASS ARBITRATIONS

If the parties have agreed to arbitrate a class action under the Rules, or a court orders class arbitration, the arbitrator will apply procedures based on appropriate court rules and legal standards, including the Federal Rules of Civil Procedure.

NOTES

EXHIBIT 1

Arbitrator Selection Process

As is stated in Rule 3.2(g), the Administrator appoints the candidate with the lowest combined score from the parties' Ranking Sheets (see Illustration 1). In the event of a tie, the Administrator appoints the candidate ranked most similarly by the parties (see Illustration 2). If this tie-breaking procedure fails to produce a winner, the Administrator appoints the candidate whose last name comes first in alphabetical order if the case number is odd, and in reverse alphabetical order if the case number is even (see Illustration 3).

Illustration 1: Lowest Combined Score

Party A's rankings are:	Party B's rankings are:
1. Smith	1. Johnson
2. Jones	2. Smith
3. Johnson	3. Murphy
4. Brown	4. Jones
5. Murphy	5. Brown

Smith has the lowest combined score (2+1=3) and is therefore appointed as the arbitrator.

Illustration 2: Most Similar Rankings

Party A's rankings are:	Party B's rankings are:
1. Jones	1. Murphy
2. Smith	2. Smith
3. Johnson	3. Jones
4. Brown	4. Johnson
5. Murphy	5. Smith

Both Jones and Smith have the lowest combined score three (3). Because there is no difference between Smith's scores (2-2=0) and a two (2) point difference between Jones's scores (3-1=2), Smith is appointed.

Exhibit 1

Illustration 3: Alphabetical Order

Party A's rankings are:

1. Jones
2. Smith
3. Johnson
4. Brown
5. Murphy

Party B's rankings are:

1. Smith
2. Jones
3. Brown
4. Johnson
5. Murphy

Both Jones and Smith have the lowest combined score four (4) and the difference between their rankings is the same one (1). Jones will be selected if the case number is odd; Smith will be selected if the case number is even.

MULTI-PARTY CASES

To provide each side equal input into the selection of an arbitrator, the Administrator averages the rankings of parties with common interests into a single score (see Illustration 1). If Claimants or Respondents have conflicting interests, their scores are weighted separately (see Illustration 2).

Illustration 1: Common Interests

General Hospital claims Dr. Young and Dr. Restless violated their recruiting agreement when they established Group Practice with three other physicians. The parties' rankings are:

General Hospital	Dr. Young	Dr. Restless
1. Murphy	1. Smith	1. Smith
2. Johnson	2. Brown	2. Murphy
3. Brown	3. Johnson	3. Brown
4. Jones	4. Jones	4. Johnson
5. Smith	5. Murphy	5. Jones

Because Dr. Young and Dr. Restless are similarly situated, their scores are averaged into one:

Smith 1
Brown 2.5
Johnson 3.5
Murphy 3.5
Jones 4.5

Murphy has the lowest combined score (1 + 3.5) and is appointed as the arbitrator.

Exhibit 1

Illustration 2: Competing Interests

Dr. Young seeks compensation for unpaid bills from General Hospital and Medical Insurance for surgeries performed at General Hospital. Medical Insurance refused to pay because General Hospital provided false and incomplete information. General Hospital denies these allegations. The parties' rankings are:

Dr. Young	General Hospital	Medical Insurance
1. Murphy	1. Smith	1. Smith
2. Johnson	2. Brown	2. Murphy
3. Brown	3. Johnson	3. Brown
4. Jones	4. Jones	4. Johnson
5. Smith	5. Murphy	5. Jones

Because all three parties are at odds with each other, their rankings receive equal weight. Smith has the lowest combined score (5 + 1 + 1) and is appointed as the arbitrator.

NOTES

EXHIBIT 2

Guidelines for Mediation-Arbitration (Med-Arb) and Arbitration-Mediation (Arb-Med)

Introduction

A key advantage of resolving disputes privately is the freedom to customize the process. These guidelines explain how to successfully combine mediation and arbitration. If an agreement does not conform to these guidelines, the Administrator may refuse to accept the case.

Definitions

In "Mediation-Arbitration" or "Med-Arb" a Neutral assists parties in negotiating an agreement to resolve a legal dispute, and, if no agreement is reached, resolves the dispute by holding an evidentiary hearing and issuing a binding award.

In "Arbitration-Mediation" or "Arb-Med" a Neutral holds an evidentiary hearing on a legal dispute and, before issuing an award, assists the parties in negotiating an agreement to resolve the dispute. If no agreement is reached, the Neutral resolves the dispute by issuing a binding award.

Guidelines

1. PREREQUISITES. Prerequisites for initiating arbitration or mediation must be clearly articulated. In other words, if certain events must occur before parties become obligated to mediate or arbitrate, the agreement must clarify what those events are and how a Neutral can determine whether these events have occurred.

2. TRANSITIONS. The agreement must provide that, at any given point in time, the Neutral serves in only one role—as either a mediator or an arbitrator. The agreement must clearly delineate when the Neutral transitions from one role to another.

3. MED-ARB. A Med-Arb agreement must:
   - state that information shared with the Neutral in mediation may form the basis for an award in arbitration; and
   - waive the parties' right to contest the award because ex parte communications took place in mediation caucuses.

Exhibit 2

4. ARB-MED. An Arb-Med agreement must indicate whether the arbitrator is going to seal the award before mediation begins in order to foreclose the possibility that the award will be based on information shared in confidence in mediation. If the award is not sealed, the agreement must comply with Guidelines 3(a) and 3(b) above.

EXHIBIT 3

Fee Schedule

AHLA charges the following amounts to file a claim involving two parties:

If the parties select an arbitrator by agreement $250
If the Administrator provides a list of 5 candidates to rank $350
If the Administrator provides a list of 10 candidates to rank $450

For each additional Claimant or Respondent, the filing fee of $200.

If the Claimant requests a list of five (5) candidates, the responding party may request the Administrator to expand the list to ten (10) candidates by paying a fee of $100.

In certain employment and consumer cases, the Respondent must pay the filing fees. See Rules 10.4 and 11.4.

Illustration 1

The Claimants request a list of ten (10) candidates to rank. There are two Claimants and two Respondents. The total filing fee is $850 (450 + (200 x 2)).

Illustration 2

The Claimant requests a list of five (5) candidates to rank. The Respondent requests an additional 5 candidates to rank. The Claimant pays a filing fee of $350. The Respondent pays a fee of $100.

Illustration 3

The Claimant files a claim for malpractice against a hospital and a physician pursuant to an agreement to arbitrate signed by the claimant when he was admitted for surgery. The Claimant requests a list of ten (10) candidates to rank. The Respondents are jointly responsible for the filing fee of $650 ($450 + $200).

To cover the costs of administering cases, AHLA retains a percentage of the amount billed and collected on behalf of arbitrators.

AHLA

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC , Applicants, vs. Rajinder Parmar, Respondent.	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Civil Action No.: 2014-CP-40-6017 **RESPONDENT'S MEMORANDUM IN OPPOSITION TO APPLICANTS' MOTION TO VACATE, OR IN THE ALTERNATIVE, MODIFIY OR CORRECT ARBITRATION AWARD**

RICHLAND COUNTY FILED
2016 NOV 23 AM 11:38
JEANNETTE W. McBRIDE
C.C.P. & G.S.

TO: THE PRESIDING JUDGE OF THE FIFTH JUDICIAL CIRCUIT

Respondent Rajinder Parmar ("Parmar") submits this Memorandum in Opposition to Applicants Balbir S. Minhas, Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC (hereinafter collectively referred to as "Minhas") Motion to Vacate, or in the Alternative, Modify or Correct the Arbitration Award.

BACKGROUND AND PROCDEURAL HISTORY

Dr. Parmar and Dr. Minhas each were 50% shareholders of Midlands Gastroenterology, PC (hereinafter referred to as "MG") and 50% members of Midlands Endoscopy Center, LLC (hereinafter referred to as "MEC"), as well as employees of each entity. Minhas was also managing shareholder and managing member of both entities. Parmar acquired his interests in MG and MEC on or about June 30, 2011. Parmar's purchase price was $50,000 for MG and $300,000 for MEC. The purchase price did not include A/R existing at the time of Parmar's purchase. Nor did it include the cash on hand in the operating accounts at the time of Parmar's acquisition. Indeed, Minhas received the benefit, use and distribution of the A/R and the cash on hand at the time of the acquisition.

After working together for just under three years, the parties relationship dissolved. On March 3, 2014, Minhas wrote a letter to Parmar in which he sought to trigger his "right" to a mandatory buyout of Parmar's interest in both MG and MEC. A dispute arose between Parmar and Minhas regarding their respective rights and obligations in MG and MEC. Both the ME Operating Agreement and the MG Shareholder Agreement ("the governing Agreements") mandate binding arbitration pursuant to the American Health Lawyers Association ("AHLA") Dispute Resolution Service.

At the time, the parties disagreed as to the amount to be paid for Parmar's ownership interests and how much, if any, Parmar would be entitled to receive prior to the purchase date for outstanding accounts receivable for 2011-2014, cash on hand in the bank accounts for both entities, his retirement amounts, a Nissan Murano automobile and other matters ("the Disputes"). In connection with these Disputes, Parmar asserted Minhas admitted in a number of emails from 2012-2015 that if he bought out Parmar's interests in the entities that Parmar would be entitled to his share of A/R and bank account balances at the time of the purchase of his interests. This method of "buy-out" would equate to the method of "buy-in" in 2011 when Minhas received all of the benefit of the A/R and bank account balances existing at the time of "buy-in."

After the issues between Parmar and Minhas ripened into the Disputes, the parties agreed that Parmar would sell his shareholder and member interests in the two entities pursuant to the terms and conditions of the governing Agreements at a May 30, 2014 closing and that all other matters in dispute would remain to be resolved in either "mediation or arbitration." Contemporaneous with the closing, via email in direct response to the request that he affirm that the remaining Disputes would not be affected by the sale of Parmar's shares and member interests to Minhas, Edward White, the General Corporate Counsel for MG and MEC, confirmed

the understanding that they agreed to first mediate and then arbitrate the Disputes per the terms of the Agreement. The email was sent immediately prior to the closing and Parmar agreeing to execute the transfer documents. Minhas's private counsel was copied on the email and did not object.

In direct reliance on White's admissions made on behalf of MG, MEC and Minhas, Parmar sold his interests on May 30, 2014, received the sale consideration, and left open the remaining Disputes to be mediated or arbitrated. After the closing, Minhas directed MG and MEC corporate accountant, Donny Burkett, to calculate the final A/R, bank account balances and the final accounting of Parmar's ownership in MG and MEC as of May 30, 2014.[1]

After retaining new counsel and reneging on the agreement to mediate, Parmar was forced to filed a Demand for Arbitration with the AHLA on September 16, 2014. (Demand for Arbitration attached as **Exhibit A**). On September 25, 2014, counsel for Parmar inexplicably declined to arbitrate the matter and would not agree to accept service of the arbitration complaint, forcing Parmar to file a declaratory judgment action.

In defending against the declaratory judgment action, Minhas argued that the parameters of the May 30, 2014 closing documents dealt with not only the sale of Parmar's interest in the two entities, but also all ancillary compensation matters contained in the Disputes. By order dated July 22, 2015, this Court referred all remaining issues in dispute between them after the May 31, 2014 purchase by Minhas of Parmar's interests in MG and MEC to binding arbitration. (Order Compelling Arbitration attached as **Exhibit B**).

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[1] Despite requesting these calculations, Minhas later argued the Disputes were extinguished upon the May 30, 2014 closing. At the arbitration hearing, Parmar asserted that Minhas' direction to the accountant to calculate final A/R and bank account balance was further evidence of Parmar's rights to 50% of those accounts. In other words, there would be no need to calculate those amounts if Minhas retained 100%.

This matter was arbitrated before a single arbitrator, James P. Kelly, Esquire, on December 8 and December 9, 2015. The parties did not dispute that the Agreements define the calculation for the sale of Parmar's ownership interests in MG and MEC, principal plus 4% interest. However, Parmar argued that the governing Agreements we ambiguous in that they did not address or define other compensation aspects of the buyout, particularly how the accounts receivables and cash on hand in the operating accounts were to be divided in the event of a buyout. Parmar maintained that he was entitled to at least half of those accounts. Parmar also claimed he was entitled to funds representing the variance in MG production for 2013-14. Parmar's claims for damages were detailed in a Pre-Hearing Brief outlining the basis for the claims and the source for such calculated amount. (Pre-Hearing Brief attached as **Exhibit C).** The overwhelming extrinsic testimonial and documentary evidence submitted to the arbitrator supported Parmar's position as to cash on hand, accounts receivable and the MG production variance amount and the parties intent as to Parmar's entitlement to these funds in connection with his separation from MG and MEC.

After the proceedings concluded, Minhas requested the decision be issued in the form of an unreasoned award. **(Exhibit D)**. The Arbitrator's Award was issued by Order dated May 17, 2016 in the amount of $339,568.48 in favor of Parmar. (AHLA Order No. 7 attached as **Exhibit E)**. The arbitrator awarded Parmar ½ of operating accounts; ½ of trailing accounts receivable and MG production variance for 2013-14 for the total dollar amount sought by Parmar for those particular claims. The arbitrator denied several other claims asserted by Parmer and denied the counterclaims asserted by Minhas.

On June 1, 2016, Minhas filed a Motion to Correct the May 17, 2016 Order on the grounds that the Order contained typographical or computational errors. **(Exhibit F)**. Parmar

opposed the motion asserting that the Motion to Correct went far beyond the rules (AHLA Rule 7.9) permitting the correction of scriveners errors, clerical errors or inadvertent mistakes and amounted to an attempt to have the arbitrator reconsider the exact arguments, evidence and testimony presented by Minhas in the hearing and rejected by the arbitrator in his award.[2] (See Parmar counsel's email response to Motion to Correct attached as **Exhibit G).** A hearing on Minhas's Motion to Correct was held by telephone conference on June 3, 2016. On June 10, 2016, Minhas submitted to the arbitrator a Reply to Parmar's Response to the Motion to Correct in further support of his Motion to Correct. **(Exhibit H)**. In the Reply, Minhas asserts that the arbitrator could modify or correct some or all of the award due to inadvertence if he determined he misapprehended material facts. Minhas conceded in his Reply Brief that a denial of the Motion to Correct "demonstrates the arbitrator's calculations and ultimate disposition was the product of intentional decision making and free of computational error". (See **Exhibit H, p.3).** By Order dated June 21, 2016, Arbitrator Kelly denied Minhas's Motion to Correct. (See AHLA Order No. 11 attached as **Exhibit I**).

On June 27, 2016, Minhas filed an Objection to entry of the May 17, 2016 Award on the ground that it was untimely. (See **Exhibit J).** Parmar filed a Response to the Objection on June 27, 2016. (See **Exhibit K**). Minhas's Objection was denied by Order dated August 30, 2016. (See **Exhibit L).** In a continuing effort to avoid the Award, Minhas petitioned the AHLA via email dated July 25, 2016, to void the proceedings and to remove and replace Arbitrator Kelly

[2] Indeed, the Motion to Correct is a 15 page comprehensive effort to re-argue Minhas' position on the entirety of the case. Interestingly, the arguments set forth in the Motion to Correct are lifted and restated **word for word** in Minhas' Motion to Vacate or Modify the Award pending before this Court.

pursuant to AHLA Rule 4.5[3] on the basis that the Award was not delivered timely. (Minhas's Petition to Remove Arbitrator attached as **Exhibit M**).[4] On August 22, 2016, the AHLA issued a ruling denying Minhas' request to remove Arbitrator Kelly. (See AHLA email attached as **Exhibit N**).

Finally, on August 15, 2016, Minhas filed an Application to Vacate, or in the Alternative, Modify or Correct the Arbitration Award with this Court. Minhas filed an Amended Application on August 16, 2016, seeking to vacate or modify the Award on the identical grounds set forth in Minhas's previous Motion to Correct. Minhas' efforts are nothing more than an effort to relitigate precisely the same issues that were presented to the arbitrator in numerous forms through repeated efforts before, during and after the subject arbitration. Minhas' request for judicial review reflects dissatisfaction and a refusal to accept the arbitrator's interpretation of the evidence and application of the law to the credible facts presented which resulted in an award adverse to Minhas. For the reasons set forth herein, Parmar seeks an Order from this Court denying Minhas's Motion to Vacate or Modify and confirming the May 17, 2016 Arbitration Award.

LAW AND ANALYSIS

I. Minhas's Motion to Vacate the Award must be denied.

Pursuant to the South Carolina Uniform Arbitration Act § 15-38-130(a)(1) and § 15-38-130(a)(1)(3), Minhas seeks to vacate the arbitration award entered on May 17, 2016 on the grounds that (1) the arbitrator exceeded his powers pursuant to AHLA Rules 7.1 and 7.9 by

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[3] AHLA Rule 4.5 allows a party "who believes an arbitrator is unfit to serve because of a conflict of interest, mental or physical impairment, or conduct that calls his or her fairness or impartiality into to question" to file a petition with the Administrator requesting Review Board to remove the arbitrator.

[4] Subsequent to this filing, Notice of Substitution of Counsel was filed, notifying AHLA that the undersigned was substituted as counsel of record in place of Bland & Richter.

failing to issue an award within 8 months after being appointed and within 30 days after the hearing was closed, and (2) the award was procured by corruption, fraud or other undue means. Minhas also contends the arbitrator exceeded his powers because he disagrees that the contract at issue authorized the relief granted by the arbitrator, which was the essence of the dispute between the parties and decided by the arbitrator after extensive briefing, testimony and presentation of evidence by both parties.

Standard for Vacating Arbitration Award

The South Carolina Uniform Arbitration Act sets forth the narrow circumstances in which a party may seek to vacate an arbitration award. The court may vacate the award only upon the establishment of one of the grounds set forth in South Carolina Code § 15-48-130, or the rarely applied non-statutory ground of "manifest disregard of the law."

"South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution, including arbitration." C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359 (2013). "Generally, an arbitration award is conclusive and courts will refuse to review the merits of the award." Id. As such, the standard for vacating an arbitration award is not easily overcome. An award will be vacated only under narrow, limited circumstances "when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law ...[F]or a court to vacate an arbitration award based upon an arbitrator's 'manifest disregard for the law,' the 'governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable.'" Id. (quoting Gissel v. Hart, 382 S.C. 235, 241-42, 676 S.E.2d 320 (2009)).

In addressing the Court's policy of favoring arbitration and limiting judicial review, our Supreme Court has noted:

> [t]he fundamental premise upon which this policy is grounded is the laudable goal of providing 'a relatively quick and inexpensive resolution of contractual disputes by avoiding the expense and delay of extended court proceedings.' (Citations omitted). The primary function of arbitration is to serve as a substitute for and not a prelude to litigation.....The court's function in confirming or vacating an arbitration award is severely limited. If it were otherwise, the ostensible purpose for resort to arbitration, ie avoidance of litigation, would be frustrated....(Citations omitted). Indeed, '[b]road judicial review on the merits would render resort to arbitration wasteful and superfluous....' (Citations omitted).

Trident Technical College v. Lucas and Stubb, Ltd., 283 S.C. 98, 333 S.E.2d 781 (1985).[5]

A. Timeliness of Award

Minhas argues the Arbitrator's Award was untimely, and therefore, the arbitrator "exceeded his powers" within the meaning S.C. Code Ann. § 15-48-130(a)(3). Minhas incorrectly suggests that the timeliness of the award is a matter of subject matter jurisdiction and can be raised at any time.

Minhas clearly waived any right to contest the timeliness of Award and cannot now assert it as a basis to vacate it.[6] See e.g. Success Vill. Apts., Inc. v. Amalgamated Local 376, Int'l Union UAW, 380 F. Supp. 2d 95, 2005 U.S. Dist. LEXIS 15896, 177 L.R.R.M. 3148 (D. Conn. 2005) (holding that despite a set of state regulations requiring issuance of arbitration awards on a specific timetable, there was no basis to set aside an arbitration award where "plaintiff has made no showing that it objected to the delay prior to the issuance of the award."); See also Samuel Estreicher & Steven C. Bennett, *Untimely Arbitration Awards*, 235 N. J. L. J. 59 (2006) ("[T]he

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[5] Trident Tech considers arbitration in the context of the Federal Arbitration Act, which advances the same theory and policy favoring arbitration and limiting judicial review.

[6] Parmar also contends that the procedural untimeliness of an award does not amount to an "excess" of powers within the meaning of § 15-48-130(a)(3), and Minhas has not identified any legal precedent to the contrary. The arbitrator had the authority to enter the Award pursuant to the controlling arbitration clause. To vacate the award due to a ministerial or administrative error would unfairly prejudice Parmar, who incurred substantial time and expense to participate in the proceedings with no control over the arbitrator's timing of the Award.

weight of modern authority is that untimeliness of an award is typically not fatal to enforceability of an award").[7]

Here, Minhas correctly points out that AHLA Rules require a final award be issued within 8 months of the appointment of the Arbitrator (AHLA Rule 4.3) and within 30 days of the arbitration hearing (AHLA Rule 7.1) absent an agreement by the parties for an extension of time. However, noticeably absent from Minhas's Motion is any mention of § 15-48-90(b) of the South Carolina Uniform Arbitration Act, which provides as follows:

> An award shall be made within the time fixed therefor[e] by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. ***A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.***

(emphasis added).

While Minhas acknowledges he was "disappointed" with the delay, it is undisputed that Minhas did not notify the arbitrator of his objection prior to the delivery of the May 17, 2015 Award. It was only after the Award and when Minhas realized he did not prevail on the merits of the arbitration that Minhas first argued the Arbitrator was divested of jurisdiction.[8] Minhas incorrectly approaches this argument as one of subject matter jurisdiction. Rather, the

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[7] The Court of Appeals recently addressed this issue in an unpublished opinion. However, Parmar recognizes this opinion has no precedential value. See Sosebee v. Sosebee, 2015-UP-481 (S.C. Ct. App. 2015) (finding arbitrator did not lose authority or jurisdiction when arbitrator issued untimely award where appellant failed to file a motion to terminate the arbitrator's authority or otherwise object to the arbitrator's delay until after he had an opportunity to review a draft of the award).

[8] The Award was issued on May 17, 2016. Minhas filed a Motion to Correct the Award on June 1, 2016, in which he failed to assert the issue regarding the timeliness of the Award. Minhas's Motion to Correct was denied by Order dated June 21, 2016. Six days after Minhas's Motion to Correct was denied and more than one month after the Award was delivered, Minhas filed an Objection to the May 17, 2016 Order on June 27, 2106, raising the timeliness issue for the first time. (See **Exhibit J**).

untimeliness issue is more analogous to a question of personal jurisdiction, which may be waived by a party's appearance and acquiescence to be heard in a particular forum. Indeed, this is contemplated explicitly by the legislature in § 15-48-90(b) of the South Carolina Uniform Arbitration Act.

B. Corruption, fraud or other undue means

Minhas failed to identify any corruption, fraud or undue means that could overcome the exceptional burden of proof required to vacate an arbitration award. Minhas contends the award must be vacated pursuant to S.C. Code Ann. § 15-38-130(a)(1) because "the Arbitrator's decision was procured by undue and unreasoned means." (Amended App. to Vacate, p. 4). However, the standard for vacating an award is not "undue and unreasoned means" as Minhas suggests.[9] Rather, S.C. Code Ann. § 15-38-130(a)(1) of the South Carolina Uniform Arbitration Act provides that an award shall be vacated where "the award was procured by corruption, fraud or other undue means."

In Trident Technical College, the Court, considering similar language under the Federal Arbitration Act, noted "[t]he phrase 'corruption, fraud, or undue means' has been construed by the court to proscribe affirmative misconduct by the parties, such as perjury or subornation of perjury.'" Trident Technical College, 286 S.C. at 104, 333 S.E.2d at 787. Moreover, a party's manifest disregard of the facts and the law is insufficient to constitute "undue means" absent a finding of bad faith, fraud or corruption. Id.; See also General Constr. Co. v. Hering Realty, 201 F. Supp. 487, 491 (D.S.C. 1962) (a party seeking to upset an arbitration award carries heavy burden to make it abundantly clear that award was obtained through undue means).

[9] It is unclear what Minhas is alluding to in his reference to "unreasoned means." To the extent Minhas is challenging the award as an unreasoned award, reference is made to Minhas request that the award **not** be a reasoned award. (See **Exhibit D**)

Here, Minhas has not alleged any corruption or fraud on the part of Parmar. Instead, Minhas alleges that "[Parmar's] trial counsel misrepresented [the] provisions of Midlands Gastroenterology, P.C. Agreement ("the MG Agreement"), assembled and comingled Midlands Gastroenterology, P.C. and Midlands Gastroenterology Center, LLC bank accounts and accounts receivable, and referenced various cases including a prior MG, LLC dispute during the December 8-9, 2015, arbitration hearing as a basis for an inappropriate argument that Dr. Minhas is a litigious person who is unable to get along with his partners." Id.

As to the first and second allegations, Minhas simply disagrees with Parmar's characterization of the compensation and buy out terms of the MG Agreement as presented at the arbitration hearing, the interpretation of which was the very issue in dispute to be decided by the Arbitrator. Moreover, it appears that Minhas is challenging Parmar's method of grouping its damages presentation as support of Parmar pursuing its claims through "undue means." The MG Agreement was admitted into evidence in its entirety at the arbitration hearing, discussed and referred to *ad nauseam* in direct and cross of many witnesses, and, ultimately, independently reviewed by the arbitrator. Therefore, the arbitrator did not blindly accept Parmar's characterization of its terms. Nevertheless, Parmar's advocacy of his position cannot amount to a "misrepresentation" simply because it did not align with Minhas's interpretation of the MG Agreement. Indeed, the parties' contradicting positions are the very reason this lawsuit exists. Both parties argued and briefed their respective positions at length before and after the arbitration hearing. The arbitrator read the MG Agreement, heard testimony of the parties and fact and expert witnesses over the course of a two-day hearing, considered the evidence presented by both sides as well as the oral and written arguments submitted by both parties. It

was only after a thorough presentation of the issues by both parties that the arbitrator issued the Award.

Finally, Minhas failed to identify which provisions Parmar allegedly "misrepresented" to the arbitrator in his Motion. Even assuming Parmar "misrepresented" a provision of the MG agreement that is material to this lawsuit, which still does not rise to the level supporting vacating an award, it is inconceivable to suggest that the arbitrator relied on the alleged misrepresentation simply because the arbitrator disagreed with Minhas's position. Minhas is incapable of presenting any credible support for the proposition that Parmar engaged in fraud, bad faith or corruption rising to the level clearly establishing "undue means."

In regard to Minhas's third allegation relating to references to prior lawsuits involving Minhas and his former business partners, Minhas failed to express in any way how this rises to the level of perjury, fraud, bad faith or corruption necessary for a finding of undue means. Moreover, Minhas failed to argue or identify how it improperly influenced the arbitrator in this case. The references identified by Minhas involved the cross examination of Dr. Minhas by Parmar's counsel relating to Dr. Minhas's background, familiarity with litigation and his history of litigation with former business partners. Indeed, soliciting this type of information on cross-examination is not only proper but to be expected. Furthermore, the scope of the testimony solicited was limited to acknowledgment that such litigation existed, which is a matter of public record, and did not seek to require divulging any confidential information. Such evidence was appropriately before for the arbitrator pursuant to Rule 401, SCRE and AHLA Rule 4.12, which affords arbitrators wide latitude and deference to consider the evidence offered.[10] Here, the

[10] AHLA Rule 4.12 provides in relevant part: "The arbitrator shall be the sole judge of the duplicative nature, relevance and materiality of the evidence offered. Conformity to legal rules of evidence shall not be necessary."

arbitrator's discretion in allowing that line of questioning was appropriate and did not amount to reversible error as to warrant vacating the Award in its entirety, nor has Minhas identified any evidence to suggest that such questioning improperly influenced the outcome of the arbitration.

For these reasons, any "misrepresentation" as to the provisions of the MG Agreement or reference to Minhas's litigious history cannot legally amount to "corruption, fraud or other undue means" within the meaning of § 15-38-130(a)(1) as to warrant vacating the Arbitration Award. To accept Minhas's arguments would undermine the entire arbitration process and render it meaningless.

C. Arbitrator Kelly's Acted Within His Authority to Issue the Award

Finally, Minhas argues the arbitrator "exceeded his authority" to issue the Award because he disagrees the relief granted by the arbitrator was authorized. However, Minhas's argument fails because the issues resolved by the Award were squarely within the scope of the arbitration agreement and Judge Benjamin's Order compelling arbitration of the remaining issues in dispute between them after the May 31, 2014 purchase by Minhas of Parmar's interest in MG and MEC and pending before the American Health Lawyers Association in case number 2648. (See Order Compelling Arbitration, **Exhibit B**).

It is well settled in South Carolina that "the question of whether arbitrators have exceeded their powers relates to the arbitrability of the issue they have attempted to resolve. Arbitrators exceed their powers only if the issue resolved by them is not within the scope of the agreement to arbitrate. Conversely, if an issue resolved by arbitrators is within the scope of the arbitration agreement, the statutory language does not require the Court to review the merits of their decision." Batten v. Howell, 300 S.C. 545, 548, 389 S.E.2d 170, 1990 S.C. App. LEXIS 7 (S.C. Ct. App. 1990). A party may not attempt to relitigate the merits of the arbitrator's resolution of

the arbitrable issues under the guise of questioning the arbitrators' power. Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 107, 333 S.E.2d 781 (1985).

By Order dated July 22, 2015, this Court compelled arbitration of all claims that relate to and arise out of the parties' Shareholder's Agreement and Operating Agreement. (**Exhibit B**). It is clear that the dispute related to Parmar's entitlement to any portion of the bank accounts and accounts receivable and the MG production variance which arose out of the governing Agreements. Indeed, the foundation of Parmar's complaint was that the Agreements were silent and ambiguous as to the ancillary compensation issues. While Minhas disagrees with the arbitrator's application of the law in this case, that is not a proper basis to challenge the arbitrator's power to resolve arbitrable issues. This is not an instance where the arbitrator issued an award wholly unrelated to the governing Agreements.

While Minhas styles this argument as the arbitrator exceeding the scope of his authority in issuing the Award, we presume Minhas is relying on the non-statutory ground, "manifest disregard of the law", as a basis to vacate the Award. In his brief, Minhas suggests that the arbitrator misapplied, misunderstood or misread the terms of the MG Agreement and the MEC Agreement regarding the transfer of shares and compensation. In short, Minhas disagrees with the arbitrator's decision on the merits and improperly seeks to vacate the Award and re-litigate the entire matter. To the extent Minhas argues that the arbitrator's Award must be vacated because the relief granted was not based on the contract or applicable law, that argument is also without merit.

"The court may vacate the award only upon the establishment of one of the grounds set forth in section 15-48-130, or the rarely applied non-statutory ground of 'manifest disregard or perverse misconstruction of the law.'" Swentor v. Swentor, 336 S.C. 472, 520 S.E.2d 330 (Ct.

App. 1999 (quoting Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 108, 333 S.E.2d 781 (1985)). "[The South Carolina Supreme Court] has held that for a court to vacate an arbitration award based upon an arbitrator's 'manifest disregard for the law,' the 'governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable.' Indeed, 'an arbitrator's manifest disregard of the law,' as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." C-Sculptures v. Brown, 403 S.C. 53, 742 S.E.2d 359 (2013) (quoting Gissel v. Hart, 382 S.C. 235, 241-42, 676 S.E.2d 320 (2009)). "The focus is on the conduct of the arbitrator and presupposes something beyond mere error in construing or applying the law...[f]actual and legal errors by arbitrators do not constitute an abuse of powers, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers." (Gissel, 382 S.C. at 232, 323-24). "Even a clearly erroneous interpretation of the contract cannot be disturbed." Lauro v. Vinapuu, 351 S.C. 507, 519, 570 S.E.2d 551 (Ct. App. 2002) (quoting Trident Technical College v. Lucas & Stubbs, Ltd., 286, S.C. 98, 108, 333 S.E.2d 781 (1985)).

Here, Minhas argues the contracts at issue in this case did not provide for the money Parmar sought and was awarded at arbitration. Specifically, Minhas disagrees that the MEC and MG Agreements entitled Parmar to any interest in the accounts receivable and cash in the operating accounts at time of separation as awarded by the arbitrator. Minhas further argues that, to the extent Parmar is entitled to any accounts receivable or cash on hand, Parmar is not entitled to as much of the accounts receivable and cash on hand as was awarded.

The primary issue before the arbitrator was whether Parmar was entitled to a portion of the bank accounts and accounts receivable and the MG production variance under the terms of the MEC and MG Agreements. The parties vigorously debated these issues before the arbitrator

at a two-day hearing on the merits and in numerous briefs submitted to the arbitrator. There was ample testimony from multiple witnesses that while the agreements addressed the sale of the ownership (shares and membership interest), the agreements were silent and ambiguous as to compensation and particularly the issue of accounts receivables and cash on hand. Moreover, there was ample testimony that in connection with a buyout of this nature one would expect to implement some measure of compensation to account for A/R and cash on hand. The arbitrator made his award based upon the testimony offered by both parties and the evidence before him. In fact, On June 1, 2016, Minhas filed a Motion to Correct the May 17, 2016 Award on the identical grounds for which Minhas now seeks to vacate the Arbitration Award. A hearing was held on Minhas's Motion to Correct on June 3, 2016, and Minhas's Motion was ultimately denied by Order dated June 21, 2016.

The parties' detailed presentation of these complex issues demonstrates the arbitrator did not disregard well-defined, explicit, and clearly applicable law in rendering his decision. Minhas simply failed to point to any evidence that the arbitrator knew the applicable law and chose to disregard it. Pursuant to the standard defined by the Supreme Court in Gissel v. Hart, 382 S.C. 235, 676 S.E.2d 320 (2009), even if Minhas can prove that Arbitrator Kelly erroneously applied the law and misinterpreted the contracts, that alone does not overcome the burden of proof necessary to justify vacating the Award. Quite simply, without parsing the arbitrator's mental pathway, there is no basis to conclude that the arbitrator committed a substantial error. Consequently, the arbitrator's award must be affirmed.

II. Minhas's Alternative Motion to Modify or Correct the Award must be denied.

Minhas seeks to modify or correct the Award under the guise of an alleged miscalculation, which would affect the substantive rights of the parties and reflects and attempt to revisit the merits of the arbitrator's award.

South Carolina Uniform Arbitration Act § 15-38-140(a)(1) permits modification of an award where there was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award." While not explicitly defined within the statute or by the courts, "evident miscalculation of figures" is commonly defined as "mathematical errors committed by arbitrators which would be patently clear" in jurisdictions with identical statutes. The use of an incorrect formula to determine the award is not an "evident miscalculation of figures." See e.g. Carolina Virginia Fashion Exhibitors, Inc. v. Gunter, 41 N.C. App. 407, 413, 255 S.E.2d 414 (1979); Dadak v. Commerce Ins. Co., 53 Mass App. Ct. 302, 758 N.E.2d 1083 (2001). Arbitrators need not specify their reasoning or the basis for the award as long as the factual inferences and legal conclusions supporting the award are barely colorable. Mills v. William Clarke Jeep Eagle, 321 S.C. 150, 153, 467 S.E.2d 268 (Ct. App. 1996) (citing Renaissance Enters., Inc. v. Ocean Resorts, Inc., 310 S.C. 395, 426 S.E.2d 821 (Ct. App. 1992). If the grounds for the award can be inferred from the facts, the award should be confirmed.

Here, Minhas argues the "miscalculation" is a result of the arbitrator not calculating the award in accordance with his own view of the merits of the controversy. Even if the arbitrator's decision on the merits was erroneous, it does not constitute an evident miscalculation of figures under § 15-38-140. That is, the arbitrator did not commit a mathematical error in computing the total amount of the Award. Rather, the arbitrator consciously declined to use Minhas's

accounting method to calculate the accounts receivable. Paragraph 37 of Parmar's Pre-Hearing Brief outlines in detail exactly the relief sought in the arbitration proceedings, which is mirrored identically in the Arbitration Award, except that the arbitrator denied Parmar's request for MEC AR 2011 buy-in reimbursement, profit sharing, and prejudgment interest. (Compare Petitioner's Pre Hearing Brief, **Exhibit C**, pp.8-9 and Arbitration Award, **Exhibit E**).

It is clear from the record that the Award was a result of the conscious decision of Arbitrator Kelly and was not inadvertent error. On June 1, 2016, Minhas filed a Motion to Correct the Award for the identical reasons set forth in Minhas' Motion to Vacate. (See **Exhibit F**). Parmar replied to Minhas's Motion by emails dated June 1 and June 2, 2016. (**Exhibit G**). On June 3, 2106, a hearing was held by telephone on Minhas's Motion to Correct. On June 10, 2016, Minhas submitted a memo in reply to Parmar's response. (See **Exhibit H**). Amazingly, in his Reply, Minhas conceded that "[a] grant in whole or part of Respondents' motion to correct [evidences] that some or the entire award was due to inadvertent mistake. *A denial of the motion demonstrates the arbitrator's calculations and ultimate disposition was the produce of intentional decision making and free of computational error*." (emphasis added) (See Reply, **Exhibit H,** pp.2-3).

Finally, "[a]fter careful consideration of the parties' briefs, emails, arguments at the June 3, 2016 hearing, and careful review of Order No. 7.," the arbitrator denied Respondents' Motion to Correct by order dated June 21, 2016. (See **Exhibit I**). All of this shows purposeful, clear and decisive action on the part of the arbitrator to enter the Award as written. Arbitrator Kelly was aware of and explicitly rejected the very same arguments Minhas now presents to this Court for a third time. At a bare minimum, there is a colorable inference that the arbitrator considered the facts surrounding the "buy-in" and Minhas' claiming ownership of A/R and cash on hand at that

time, the course of dealing in terms of compensation and distribution of A/R and cash on hand during the years of joint ownership as well as the evidence concerning calculations requested by Minhas at the time of "buy-out" and determined that it was the parties intent that Parmar would receive 50% of the A/R and cash in the operating accounts along with the variance in MG production at the time of separation.

Indeed, Minhas's argument is an improper attempt to show a misinterpretation of evidence rather than an evident miscalculation of figures. Minhas based his Motion to Vacate in part on the argument that "§3.8(ii) of the Midlands Gastroenterology agreement does not entitle [Parmar] 50% of operating accounts and/or accounts receivables." (Minhas' Motion to Vacate, p. 11). That agreement was deemed ambiguous as to compensation with regards to accounts receivables and operating accounts, and the arbitrator found in favor of Petitioner on the merits of that issue.

The standard required to modify the Award is inadvertent error or mistake by the arbitrator. Section 15-38-140 is not an avenue for litigants to persuade courts to review the evidence and then reach a different result because it might be interpreted differently. Such an interpretation would completely frustrate the underlying purposes of the arbitration process.

CONCLUSION

Parmar contends that a complete review by this Court of the entirety of the record in this matter could only result in one result – affirmation of the arbitrator's Award. But that is not required or permitted under the limited review provided by the South Carolina Uniform Arbitration Act. Minhas' efforts post award with the AHLA and through its Motion to Vacate are a thinly veiled attempt to engage in the very actions prohibited by the Arbitration Act –

relitigation of the merits in a binding arbitration. Minhas' Motion to Vacate or Modify must be denied and an Order entered confirming the award.

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November 23, 2016

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	AMERICAN HEALTH LAWYERS ASSOCIATION CLAIM NUMBER: 2648
Rajinder Parmar, Petitioner,	)	
vs.	)	**PETITIONER'S PRE-HEARING BRIEF**
Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, Respondents.	)	

Petitioner, Rajinder Parmar, hereby submits his Pre-hearing Brief. It is Petitioner's position that the Court's July 22, 2015, order established the law of this case. Therefore, as a matter of law, Respondents should ***not*** be able to argue that any language contained in the May 30, 2014, closing documents (i.e. "Agreement for Sale of Limited Liability Company Interest," et al.) terminated Petitioner's ability to recover his requested damages and compensation due him as an owner and physician employee at the time of the May 30, 2014, transaction (the "Transaction"). To allow Respondents to beat this same dead horse will only add to the time and cost of the arbitration. This hearing should solely be on the merits of the dispute: *Do the Respondents owe Petitioner Parmar money that he is rightly due and if yes, how much?*

1. Petitioner Rajinder Parmar ("Parmar" or "Dr. Parmar") was both a 50% shareholder of Midlands Gastroenterology, PC and a 50% member of Midlands Endoscopy Center, LLC as well as an employee of each entity.

2. Respondent Balbir S. Minhas ("Minhas" or "Dr. Minhas") was a 50% shareholder of Midlands Gastroenterology, PC; a 50% member of Midlands Endoscopy Center, LLC and

managing shareholder and managing member of both entities as well as an employee of each entity.

3. Midlands Gastroenterology, PC ("Midlands Gastro" and/or "MG") is a professional corporation organized and existing under the laws of the State of South Carolina with its principal place of business located in Richland County, South Carolina.

4. Midlands Endoscopy Center, LLC ("Midlands Endoscopy" and/or "MEC") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business located in Richland County, South Carolina.

5. At all times relevant hereto, Parmar and Minhas were the only shareholders of Midlands Gastro and equal owners.

6. At all times relevant hereto, Parmar and Minhas were the only members of Midlands Endoscopy and equal members.

7. A dispute arose between Parmar and Minhas regarding their respective rights and obligations in Midlands Endoscopy and Midlands Gastro.

8. In the event of a dispute the Midlands Endoscopy's 2003 Operating Agreement and Midlands Gastro's June 30, 2011, Shareholders Agreement both mandate binding arbitration pursuant to the American Health Lawyers Association ("AHLA") Disputes Resolution Service or its predecessor's rules with the venue being Columbia, South Carolina.

9. Edward White ("White") of the law firm of Nelson Mullins was the attorney representing Midlands Endoscopy and Midlands Gastro as its General Corporate Counsel in connection with the dispute and Minhas' request that he purchase out Parmar's interests in the two entities pursuant to the purchase terms contained therein beginning in the spring of 2014.

10. At the time, the parties disagreed as to the amount to be paid for Parmar's ownership interests and how much, if any, Parmar would be entitled to receive prior to the purchase date for outstanding accounts receivable for 2011-2014, cash on hand in the bank accounts for both entities, his retirement account amounts, a Nissan Murano automobile and other matters (the "Disputes").

11. In connection with these Disputes, Minhas admitted in a multitude of emails from 2012-2014 that Parmar if he was purchased out would be entitled to his share of A/R and bank account balances at the time of the purchase of his interests.

12. After the issues between Parmar and Minhas ripened into the Disputes, the parties agreed that Parmar would sell his shareholder and member interests in the two entities pursuant to the terms and conditions of the governing agreements at a May 30, 2014, closing and that all other matters in Disputes would remain to be resolved in either "mediation or arbitration".

13. On May 28, 2014, White sent a first draft of proposed transaction documents which included promissory notes (which were contrary to the terms of the Shareholder's and Operating Agreements), along with proposed Settlement Agreements for Midlands Endoscopy and Midlands Gastro, which contained release language which would have prevented Parmar from pursuing post-closing his entitlement to the remaining monies pursuant to the Disputes.

14. On May 30, 2014, contemporaneous with the closing, via email from White in direct response to the request that he affirm that the remaining Disputes will not be affected by the sale of Parmar's shares and member interests to Minhas, the General Corporate Counsel for Midlands Endoscopy and Midlands Gastro confirmed the the understanding and on behalf of the entities and Minhas, that they agreed to first mediate and then arbitrate per the terms of the Agreements, which constitutes a judicial admission and/or judicial estoppel. White's email was

sent immediately prior to the closing and Parmar agreeing to execute the transfer documents and Minhas was copied on these documents.[1] **(See Exhibit A.)**

15. As attorney for Midlands Endoscopy and Midlands Gastro, White was duly authorized to make the representations and made them with the intent that they would be relied upon by Parmar and his counsel. He confirmed as such in his affidavit dated January 3, 2015, which was submitted to the circuit court. White specifically admitted that he had no intent to mislead.

16. Also, White as an attorney of the South Carolina Bar owes a duty of candor not to mislead opposing counsel, to dispense his fiduciary duties in favor of the entities for which he represents, and he cannot advocate for one owner or the other, especially in 50/50 owned entities.

17. Minhas's private counsel Lowndes Pope ("Pope") was copied on this email and as Minhas's attorney, and the attorney for the party purchasing the interests from Parmar, did not object to the representations made by White.

---

[1] The Courts have held that lawyers can make admissions in nearly any circumstance including letters. *Hanson v. Waller*, 888 F.2d 806 (11th Cir. 1989) Furthermore, pursuant to the South Carolina Rules of Evidence lawyers can make admissions on behalf of their clients under an agency theory per Rules 801(d)(2)(C) and (D).
Rule 801(d)(2)(C) and (D) state as follows:

> (d) Statements Which Are Not hearsay. A statement is not hearsay if --
>
> (2) Admission by Party-Opponent. The statement is offered against a party and is ...
>
> (C) a statement by a **person authorized** by the party to make a statement concerning the subject, or
>
> (D) a statement by the **party's agent** or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship ... (Emphasis supplied.)

"It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority." See *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.* , 273 SC 306, 257 S.E.2nd 496 (1979) As such, notice to or knowledge of an attorney may be imputed to his client. See *Dorman v. Campbell*, 331 S.C. 179, 185-186, 500 S.E.2d 786 (Ct. App. 1998) Also, South Carolina's ethics laws are equally clear that attorneys have the duty of candor and fair dealing to opposing counsel. For example, please see Rule 3.4 Fairness to Opposing Party and Counsel and Rule 4.1 Truthfulness in Statements to Others.

18. In direct reliance on White's admissions made on behalf of Midlands Endoscopy, Midlands Gastro and Minhas, Parmar sold his interests on May 30, 2014, received the sale consideration, and left open the remaining Disputes to be mediated and/or arbitrated.[2]

19. After the closing, Cory Manning ("Manning") a litigation attorney for Nelson Mullins and as counsel for Midlands Endoscopy and Midlands Gastro sent an email stating that he would be scheduling mediation with mediator Tom Wills in advance of any arbitration in an attempt to resolve the Disputes. The mediation was scheduled for August 15, 2014. **(See Exhibit B.)**

20. Most importantly, after the closing of the Transaction, there are at least five emails from June-September between Minhas, the accountants Midlands Endoscopy, Midlands Gastro and Minhas where Minhas and/or his attorneys were requesting that the final A/R, bank account balances and the final accounting of Parmar's ownership in Midlands Endoscopy and Midlands Gastro as of May 30, 2014, be calculated.

21. This panel needs to ask why Minhas would be spending this money and asking for these calculations if indeed as he is arguing now that the Disputes were extinguished upon the May 30, 2014, closing.

22. Minhas, Midlands Endoscopy and Midlands Gastro subsequently terminated White, Manning and Pope and hired their current attorneys.

---

[2] Because Minhas exercised his purchase rights within three years of June 30, 201, as per the Shareholder's and Operating Agreements for Midlands Endoscopy and Midlands Gastro, Minhas was able to purchase Parmar's interest for the original cost amount and pay an additional nominal interest rate on the purchase amounts Parmar paid. Again, Parmar did not receive the fair market valuation for the sale of his interests as would have been done if the closing occurred after June 30, 2014. This is the express reason that he was entitled to receive his portion of the existing A/R and other compensation. If it was a fair market value or a multiplier valuation for his interests, then for instance the A/R and the bank accounts would have been included in the valuation to determine a final purchase price amount for Parmar's interests.

23. Upon being retained, **CURRENT** law firm, via attorney Joel Collins ("Collins") stated that the mediation should not be cancelled and that he would advocate to mediate the Disputes as was agreed by prior counsel for Midlands Endoscopy, Midlands Gastro and Minhas.

24. On July 15, 2014, Minhas' **CURRENT** law firm, via attorney Joel Collins ("Collins"), reversed his prior statements and instead stated he preferred to arbitrate the Disputes rather than mediate them and wanted them arbitrated with the AHLA organization as agreed to arbitrate per the terms of the Agreements. **(See Exhibit C.)**

25. After a meeting in August, 2014, Collins reversed himself again and once again agreed on behalf of Minhas to mediate with Tom Wills on September 29, 2014.

26. During the summer and fall of 2014, Minhas directed Midlands Endoscopy and Midlands Gastro corporate accountant, Donny Burkett, to calculate the amounts owed to Parmar.

27. Prior to the scheduled mediation being held, Collins abruptly canceled it. **(See Exhibit D.)**

28. In direct reliance on White's written promises and the unambiguous arbitration provisions contained within the four corners of the governing Agreements on September 16, 2014, Parmar filed a Demand for Arbitration with the AHLA as Minhas had requested in Collins' July 15, 2014 letter.

29. On September 25, 2014, Collins inexplicably declined to arbitrate the matter and would not agree to accept service of the arbitration complaint, forcing Parmar to file a declaratory judgment action. **(See Exhibit E.)**

30. In defending against the declaratory judgment action Minhas argued that the parameters of the May 30, 2014, closing documents dealt with not only the sale of Parmar's interest in the two entities but **ALSO** all ancillary compensation matters contain in the Disputes.

31. On July 22, 2015, the Court ruled that the following: **(See Exhibit F.)**

a. 3. "... the parties arbitrate all remaining Disputes between them after the May 31, 2014 purchase by Defendant Minhas of Plaintiff Parmar's interests in Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC."

b. 6. "Based on the law cited above, I further find that both the aforementioned arbitration clauses survive the purported termination of the contracts in which they are imbedded."

c. 8. "The Court further finds that the Arbitration Clause at issue provides that "Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by binding arbitration."

32. The Court's July 22, 2015, order is the binding law of this arbitration hearing and the law of this case.

33. Upon information and belief, Minhas will trot out the same tired arguments in his defense of the Disputes the Court rejected on July 22, 2015, and which were rejected by Judge Benjamin in the circuit court proceedings.

34. Specifically, Minhas will argue that the May 30, 2014, closing documents (i.e. "Agreement for Sale of Limited Liability Company Interest" et. al.) dealt with not only the sale of Parmar's interest in the two entities but **ALSO** all ancillary compensation matters contain in the Disputes and that White could not bind the corporate entities.

35. The South Carolina Court has heard Minhas' faulty argument, weighed it and has found it lacking both on its merits and as a matter of law. In other words, the Court's July 22, 2015, Order establishes that the May 30, 2014, closing documents are ambiguous and not complete. By ruling that the obligation to arbitrate exists, the Court determined the May 30, 2014, closing documents were not complete and that the entirety clause did not merge the

parties' pre-closing obligations. That is the law of the case; consequently, the Court allowed parol evidence and this hearing must also do so.[3]

36. *It is Parmar's position that based on* ***White's binding admissions*** *and the* ***July 22, 2015, Order,*** *Minhas should not be able to argue that the language contained in the May 30, 2014, closing documents (ie. "Agreement for Sale of Limited Liability Company Interest," et al) terminated Parmar's ability to recover his damages from the Disputes.* To allow Minhas to beat this same dead horse will only add to the time and cost of the arbitration. *This hearing should solely be on the merits of the Disputes:* **Does Minhas owe Parmar money and if yes, how much?**

37. The answer to the first part of this key question is yes, and the answer to the second part is that **Dr. Parmar's damages are $405,195.53** calculated as follows:

a. ½ of the Operating Accounts as of May 30, 2014: **$179,104.98**
   i. MG: $47,350.25 (*Ex. 1 at 0004*)[4]
   ii. MEC: $131,754.73(*Ex. 2 at 0004*)

b. ½ of the Trailing AR as of My 30, 2014: **$78,463.50**
   i. MG: $53,560.00 (*Ex. 1 at 0019*)
   ii. MEC: $24,903.50 (*Respondents 0389 produced on 11-18-15*)

c. MEC AR 2011 Buy-In reimbursement: **$7,225.50**
   i. The MEC AR June 2011 was $87,000 according to Dr. Minhas. This was false. (*Ex. 1*)
   ii. The correct MEC AR June 2011 was $72,549 (*Ex. 9*)
   iii. This is a $14,451 difference so Dr. Parmar was shorted half of it which is $7,225.50.

d. 2012 and 2013 VA Weekend Money owed to Dr. Parmar: **$8,900.00** *(Ex. 12)*

e. 2013 MG Variance Amount: **$53,000.00** *(Ex. 13)*

f. 2014 MG Variance Amount: **$29,000.00**

---

[3] Interestingly, only one (1) of the two (2) May 30, 2014, closing documents contains an entirety clause.

[4] All exhibits referenced in paragraph 31 are from Donny Burkett's Nov. 18, 2015 deposition unless otherwise indicated.

g. Profit Sharing Plan /Retirement: **$7,100.00** *(Ex. 21)*

h. Items a-g total $362,793.98 x 8.25% statutory interest from June 1, 2014, to December 1, 2015 is **$42,401.55**[5]

i. The 2010 Nissan Murano shall be returned to Dr. Minhas *(Ex. 26)*

38. This arbitration hearing should focus solely on the Disputes and answer the seminal question: *Does Minhas owe Parmar money and if yes, how much?*

Respectfully submitted,

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December 2, 2015

[5] See S.C. Code Ann. § 34-31-20 (B) (Supp. 2011) provides that the legal rate of interest on money decrees and judgments is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually.

From: Eric S. Bland
Sent: Thursday, June 02, 2016 2:47 PM
To: Jim Kelly
Cc: Christian Stegmaier; Joel Collins; ncaesar@healthlawcenter.com; Ronnie Richter; Scott Mongillo; Larry Blackmer; Mary-Ellen Shirley
Subject: FW: Rajinder Parmar v. Midlands Gastroenterology, Midlands Endoscopy Center, and Minhas (1836-101) Final Opinion

Arbitrator Kelly. So the record is clear and as an aid to the 10:00 AM telephone conference tomorrow morning, below is the confirmation request of the Respondents for you to make a NON-REASONED decision/award. I have also set forth Petitioner's email requesting you make a non-reasoned decision/award.

From: Christian Stegmaier [mailto:cstegmaier@collinsandlacy.com]
Sent: Thursday, December 10, 2015 4:07 PM
To: James P. Kelly

Cc: Eric S. Bland; Ronnie Richter; Scott Mongillo
Subject: Rajinder Parmar v. Midlands Gastroenterology, Midlands Endoscopy Center, and Minhas (1836-101) Final Opinion

Mr. Kelly-

Good afternoon.

After consultation with Dr. Minhas, Respondents also elect to go the route of not requesting a "reasoned" opinion and instead select the mechanism of disposition you outlined as Option 1 at the conclusion of our proceedings. It is our understanding that your "Option 1" disposition will not occur until after the transcript has been prepared and you have access to it for review. If our understanding regarding your access to the transcript ahead of disposition is incorrect, we would be obliged if you would so advise.

Thank you again for your time and attention regarding this matter.

Christian Stegmaier
Collins & Lacy, PC
Counsel to Respondents

From: Eric S. Bland [mailto:ericbland@blandrichter.com]
Sent: Wednesday, December 09, 2015 8:38 PM
To: James P. Kelly
Cc: Ronnie Richter; Scott Mongillo; Lisa M. Lescord; Mary-Ellen Shirley; Larry Blackmer; Christian Stegmaier; Rajinder Parmar
Subject: Re: Rajinder Parmar v. Balbir Minhas et al. (1836-101) Final Opinion

Arbitrator Kelly. On behalf of Petitioner Parmar we thank you for your diligence and professionalism in presiding over these proceedings and arbitration. It was clear that both sides had a full and fair opportunity to present their respective cases.

To confirm, the Petitioner does NOT request a "reasoned opinion" to justify your ruling. Thank you. Eric

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TO LEARN MORE ABOUT OUR FIRM, OUR PRACTICE AND TO REVIEW THE RESULTS WE HAVE OBTAINED FOR SOME OF OUR CLIENTS, PLEASE VISIT OUR WEBSITE:
www.blandrichter.com

Rajinder Parmar, Plaintiff, vs. Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, Defendants.	)	AMERICAN HEALTH LAWYERS ASSOCIATION AHLA Arbitration Case No. 2648

ORDER NO. 7

Having heard and thoroughly considered all testimony, arguments and exhibits in the December 8-9, 2015 hearing, and all portions of the Record, I hereby order that:

(A) Petitioner is awarded:

1. ½ of operating accounts $179,104.98
2. ½ of trailing accounts receivable: $78,463.50
3. 2013 MG variance: $53,000.00
4. 2014 MG variance: $29,000.00

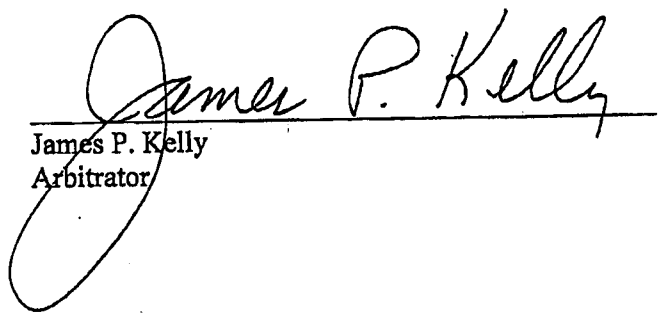
(B) Petitioner is denied:

1. MEC Account Receivable differential (posted vs. actual collection): $7,225.50
2. 2012 and 2013 VA weekend: $8,900.00
3. Profit Sharing: $7,100.00
4. Prejudgment interest
5. the Nissan automobile; and

JPC

(C) Respondents' counterclaim(s) are denied.

SO ORDERED this 17th day of May 2016.



James P. Kelly
Arbitrator

Rajinder Parmar, Petitioner, vs. Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC, Respondents.	AMERICAN HEALTH LAWYERS ASSOCIATION AHLA Arbitration Case No. 2648 **RESPONDENTS' MOTION TO CORRECT**

By order dated May 17, 2016, Arbitrator James P. Kelly awarded certain relief to Petitioner Rajinder Parmar and denied counterclaims pursued by Respondents Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC. See Order 7. Pursuant to Rule 7.9 of the AHLA Rules of Procedure for Arbitration,[1] Respondents respectfully seeks an order correcting various errors—particularly computational errors–extant in the instant award.

[1] Rule 7.9 of the AHLA Rules of Procedure for Arbitration states:

> Within 15 days after receiving an award, a party may request the arbitrator to correct clerical, **typographical**, or **computational** errors in the award. The other parties will have 15 days to respond to this request. The arbitrator must respond within 30 days after receiving the request. An arbitrator may not consider the merits of an award after it has been issued. He or she may alter the award only to correct **inadvertent mistakes**.

(emphasis added).

SUMMARY OF ARGUMENT

Respondents assert the arbitration award contains several **typographical** or **computational** errors or **inadvertent mistakes**. Pursuant to Rule 7.9 of the AHLA Rules of Procedure, Respondents seek correction of the same. Specifically, Respondents state:

- Regarding the award for accounts receivable and operating accounts, a mathematical error exists because § 8.1(A) of Midlands Endoscopy Center operating agreement strictly (e.g., "shall not be distributed") prohibits distribution to its shareholders without having reserves for 4 months of operating expenses (required $260,000.00).[2] The distribution to Petitioner of 1/2 of the operating accounts in sum of $179,104 does not account for or leave the required balance in the Midlands Endoscopy Center operating account.

- Petitioner received $37,058.04 + $6,176.00 (as interest) plus the principal amount ($300,000 + $50,000) for his shares/interest in Midlands Gastroenterology and Midlands Endoscopy Center as a result of the parties' May 30, 2014, transaction. This award is duplicative for the interest amount if 1/2 operating accounts ($179,104.98) is ultimately awarded to Petitioner.

- The award of $78,463.50, which was half of the trailing accounts receivables amount, is incorrect. This award does not include subtracting half of the accounts payables for accounting services for financial analysis by the accountant, which was mandated by Petitioner.

- Concerning the Midlands Gastroenterology, there is a mathematical error as the formula used for calculation in Section 3.15 of the Midlands Gastroenterology shareholder agreement brings to the total amount of $12,124.00 (vs. the $82,000.00 actually awarded).

- The sums awarded in sections 3 and 4 of the arbitator's order are already included in the operating accounts ($179,104.98) and trailing accounts receivables ($78,463.50).

- In the arbitration order, it was determined: "Petitioner is denied ... the Nissan automobile." Petitioner has kept the subject vehicle in his possession since his departure from the entities, though he had no legal right to keep it. The vehicle is titled to Midlands Gastroenterology. At the arbitration hearing, Petitioner announced he no longer sought to keep the automobile and that its disposition was no longer an issue for the arbitrator. Notwithstanding this announcement, to date, the vehicle has still not been returned. Midlands Gastroenterology has sustained a loss of use of the vehicle since May 30, 2014. Moreover, Midlands

[2] See Exhibit 1.

Gastroenterology has paid the property taxes and insurance on the car in the interim. The arbitrator's award contained no disposition as it pertains to the automobile; further, the order was without any award as it pertains to value, loss of use, taxes, insurance, etc, which are owed to Midlands Gastroenterology. Respondents maintain this omission was inadvertent typographical error and/or computational error and should be corrected.

FACTS/PROCEDURAL BACKGROUND

On September 16, 2014, Petitioner Rajinder Parmar filed a "Demand for Arbitration" with the American Health Lawyers Association. Respondents Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC alleged numerous counterclaims in response to the same.

At the hearing, Respondents averred Petitioner was owed nothing else monetarily. He had been paid for his shares and interest in Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC. Furthermore, Respondents maintained Petitioner had substantially damaged them monetarily, which Respondents sought to recover. Notwithstanding Respondents' presentation and arguments, the arbitrator made the following determinations concerning disposition:

(A) Petitioner is awarded:

1.	½ of operating accounts	$179,104.98
2.	½ of trailing accounts receivable:	$78,463.50
3.	2013 MG variance:	$53,000.00
4.	2014 MG variance:	$29,000.00

(B) Petitioner is denied:

1.	MEC Account Receivable Differential (posted vs. actual Collection):	$7,225.50
2.	2012 & 2013 VA weekend:	$8,900.00

3. Profit Sharing: $7,100.00

4. Prejudgment interest

5. The Nissan automobile; and

(C) Respondents' counterclaims are denied.

ARGUMENT

Section 3.8 of the Shareholders Agreement states, in pertinent part, what Petitioner would be entitled to monetarily with regard to any and all interests he possessed in the entities in the event of his exit:

> Founding Shareholder Protection Provisions. As the founding shareholder of the Company, the following provisions shall apply to Balbir S. Minhas for so long as he remains a Shareholder of the Company:
>
> ii. **From the period beginning one (1) year from the Effective Date and ending [three] (3) years from the Effective Date, in the event of a dispute that cannot be resolved by the Shareholders after good faith efforts, Balbir S. Minhas shall be entitled to elect in writing to purchase all of the Shares owned by Rajinder Parmar for the sum of $50,000 plus interest computed from the Effective Date at a per annum rate of Four and No/100 Percent (4.00%) with a closing to occur within ninety (90) days of the election with [Petitioner] making the representations contained in Section 4.6.3 and subject to the conditions in Seciton 4.6.4.**

See id. (emphasis added).

As well, Section 3.9 of the Shareholders Agreement states:

> New Shareholder Protection Provision. As the new shareholder of the Company, the following provisions shall apply to [Petitioner] for aso long as he remains a Shareholder of the Company:
>
> ii. **From the period beginning one (1) year from the Effective Date and ending [three] (3) years from the Effective Date[,] [Petitioner] shall be entitled to elect in writing to sell of his shares to Balbir S. Minhas for the sum of $50,000 plus interest computed from the Effective Date at a per annum rate of Four and No/100 Percent (4.00%) with a closing to occur within ninety (90) days of the election with [Petitioner] making the**

representations contained in Section 4.6.3 and subject to the conditions in Seciton 4.6.4.

Petitioner departed both entities by selling his shares before the end of three years.

At no time did Petitioner object to this exit clause. His signature on the agreement evinces the same as a matter of law. There is no mention of any right to one-half of the operating accounts or one-half of the accounts receivable.

With regard to what he purchased, Petitioner was gifted both a generous and gentle entrance into the practice of medicine in South Carolina. For $300,000 and $50,000 respectively, Petitioner purchased a 50% percent interest in Midlands Endoscopy, LLC and a 50% share in Midlands Gastroenterology, PC.[3] The $300,000 purchase price for the Midlands Endoscopy, LLC interest was fronted to him by Midlands Endoscopy Center—interest free–over the course of 3 years (i.e., there was no upfront out-of-pocket expense incurred by Petitioner for Midlands Endoscopy Center in connection with joining this as a full partner). Payment for the Midlands Endoscopy, LLC interest by Petitioner was via **pretax** dollars by way of periodic distributions.

Additionally, irrespective of the amount of procedures he was performing on the endoscopy side, Petitioner enjoyed essentially passive income of 50% of the profits of Midlands Endoscopy, LLC, which was not an insignificant sum. Petitioner was compensated generously and on par with Dr. Minhas during his time in the practices.

After practicing medicine together for nearly three years, Petitioner articulated his desire to sell his ownership interest in both entities during the late winter/early spring of 2014.

[3] Petitioner's purchase of his interest in Midlands Endoscopy, LLC and a 50% share in Midlands Gastroenterology, PC **did not include purchase of any existing accounts receivable or cash in the bank. This was at the express direction of Petitioner**.

Accordingly, Dr. Minhas elected to purchase Petitioner's interests in both entities—as was his right to do so–in March 2014.

In connection with this sale, Petitioner and Dr. Minhas ultimately executed an "Agreement for Sale of Limited Liability Company Interest" regarding Midlands Endoscopy Center, LLC on May 30, 2014. See Exhibit 2. Also on May 30, 2014, Petitioner and Dr. Minhas executed a Stock Sale Agreement, regarding Midlands Gastroenterology, PC. See Exhibit 3.

Pursuant to the parties' 2011 agreement outlining sale price, Petitioner received $337,058.04 (principal + 4% interest) for his interest in Midlands Endoscopy, PC and $56,176.34 (principal + 4% interest) for his shares in Midlands Gastroenterology, PC. See Exhibit 4. These amounts constituted the complete aegis of what Petitioner was entitled to. No other written agreement—executed by the parties–was created that entitled Petitioner to any other sum.[4] The sale documents Petitioner executed on May 30, 2014, were done so in the presence of his lawyer and with the advice of counsel.

Upon the sale of Petitioner's interest, Dr. Minhas became the sole member of Midlands Endoscopy Center, LLC and the sole shareholder of Midlands Gastroenterology, PC.

Though the written sales agreements are completely silent regarding any additional amounts due and owing to him, Petitioner maintained he was entitled, inter alia, to one half of the accounts receivable and one half of the cash on hand for both entities at the time of his

---

[4] See also, e.g., Paragraph 4 of the Stock Sale Agreement regarding Petitioner's sale of his shares of Midlands Gastroenterology, PC, which states:

> Entire Agreement. This Agreement is the entire agreement among the parties hereto with respect to the transaction contemplated hereby and supersedes all prior or contemporaneous agreements or understandings, whether written or oral, among the parties, or any of them, with respect to the subject matter hereof.

See Exhibit 3.

departure. Prior to the hearing in the instant case, Petitioner asserted he was entitled to an additional $405,195.53.

In his disposition, the arbitrator elected to award Petitioner one half of the accounts receivable and one half of the cash on hand for both entities. The arbitrator calculated these sums to be $179,104.98 and $78,463.50, respectively. As well, Petitioner was awarded $53,000.00 and $29,000.00 in alleged Midlands Gastroenterology shareholder compensation variance for years 2013 and 2014, respectively. As explicated below, Respondents aver these awards was the product of computational error, which should be corrected.

I. Accounts Receivable and Operating/Bank Accounts:
(Section A, Subsections 1 & 2 of Arbitration Order)

In his order, the arbitrator awarded Petitioner one half of the operating accounts ($179,104.98) and one half of the accounts receivable ($78,463.50) of Midlands Gastroenterology and Midlands Endoscopy Center as of May 30, 2014. This was the exact sum sought by Petitioner in his pre-hearing brief.

Respondents aver this award was the product of a computational error, which requires correction. Respondents reason/argue their position upon the following, among other reasons:

- There is no mention of bank accounts and/or accounts receivable to be given to Petitioner in the agreements Petitioner signed on June 30, 2011, or the sale documents Petitioner signed on May 30, 2014.

- The calculations of accounts receivable and reconciled bank accounts for both Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC **ignore** both the realities of overhead **and** the calculations by accountant Donny Burkett post May 30, 2014. Assuming, arguendo, Petitioner was entitled to anything post May 30, 2014, dollars, it would be net rather than gross. Petitioner received a windfall to which he was not entitled.[5]

[5] Notwithstanding Respondents' assertion that Petitioner is not entitled to one half of the operating accounts and one half of the accounts receivable, the award to Petitioner overlooks the existence of accounts payable. Petitioner seeks all the benefit without any of the obligation

Moreover, the subject bank accounts and accounts receivable belong to the entities. Petitioner did not buy any interest in the bank accounts and accounts receivable at the time of purchasing shares of Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC. During his tenure with Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC Petitioner was not expecting any more than what he paid for those shares. Petitioner received 4% interest on the original amounts he paid for Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC. In fact, for Midlands Endoscopy Center, LLC, since Petitioner obtained ownership of 50% shares on day one, in essence, Midlands Endoscopy Center, LLC loaned $300,000 to him. Contrary to normal convention, Petitioner, as a borrower, received 4% interest on borrowed money (from Midlands Endoscopy Center, LLC) on May 30, 2014 when he forced Dr. Minhas to personally buy the Midlands Endoscopy Center, LLC shares back. That was all that was contemplated, **just to avoid the very dispute that Respondents have been dragged into right now**, if the sale occurred after first year but before the third anniversary of June 30, 2011. There is no mention of bank accounts and/or accounts receivable to be given to Petitioner in the agreements Petitioner signed on June 30, 2011, or the sale documents Petitioner signed on May 30, 2014.

Further, Petitioner bought shares of Midland Gastroenterology and Midlands Endospcopy Center in 2011. The value of these shares did not include bank accounts and accounts receivable. That fact is undeniable and indisputable. Dr. Minhas merely acted as officer of the entities to complete the transactions. The shares are integral and inherent part of the entities. Dr. Minhas is not the "shares." Petitioner's sale agreement on May 30, 2014, returned his shares to

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attendant to operating these entities. An award without such a consideration constitutes a miscalculation and computational error.

the entities and he received the amount in return, which he bargained for in 2011. By referring to provisions 3.8(ii) and 3.9(ii) of the Midlands Gastroenterology Shareholder Agreement,[6] Petitioners forced Dr. Minhas to personally buy the shares because there was an error recognized by both parties in the drafted agreement where "Dr. Balbir S. Minhas" name was inserted instead of "[Midlands Gastroenterology/]Midlands Endoscopy Center." This is well documented in the April 7, 2014, meeting where Petitioner agreed that the entities could buy his shares. Had the entities paid the $393,234.34—the amount Dr. Minhas was forced to personally pay–for the shares/interests, there would have been much less money in the entities. **The order, therefore, computes incorrectly to award the petitioner "sale amount" twice.**[7]

The same provisions 3.8(ii) and 3.9(ii) within the Midlands Gastroenterology Shareholder Agreement that were used by Petitioner to demand and successfully get payment for his shares personally from Dr. Minhas also specifically lack mention of bank accounts and accounts receivable. The buy-sell provisions 3.8(ii) and 3.9(ii) are clearly worded and **unambiguous** because they include 4% interest (unconventionally to be paid by the lender to the borrower) added to the "amount deemed paid to buy shares" by Petitioner, but does not include bank accounts and accounts receivable. Whereas, provisions 3.8(iii) and 3.9(iii), which are the buy-sell after 3 years, do not include 4% interest, but include bank accounts and accounts receivable as part of the well-established "Fair market evaluation" determination. Respectfully,

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[6] See Exhibit 4.

[7] The typographical error using "Balbir S. Minhas" instead of "Midlands Gastroenterology/Midlands Endoscopy Center" is no different than "THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C CODE ANN. 15-48-10, *et seq*." written on the title page of the Midlands Gastroenterology Shareholder Agreement and "NHLA Alternative Dispute Service Rules of Procedure for Arbitration" (Section 8.11) within the Agreement's text. This was also recognized by the Petitioner's legal counsel.

the arbitration award contains a computational error with its lack of recognition of this clear distinction between 3.8(ii)/3.9(ii) and 3.8(iii)/3.9(iii) clauses of the shareholder agreement.

Bank accounts and accounts receivable are assets of the companies. This was a buy-sell transaction of shares, and not liquidation of the company assets and distribution of the proceeds to the shareholders.[8]

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[8] Respondents maintain that some sort of (artificial) economic justice has been employed to bring the Midlands Gastroenterology and Midlands Endoscopy Center operating accounts and accounts receivable to zero on May 30, 2014, as it was misrepresented by Petitioner to be on July 1, 2011. What is being overlooked in the award are the true economic positions of Petitioner, Dr. Minhas and Midlands Gastroenterology and Midlands Endoscopy Center on July 1, 2011.

The true economic positions were the following: Petitioner paid $50,000.00 for 50% stock of Midlands Gastroenterology. He also gained $300,000.00 worth of Midlands Endoscopy Center 50% shares while contributing nothing to Midlands Gastroenterology and Midlands Endoscopy Center's operating accounts. Combined, Midlands Gastroenterology and Midlands Endoscopy Center had approximately $297,000.00 dollars of Dr. Minhas' money in the operating accounts and accounts receivables. Midlands Endoscopy Center needed to pay Dr. Minhas $300,000 for the shares purchased by Petitioner. The gap between economic positions of Dr. Parmar and Dr. Minhas (favorable to Petitioner and unfavorable to Dr. Minhas) was $897,000.00 if Midlands Gastroenterology and Midlands Endoscopy Center had zero money. This economic gap was not dissipated until December 2013. All of this was demonstrated/testified to at the arbitration proceeding.

When Petitioner bought shares of Midlands Gastroenterology and Midlands Endoscopy Center, Petitioner did not pay any money for his shares for Midlands Endoscopy Center. To satisfy all mutual financial obligations, Midlands Gastroenterology and Midlands Endoscopy Center could not have been able to conduct their business with no money without a loan. For equal contribution, Petitioner could have contributed $297,000 to match the amount Dr. Minhas had in the operating accounts and accounts receivables in Midlands Gastroenterology and Midlands Endoscopy Center, which Petitioner did not. Or, as dictated by MEC operating agreement and business rule for Midlands Gastroenterology, a total $365,797.00 (as calculated by Donny Burkett, the entities' accountant) was needed to conduct business of the two entities. To satisfy the Midlands Endoscopy Center obligation to pay $300,000.00 to Dr. Minhas on July 1, 2011, there would have been additional loan needed, making the total amount of money to be borrowed $665,797. Or, Petitioner could have borrowed money independently to pay to Midlands Endoscopy Center for his shares. This would have been the fairest economic just configuration to all parties on July 1, 2011. Petitioner elected not to opt for any of these options.

Respondents posit the following: Assume Midlands Gastroenterology and Midlands Endoscopy Center had borrowed that amount $665,797 from a lender, such as a bank. Midlands Gastroenterology and Midlands Endoscopy Center would have had the obligation to pay back

II. 2013 & 2014 Midlands Gastroenterology Shareholder Compensation Variance (Section A, Subsections 3 & 4 of Arbitration Order)

Section 3.15 of the Midlands Gastroenterology Shareholder Agreement governs shareholder compensation. This section states, in pertinent part:

> Shareholder Compensation. Shareholder compensation for physisican services provided to the Corporation shall be equal for all Shareholders as long as each Shareholder's production is within ten percent (10%) of each other Shareholder. If a Shareholder's production is not within 10%[,] but is within twenty percent (20%) of each other Shareholder, then Shareholder compensation shall be fifty percent (50%) equal and fifty (50%) based upon personal production of each Shareholder . . . .

In the arbitration award. Petitioner was awarded $53,000.00 and $29,000.00 in alleged Midlands Gastroenterology shareholder compensation variance for years 2013 and 2014, respectively. As explicated below, this award was incorrect.

In the award, the arbitrator misapprehended or overlooked the following when calculating variances:

Year 2013: For 2013, the productivity numbers were $590,968.00 for Petitioner and $469,237.00 for Dr. Minhas. The variance was $121,731.00, which was a percentage difference of 11.48% in favor of Petitioner.

With 50% overhead considered, net distributable income was approximately $61,000.00. Calculated per formula: 50% equal (Petitioner $15,250.00) and 50% as per percentage difference (Petitioner $18,605.00) equals to a total of $33,855.00 and 50% equal (Dr. Minhas $15,250.00) and 50% as per percentage difference (Dr. Minhas $11,895.00) equals to a

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that amount before distribution of cash to their shareholders (50% for Petitioner and 50% for Minhas). Under this scenario, needless to say, had Midlands Gastroenterology and Midlands Endoscopy Center paid its debt in full on May 30, 2014, there would be no remaining amount for distribution without making Midlands Gastroenterology's and Midlands Endoscopy Center's operating accounts go to less than zero.

In reality, Dr. Minhas was the "lending party," but did not compel Petitioner to pay half of the loan. Respondents again maintain that this is the reason Section 3.8(ii) and 3.9(ii) do not have bank accounts and accounts receivable. Petitioner—with full knowledge–signed the Shareholder Agreement, as drafted.

total of $27,145.00. Therefore, difference in favor of Dr. Parmar was $6,710.00 (vs. the awarded $53,000.00).

Year 2014: For 2014, the productivity numbers were $281,859 for Petitioner and $209,046 for Dr. Minhas. The variance was $72,813.00, which was a percentage difference of 14.83% in favor of Petitioner.

With 50% overhead considered, net distributable income was approximately $36,000.00. Calculated as per formula 50% equal (Petitioner $9,102.00) and 50% as per percentage difference (Petitioner $11,832.00) equals to a total of $20,934.00 and 50% equal (Dr. Minhas $9,102.00) and 50% as per percentage difference (Dr. Minhas $6,418.00) equals to a total of $15,520.00. Therefore, difference in favor of Dr. Parmar was $5,414.00.

These figures add up to a grand total of $12,124.00 ($6,710.00 + $5,414.00) in favor of Petitioner for the years 2013 and 2014. In light of the sum that was actually awarded for production variance ($82,000.00), Respondents respectfully maintain computational error exists, which requires correction.

To the extent, Petitioner is entitled to any sums from the accounts receivable or operating/bank accounts, Respondents assert the sums awarded for shareholder compensation variance are contained in the bank accounts and accounts receivables; accordingly, Respondents maintain the sums awarded for shareholder compensation are duplicative and should be subtracted from any award including amounts from accounts receivable or operating/bank accounts.

Respondents further note that to calculate these productivity numbers for purposes of this analysis, Midlands Gastroenterology paid its accountant in excess of $28,000.00 after May 30, 2014. Petitioner did not participate at all in paying for that analysis, something he should have done and something that should have been accounted for in the award. In fact, the accountant did all the dispute-related financial analyses before and after May 30, 2014 for both parties. Only Midlands Gastroenterology and Midlands Endoscopy Center paid the accounting fees totaling

approximately $70,000.00. As 50% shareholder before May 30, 2014, Petitioner should have been responsible for 50% of the accounting fees, and if bank accounts and accounts receivables are not justifiable claims, then almost for 100% of these fees.

III.Nissan Automobile

In the arbitration order, it was determined: "Petitioner is denied ... the Nissan automobile." Respondents submit the arbitration award should not deny something Petitioner is not asking for.

The 2010 Nissan Murano is titled to Midlands Gastroenterology and has been in Petitioner's possession since his departure from the entities. Petitioner had no legal basis to keep the vehicle in his possession after he left. Petitioner stated in his prehearing brief that he will return the vehicle. At the time of the hearing, Midlands Gastroenterology did not have the benefit of the use of the automobile for 555 days. The vehicle has still not been returned, which adds that much more time the vehicle has been outside the possession of Midlands Gastroenterology. Moreover, Midlands Gastroenterology has paid the property taxes and insurance on the car in the interim. The arbitrator's award contained no disposition as it pertains to the automobile; further, the order was without any award as it pertains to loss of use, taxes, etc, which are arguably owed to Midlands Gastroenterology. Respondents maintain this omission was inadvertent typographical error and should be corrected.

CONCLUSION

For the reasons stated herein, Respondents respectfully request an order of correction containing the following:

- Denial of sums/revision of award relating to accounts receivable and operating/bank accounts to Petitioner due to the facts that, inter alia: there is no mention of bank accounts and/or accounts receivable to be given to Petitioner in the agreements Petitioner signed on June 30, 2011, or the sale documents Petitioner signed on May 30, 2014; the duplicative award of interest on the principal; and the calculations of accounts receivable and reconciled bank accounts for both Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC ignore both the realities of overhead and the calculations by accountant Donny Burkett post May 30, 2014.
- A revised award of $12,124.00 ($6,710.00 + $5,414.00) for variance in Midlands Gastroenterology shareholder compensation in favor of Petitioner for the years 2013 and 2014 (vs. the awarded $82,000.00); and
- Disposition of the 2010 Nissan Murano to Respondent Midlands Gastroenterology, along with an award of loss of use and diminution of value and reimbursement for property taxes and insurance incurred by Midlands Gastroenterology during Petitioner's possession of the vehicle.

Respectfully submitted,

COLLINS & LACY, P.C.

/s Christian Stegmaier

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ATTORNEYS FOR REESPONDENTS BALBIR S. MINHAS, M.D., MIDLANDS GASTROENTEROLOGY, PC, AND MIDLANDS ENDOSCOPY CENTER, LLC

RESPONDENTS' MOTION TO CORRECT

Columbia, South Carolina
June 1, 2016

Rajinder Parmar, Petitioner, vs. Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC, Respondents.	AMERICAN HEALTH LAWYERS ASSOCIATION AHLA Arbitration Case No. 2648 **RESPONDENTS' REPLY TO PETITIONER'S RESPONSE TO MOTION TO CORRECT**

By order dated May 17, 2016, Arbitrator James P. Kelly awarded certain relief to Petitioner Rajinder Parmar and denied counterclaims pursued by Respondents Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC. See Order 7. Pursuant to Rule 7.9 of the AHLA Rules of Procedure for Arbitration, Respondents moved for an order correcting various errors—particularly computational errors—extant in the instant award. By emails dated June 1 and June 2, 2016, Petitioner replied to Respondents' motion. During a June 3, 2016, telephone conference of the parties and the arbitrator, Petitioner confirmed these emails constituted his reply to Respondents' motion. Thereafter, the arbitrator ordered that any reply by Respondents be filed on or before June 10, 2016. This reply follows:

- In his June 1 and 2, 2016, emails, Petitioner asserted that Respondents' pursuit of a motion to correct was procedurally improper. Following the June 3, 2016, conference, wherein the parties presented argument concerning the same, the arbitrator held that Respondents' motion was procedurally proper and would be considered. Thus, as to the procedural-based argument advanced by Petitioner, Respondents maintain this matter has been disposed of by the arbitrator and is now moot.

- Petitioner additionally asserts the arbitrator is precluded from correcting the award because the parties did not seek a reasoned award. In Petitioner's calculus of reasoning, the absence of findings of fact, etc. prevent the arbitrator from considering whether his summary award was the product of, inter alia, computational error rising to the level of inadvertent mistake. Petitioner's averment is erroneous. Whether the disposition was via summary award or reasoned award, the distinction is immaterial. The award must be reasonable, which in turn connotes an award free of prejudicial error. The arbitrator is free to assess his own order—including his reasoning—even if that reasoning is not stated in the order. For Petitioner to assert otherwise exceeds the bounds of credulity.
- Respondents do not seek reconsideration of the merits, but instead the assurance the arbitrator's award and ruling via AHLA Rule 7.9 was free of computational error, which prejudices them. Respondents maintain computational error can be the product of, among other things, the tribunal overlooking or misapprehending material facts leading to (mis)calculation and not just scrivener's errors or transposition of numbers, including, but not limited to, the methods of calculation embedded in contractual provisions and/or well established business practices. Again, at this stage, the arbitrator possesses the discretion to re-examine his decisions that comprise his ultimate disposition to determine whether the award was premised upon mistake. Admittedly, for correction to occur, said error(s) must be inadvertent (vs. an intentional award based upon specific[1] decisions by the arbitrator). A grant in whole or part of Respondents' motion to correct evinces that some

[1] Again, the fact the instant award was not reasoned doesn't negate the fact that the arbitrator would need to arrive at specific decisions—though unwritten–to arrive at ultimate disposition. If there weren't such findings and conclusions, then any subsequent award would be arbitrary and capricious. The case law in South Carolina is legion for the proposition that awards and judgments cannot be arbitrary and capricious. See Riley v. Ford Motor Co., 414 S.C. 185, 777 S.E.2d 824 (2015).

or the entire award was due to inadvertent mistake. A denial of the motion demonstrates the arbitrator's calculations and ultimate disposition was the product of intentional decision making and free of computational error. As explicated within their motion, Respondents aver the award and ruling in fact contained computational error, which they believe deserves review. As they have laid out:

- The figures contained within Order 7 award in sections (A) 1 and 2 (when compared with the corresponding numbers in the Petitioner's prehearing brief at paragraph 37, a and b indicates the arbitrator's inadvertent computational error made arguably by probably having relied on the incorrect assembly of those numbers by the Petitioner.

- Midlands Endoscopy Center and Midlands Gastroenterology are two independent corporations and have two separate operating agreements with completely different compensation systems. Midlands Endoscopy Center is entirely share based "distribution" (50% to each shareholder). Midlands Gastroenterology is exclusively productivity based.

- As clearly demonstrated at the arbitration hearing, Petitioner—during his association with Midlands Gastroenterology and Midlands Endoscopy Center from July 1, 2011 to May 30, 2014—was fully aware of the difference between compensation systems for Midlands Gastroenterology and Midlands Endoscopy Center, yet asserted in his prehearing brief and at the hearing: (a) operating accounts of Midlands Gastroenterology (i) and Midlands Endoscopy Center (ii) added to a total $179,104.98 and; (b) as trailing accounts (A/Rs) of Midlands Gastroenterology (i) and Midlands Endoscopy Center (ii) added to a total of $78,463.50. The arbitrator's adoption of the argument for purposes of calculating the award was computational error.

- Midlands Gastroenterology owes no additional money to Petitioner, as bank accounts and accounts receivables (company assets) were not distributable on May 30, 2014, when Petitioner forced Dr. Minhas personally to buy Petitioner's Midlands Gastroenterology shares. Petitioner made no written declaration that Midlands Gastroenterology bank accounts and accounts receivable were not included in the sale to Dr. Minhas. This was in contradiction to when Petitioner purchased Midlands Gastroenterology shares on July 1, 2011, after Petitioner's categorical declaration that he did not want to buy Midlands Gastroenterology bank accounts and accounts receivable. At most, Midlands Gastroenterology's obligation to Petitioner is the productivity variance of $12,124.00 if the arbitrator makes no adjustments for the accounts payables.

- Petitioner received 50% of Midlands Endoscopy Center shares from Midlands Endoscopy Center on July 1, 2011, without paying any money and received passive income (in distributions) from Midlands Endoscopy Center, but did not complete payment for his purchase of shares until December of 2013.

- Again, regarding Midlands Endoscopy Center, this entity owes no additional money to Petitioner, as:

  - Bank accounts and accounts receivables (company assets) were not distributable on May 30, 2014, when Petitioner forced Dr. Minhas to personally buy Petitioner's shares.

  - Petitioner made no written declaration that Midlands Endoscopy Center bank accounts and accounts receivable were not included in the sale of Midlands Endoscopy Center shares to Dr. Minhas. This was in contradiction to when Petitioner purchased Midlands Endoscopy Center shares on July 1, 2011, after Petitioner's categorical declaration that he did not want to buy Midlands Endoscopy Center's bank accounts and accounts receivable.

  - Petitioner forced the sale of his Midlands Endoscopy Center shares to Dr. Minhas personally despite knowing that there was a typographical error (Balbir S. Minhas in place of Midlands Endoscopy Center) in the Midlands Gastroenterology operating agreement. Consequently, Petitioner forced the sale of his Midlands Gastroenterology and Midlands Endoscopy Center shares to Dr. Minhas personally instead to Midlands Gastroenterology and Midlands Endoscopy Center, effectively Petitioner's interests to Dr. Minhas personally on May 30, 2014. Had Midlands Gastroenterology and Midlands Endoscopy Center bought Petitioner's shares, as the contracts intended, there would have been much less money for distribution. Petitioner seeks to obtain the sale price twice. If what is written in error is applicable, then what is omitted (bank accounts and A/Rs) should be equally applicable. Failure to recognize and account for the same is computational error.

  - Petitioner demanded and received "lump sum" payment for Midlands Endoscopy Center shares on May 30, 2014, despite there being no such provision in 3.8(ii). Further, Petitioner's assertion that Dr. Minhas "zeroed out" the accounts of Midlands Gastroenterology and Midlands Endoscopy Center on July 2011 is erroneous. Between July 1, 2011 and May 30, 2014, the entities never had zero amounts in their accounts. Dr. Minhas had personal monies ($297,000.00+ $300,000.00) in the entities for which he did not get paid in full until December 2013.

- Petitioner selected different segments of the respective operating agreements at different times according to what was economically beneficial to him at that time. Any adoption of this is computational error.

- Finally, Dr. Minhas personally owes no money to Petitioner since he has already fully paid for Petitioner's shares of Midlands Gastroenterology and Midlands Endoscopy Center on May 30, 2014.

- Concerning the Nissan Murano, Petitioner owes related expenses, including repair costs, for his lawless possession of the vehicle for the last 2 years, in addition to the expenses mentioned in the motion to correct. Petitioner knew the Nissan Murano is/was titled to Midlands Gastroenterology at all points material to the case. Yet, without any sale agreement signed by Midlands Gastroenterology in favor of Petitioner, Petitioner kept this vehicle, thus damaging Midlands Gastroenterology. Petitioner even kept the vehicle after he announced prior to and at the arbitration hearing that he would return the vehicle to Midlands Gastroenterology. At the June 3, 2016, conference, the arbitrator directed Petitioner to turn over possession of the automobile to Midlands Gastroenterology, which arguably evinces the arbitrator's correction of his initial award concerning this issue—at least in part. Though the automobile was not drivable (he had to have it towed), Petitioner has done so. Respondent incurred $1,433.72 in repair costs to the Nissan Murano. See Attachments. Absence of disposition of Midlands Gastroenterology's damages averments is inadvertent mistake, which should be further corrected.

For the reasons stated herein and within its initial motion, Respondents respectfully request an order of correction in the instant case.

Respectfully submitted,

COLLINS & LACY, P.C.

/s Christian Stegmaier

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ATTORNEYS FOR REESPONDENTS BALBIR S. MINHAS, M.D., MIDLANDS GASTROENTEROLOGY, PC, AND MIDLANDS ENDOSCOPY CENTER, LLC

RESPONDENTS' REPLY TO PETITIONER'S RESPONSE TO MOTION TO CORRECT

Columbia, South Carolina
June 10, 2016

Rajinder Parmar, Plaintiff, vs. Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, Defendants.	)	AMERICAN HEALTH LAWYERS ASSOCIATION AHLA Arbitration Case No. 2648

ORDER NO. 11

After careful consideration of the parties briefs, emails, arguments at the June 3, 2016 hearing, and careful review of Order No. 7, I find no material clerical, typographical or computational errors or inadvertent mistakes in the award (Order No. 7). Accordingly, I deny Respondents' Motion to Correct.

SO ORDERED this 21st day of June 2016.

James P. Kelly

James P. Kelly
Arbitrator

Rajinder Parmar, Petitioner, vs. Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC, Respondents.	)	AMERICAN HEALTH LAWYERS ASSOCIATION AHLA Arbitration Case No. 2648 **RESPONDENTS' OBJECTION**

Respondents Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC object to entry of either Orders #7 or # 11 (or any subsequent award) as the final order in the case sub judice.

On May 17, 2016, the arbitrator issued Order #7 as disposition of the parties' dispute. See Exhibit A. Subsequent to the issuance of Order #7, Petitioner Rajinder Parmar inquired by email to the arbitrator concerning the matter of costs. See Exhibit B. In response, the arbitrator related that absent any agreement to the contrary, all parties were to bear their own costs, referencing (though not specifically citing) Rule 7.6(b) of the AHLA Rules of Procedure. See Exhibit C.

On May 18, 2016, Petitioner's counsel emailed the arbitrator again and asserted section 8.11 of the Midlands Gastroenterology Shareholders Agreement—which was in evidence in the record from the hearing and presumably reviewed by the arbitrator prior to the issuance of Order #7–contemplated the award of costs to the prevailing party. Petitioner maintained the disposition in Order #7 made him the prevailing party; accordingly, Petitioner was aggrieved Order #7 did not award him costs in addition to the other awards. Stated specifically, Petitioner's counsel averred:

Arbitrator Kelly. Pursuant to your email of last evening regarding attorney's fees and costs requested by the Petitioner, please see section 8.11 of the June 30, 2011 signed Midlands Gastroenterology Shareholders Agreement. I have highlighted the relevant portion. While it is arguable that attorney's fees are sometimes not considered "costs", it is clear that my client is entitled to recover all of its "costs" from the arbitration. These include but are not limited to filing fees, arbitration fees, court reporter costs, etc. and others. This is not discretionary on the panel's part. It is mandatory. The language that "all costs shall be borne by the party against whose interest the arbitration is adversely determined" could not be more clear. It is not debatable that my client was the prevailing party and that the Respondents were not. You awarded my client over 90% of the entire monetary relief he requested in his demand for arbitration. The Respondents' counterclaims were denied in their entirety. Please let us know whether you want us to submit an affidavit itemizing the costs and provide the invoices and payments for the. Thank you. Eric Bland

> Section 8.11 Disputes. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, which shall be conducted in Columbia, South Carolina, in accordance with the NHLA Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the arbitration, shall be binding not only on all parties to the Agreement, but on any other entity controlled by, in control of or under common control with the party to the extent that such affiliate joins in the arbitration. Judgment upon the award rendered by the arbitrators may be enforced in any court having jurisdiction thereof and all costs shall be borne by the party against whose interest the arbitration is adversely determined.

See Exhibit D (highlight in original).

While not expressly characterized as such, Respondents maintain Petitioners sought correction of Order #7 pursuant to Rule 7.9 due to the matter of the award of costs being absent from the original disposition.

In response, the arbitrator issued Order #8 on May 18, 2016, after advising the parties "Mr. Bland has brought to my attention a clause which may represent an agreement between the parties on allocation of costs of the arbitration. If it is such an agreement, then AHLA rules require that the agreement be followed." See Exhibit E. To that end, "[t]o flesh out this matter," the arbitrator ordered:

1. Respondents to respond, by midnight, Thursday, May 26, 2016, in writing to Petitioner's positions on (a) application of the MG Shareholders Agreement to allocation of costs, (b) whether in this case costs include attorney fees, and (c) determination of the prevailing party when the Award split as did Order No. 7. Petitioner will have seven calendar days after receipt of Respondents response to reply to that response;

2. Petitioner to submit, by midnight, Thursday, May 26, 2016, an affidavit itemizing the costs with attached invoices and evidence of Petitioner's payments for the costs of the arbitration.

See id.

The parties prepared responses concerning the matter of costs in accordance with the directive of Order #8. Presently, the matter of costs remains pending. Thus, there has not been any order issued in this case, which finally disposes of all of the purported issues and relief sought by the parties in the original action.

Due to the fact that there has not been any final order issued in this case, Respondents therefore now object to any award ultimately issued (along with previous companion rulings) in the instant case as null and void inasmuch as the disposition of this matter is untimely. Applying Rules 4.3(a) and 7.1 (and 7.9) of the AHLA Rules of Procedure, Respondents assert the arbitrator is divested of jurisdiction.

[SIGNATURE PAGE ATTACHED]

Respectfully submitted,

COLLINS & LACY, P.C.

/s Christian Stegmaier

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RESPONDENTS' OBJECTION

Columbia, South Carolina
June 27, 2016

Wade Mullins

From: Wade Mullins
Sent: Tuesday, November 22, 2016 9:00 PM
To: Wade Mullins
Subject: FW: Rajinder Parmar v. Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC: AHLA Arbitration Case No. 2648

---------- Forwarded message ----------
From: **Eric S. Bland** <ericbland@blandrichter.com>
Date: Mon, Jul 25, 2016 at 1:51 PM
Subject: Re: Rajinder Parmar v. Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC: AHLA Arbitration Case No. 2648
To: Geoff Drucker <gdrucker@healthlawyers.org>
Cc: Christian Stegmaier <cstegmaier@collinsandlacy.com>, Ronnie Richter <Ronnie@blandrichter.com>, Scott Mongillo <Scott@blandrichter.com>, Rajinder Parmar <rparmar67@gmail.com>, Mary-Ellen Shirley <MEFShirley@blandrichter.com>, Larry Blackmer <LBlackmer@blandrichter.com>

There has been no showing whatsoever that Arbitrator Kelly has not been fair or impartial. Respondents just dont like his rulings. Eric

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On Jul 25, 2016, at 1:48 PM, Geoff Drucker <gdrucker@healthlawyers.org> wrote:

> Dear Mr. Christian Stegmaier:
>
> I will forward your petition to the Review Board but want to make clear first that I understand what is intended so I can properly inform the Board.
>
> If the Review Board were to remove Mr. Kelly, a replacement arbitrator would have to be brought in to rule on the cost allocation issue. However, the award issued on May 17, 2016, would stand. The reference in Rule 4.7 to a replacement arbitrator conducting a proceeding de novo refers to situations in which a final award has not yet been issued. Any other interpretation would transform a petition for removal into a right of appeal, which would be contrary to law and would eviscerate one of the core values of arbitration: finality. The

award may be challenged in court, but it will not be remanded by removing the arbitrator *ex post facto*.

The bases for removing an arbitrator under Rule 4.5 are a conflict of interest, a mental or physical impairment, or conduct that calls the arbitrator's fairness or impartiality into question. If I am reading your petition correctly, you are challenging Mr. Kelly's fairness or impartiality. Is that correct?

Sincerely,

Geoff Drucker | Senior Manager, Dispute Resolution Service

American Health Lawyers Association

1620 Eye Street, NW, 6th Floor

Washington, DC 20006-4010

Phone (202) 833-6945

www.healthlawyers.org

From: Christian Stegmaier [mailto:cstegmaier@collinsandlacy.com]
Sent: Monday, July 25, 2016 8:40 AM
To: DRS; Geoff Drucker
Cc: ericbland@blandrichter.com
Subject: Rajinder Parmar v. Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC: AHLA Arbitration Case No. 2648

Mr. Drucker-

Collins & Lacy represents the interests of Respondents Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC. The purpose of this correspondence is to request the removal of the current arbitrator, James P. Kelly, from the instant matter pursuant to AHLA Rule 4.5 (c) and request for Review Board (AHLA Rule 4.4) and Replacing an Arbitrator (AHLA Rule 4.6)

The instant dispute arises out of the termination of the business relationship between Petitioner Rajinder Parmar and Respondents. Petitioner and Respondent Minhas, both physicians, were joint owners of two medical practices, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC. This relationship ended on May 30, 2014, when Petitioner sold his interests in the two entities to Minhas. An ancillary dispute arose pertaining to the termination of this relationship.

The dispute, which arose after May 30, 2014, involved, in pertinent part, the division the accounts receivable and division of funds on deposit in bank accounts. Stated succinctly, Petitioner asserts he was entitled to 50% of the accounts receivable and division of funds on deposit in bank accounts. Respondents maintain Petitioner was not entitled to these funds (in addition to the sums Petitioner realized from Petitioner's sale of his interests in the two entities) as per the contractual agreements signed by both parties at the initiation of partnership .

Petitioner filed an action in the Circuit Court in Richland County, South Carolina on September 30, 2014, seeking a declaratory judgment that there was a binding arbitration agreement between the parties. Petitioner moved to compel arbitration on the same date. Respondents answered, counterclaimed, and moved to dismiss. On September 16, 2014, Petitioner filed a "Demand for Arbitration" with the American Health Lawyers Association. Respondents Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC alleged numerous counterclaims in response to the same.

Pursuant to Rule 65, SCRCP, Respondents moved for an order temporarily enjoining Petitioner from proceeding with arbitration of the parties' dispute pending the outcome of this declaratory judgment action. In the alternative, Respondents requested the arbitration proceeding be stayed pursuant to § 15-48-20(b).

Following a hearing on the matter, the presiding circuit judge denied Respondents' pursuit of injunctive relief, or in the alternative, stay of the arbitration proceedings.

With the matters in the Circuit Court decided upon, the dispute moved towards arbitration. The parties initially conferenced the case with the appointment arbitrator, James P. Kelly, of Atlanta via telephone on August 20, 2015. That same day, the arbitrator issued an order, which created a schedule in the case that included a hearing date of December 8, 2015.

Testimony and argument were presented during December 8 and 9, 2015. Upon completion of final arguments on December 9, the matter was submitted for disposition. Companion with the matter's submission for disposition was the arbitrator's inquiry regarding whether the parties desired a reasoned or summary decision. Desirous of resolution as soon as possible and believing

that a summary decision would result in the same, Respondents selected that mode with regard to disposition.

The transcript of the proceedings was made available on December 31, 2015.

Per Rule 7.1, the award was arguably to be made on or about January 21, 2016, following the arbitrator's review of the transcript (in addition to the argument, etc presented at the hearing). The parties were neither asked nor did they consent to an extension in the proceedings. (AHLA Rule 9.6)

The parties waited for disposition. After an email inquiry by Petitioner's counsel, the arbitrator advised on March 7, 2016, that disposition of the case was to occur within 7 days.

Disposition did not come within those 7 days.

Applying the initial conference date of August 20, 2015, the 8 month timeframe contemplated by Rule 4.3 expired on or about April 20, 2016.

By order dated May 17, 2016—five months after the close of the proceedings at the hearing–the arbitrator awarded certain relief to Petitioner and denied counterclaims pursued by Respondents. The relief granted by Arbitrator in his award is not authorized by the contract parties signed and/or applicable law as per AHLA Rule 7.5 "Scope of Relief" .

At the arbitration hearing, Respondents asserted that Petitioner was owed nothing else monetarily. Respondents had been paid for his shares and interest in Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC. Furthermore, Respondents maintained Petitioner had substantially damaged them monetarily, which Respondents sought to recover. Notwithstanding Respondents' presentation and arguments, the arbitrator made the following determinations concerning disposition:

(A) Petitioner is awarded:

1.	½ of operating accounts	$179,104.98
2.	½ of trailing accounts receivable:	$78,463.50
3.	2013 MG variance:	$53,000.00

4. 2014 MG variance: $29,000.00

(B) Petitioner is denied:

1. MEC Account Receivable $7,225.50

Differential (posted vs. actual

Collection):

2. 2012 & 2013 VA weekend: $8,900.00

3. Profit Sharing: $7,100.00

4. Prejudgment interest

5. The Nissan automobile; and

(C) Respondents counterclaims are denied.

The relief granted by Arbitrator in his award is not authorized by the contract parties signed and/or applicable law as per AHLA Rule 7.5 "Scope of Relief."

Pursuant to Rule 7.9, Respondents sought an order from the arbitrator correcting various errors—particularly computational errors–extant in the instant award. This motion, however, was denied.

In the prehearing stage and at the arbitration, Petitioner advised his claims concerning the subject automobile were abandoned. Notwithstanding this unambiguous abandonment, Respondents were compelled to seek correction of the order to dispose of the vehicle issue. (This can be reviewed in June 3rd 2016 conference call transcript).

Additionally, Petitioner inquired on May 17, 2016, about the matter of costs pursuant to Rule 7.6. The order was silent concerning the matter despite unambiguous language in Midlands Gastroenterology Operating agreement concerning costs of arbitration. The exchange between the parties and the arbitrator, as well as Arbitrator's Order No. 8 ("Mr. Bland has brought to my attention a clause which may represent an agreement between the parties on allocation of costs of the arbitration. If it is such an agreement, then AHLA rules require that the agreement be followed") appears to make it clear provisions of cost (as well as many other provisions of Midlands Gastroenterology and Midlands Endoscopy Center) had not been reviewed by the arbitrator during consideration regarding disposition of this and other issues. The parties were compelled to brief that issue post-order (Order 7) (contrary to AHLA Rule 7.10). To date, the matter of costs still has not been decided. Final briefing on that issue was submitted June 10, 2016 (AHLA Rule 7.9)

Respondents have additionally move to void the proceedings, averring the arbitrator is devoid of jurisdiction due to the delay in disposition of the parties' disagreement. See Rule 4.3, 7.1; see also Rules 7.5, 7.6, and 7.9 That motion remains pending. Final brief on that issue was submitted July 7, 2016.

On July 12, 2016, the arbitrator in an email advised the parties that all pending matters would be disposed of during the week of July 17, 2016. That disposition did not come. Hence, we are still waiting for a final award, which should fully and finally resolve all claims and counterclaims.

Based on the delay, which is unexplained and unwarranted, as well as breach of several AHLA Rules, as articulated above, Respondents seek the removal of the current arbitrator, James P. Kelly, from the instant matter pursuant to AHLA Rule 4.5 (c).

To date, Respondents have expended $13,500 in costs connected with this arbitration.

Christian Stegmaier

Counsel to Respondents

Christian Stegmaier

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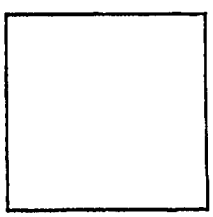

Wade Mullins

From: Wade Mullins
Sent: Tuesday, November 22, 2016 9:06 PM
To: Wade Mullins
Subject: FW: Rajinder Parmar v. Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC: AHLA Arbitration Case No. 2648
Attachments: Petitioner's Notice of Substitution of Counsel & COS.pdf

From: Wade Mullins
Sent: Tuesday, August 23, 2016 9:01 AM
To: 'gdrucker@healthlawyers.org' <gdrucker@healthlawyers.org>
Cc: 'Eric S. Bland' <ericbland@blandrichter.com>
Subject: FW: Rajinder Parmar v. Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC: AHLA Arbitration Case No. 2648

Geoff – Eric forwarded your email concerning the Review Board's decision. Just wanted to make sure you were aware that we had filed a substitution of counsel with AHLA effectively substituting myself as counsel for Parmar in place of Eric Bland and his firm. See attached. Can you make sure that Arbitrator Kelly is aware of this. Thanks for your assistance. Wade

E. Wade Mullins III
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From: Eric S. Bland [mailto:ericbland@blandrichter.com]
Sent: Tuesday, August 23, 2016 5:54 AM
To: Geoff Drucker
Cc: cstegmaier@collinsandlacy.com; Ronnie Richter; Eric S. Bland; Scott Mongillo; Rajinder Parmar; Wade Mullins
Subject: Re: Rajinder Parmar v. Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC: AHLA Arbitration Case No. 2648

Geoff. Thank you for your diligence on this matter during the last two years. Eric Bland

Eric S. Bland
Bland Richter, LLP
Attorneys at Law

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On Aug 22, 2016, at 4:20 PM, Geoff Drucker <gdrucker@healthlawyers.org> wrote:

Dear Counsel:

The Review Board met on August 15, 2016 to consider the Petition for Removal of Arbitrator. After due consideration and discussion, the Board voted to DENY the petition.

I will instruct arbitrator Kelly to complete his work on this matter without delay.

Sincerely,

Geoff Drucker | Senior Manager, Dispute Resolution Service
American Health Lawyers Association
1620 Eye Street, NW, 6th Floor
Washington, DC 20006-4010
Phone (202) 833-6945
www.healthlawyers.org

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC ,	)	Civil Action No.: 2014-CP-40-6017
Applicants,	)	**RESPONDENT'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO APPLICANTS' MOTION TO VACATE, OR IN THE ALTERNATIVE, MODIFIY OR CORRECT ARBITRATION AWARD**
vs.	)	
Rajinder Parmar,	)	
Respondent.	)	

RICHLAND COUNTY
FILED
2016 DEC -6 PM 4:35
JEANNETTE McBRIDE
C.C.P. & G.S.

TO: THE HONORABLE JEAN TOAL, PRESIDING JUDGE OF THE FIFTH JUDICIAL CIRCUIT

This matter came before the Court for a hearing on November 29, 2016. Pursuant to the Court's request, Respondent Rajinder Parmar ("Parmar") submits this Supplemental Memorandum in Opposition to Applicants Balbir S. Minhas, Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC (hereinafter collectively referred to as "Minhas") Motion to Vacate, or in the Alternative, Modify or Correct the Arbitration Award.

Supplemental Facts

Parmar provided the Court with a number of exhibits and background facts in its initial Memorandum in Opposition to Minhas' Motion to Vacate, or in the Alterative, Modify or Correct the Arbitration Award (hereinafter referred to as "Parmar Initial Mem. in Opp"). Parmar would incorporate by reference those supporting facts and seeks to limit this brief to introduction and emphasis on documentary and testimonial evidence relevant to the issues raised at the hearing.

Parmar and Minhas were joint owners of two health care entities, Midlands Gastroenterology, PC (MG) and Midlands Endoscopy Center, LLC (MEC). The parties' business

relationship began in June 2011, when Dr. Parmar and Dr. Minhas decided to practice medicine together and Dr. Parmar purchased a 50% interest in both entities. A dispute arose between the parties regarding their respective rights and obligations in MEC and MG, and Minhas requested that he purchase out Parmer's interest in the entities pursuant to Section 3.8 of the Shareholder Agreement.

Immediately prior to the closing and Parmar agreeing to execute the transfer documents, Parmar, through his former counsel Eric Bland, requested that the remaining disputes be held open and not be affected by the sale of Parmar's shares and member interests to Minhas. Specifically, Bland stated that if they execute the closing documents can "we have an agreement to table the issues of A/R distribution, Bank Account distribution...." (Email exchange prior to closing attached as **Exhibit A**). General Corporate Counsel for the Corporate Defendants, Edward White, confirmed the understanding and agreement on behalf of the entities that the remaining disputes would be mediated or arbitrated. Specifically, White represented:

> All other issues are issues still open between the parties. The Companies are willing to mediate this issues concerning additional compensation due to Dr. Parmar) after Donnie Birkett completes his accounting) and the issue of the amount of distributions payable to Dr. Parmar through May 30, 2014. Cory Manning, in our firm, will take the lead on the mediation and, if necessary, the arbitration of these issues with me assisting as necessary.

(See **Exhibit A)** Minhas's private counsel, Lowndes Pope, was copied on the email exchange and did not object to the representations made by White. In direct reliance on the express agreement that the A/R and Bank Account distribution other remaining issues would mediated or arbitrated, Parmar sold his interests in MG and MEC on May 30, 2014. (Parmar Affidavit attached as **Exhibit B**).

On June 2, 2014, Cory Manning, a litigation attorney for MG and MEC, sent an email stating he would be scheduling mediation in advance of any arbitration. (Manning Email attached

as **Exhibit C**). By letter dated July 15, 2016, Joel Collins, Minhas's private counsel, indicated that Minhas would rather arbitrate the disputes pursuant to Section 8.11 of the Shareholders Agreement instead of mediating.[1] (Collins Letter attached as **Exhibit D**). Collins finally agreed to mediate the Disputes on behalf of his clients, and a mediation date was set for September 29, 2014. However, on August 26, 2014, Collins abruptly cancelled the mediation. (Letter cancelling arbitration attached as **Exhibit E**).

Both the MG Shareholder[2] and the MEC Operating Agreement[3] ("the governing Agreements") mandate binding arbitration pursuant to the American Health Lawyers Association (AHLA). Because the parties could not resolve the disputes through mediation, Parmar was forced to filed a Demand for Arbitration with the AHLA on September 16, 2014, AHLA Arbitration Case No. 2648. (See **Parmar Initial Mem. in Opp., Exhibit A**). In the Demand for Arbitration, Parmar asserted causes of action for breach of contract and breach of fiduciary duties. Parmar alleged that the payments under section 3.8(ii) would represent payments for ownership interest only and that upon that sale and separation of the owners, Parmar would be entitled to his distributional share of

---

[1] The letter provides in relevant part: "I noted the Shareholders Agreement which both of our clients signed when they organized Midlands Gastroenterology, PC contains an arbitration clause (Section 8.11) and this clause makes reference to the National Health Lawyers Association Alternative Dispute Resolution service rules. According to my understanding, those rules allow for the arbitration proceeding to be before a single arbitrator. While my client has made no firm and final decision, we are interested in exploring with you the possibility of having an arbitration proceeding rather than mediation." (Collins Letter, **Exhibit D)**

[2] Section 8.11 of the MG Agreement titled "Disputes" mandates that "any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by binding arbitration, which shall be conducted in Columbia, South Carolina, in accordance with the NHLA Alternative Dispute Resolution Service Rules of Procedure for Arbitration."

[3] Section 12.6 of the MEC Agreement titled "Arbitration" provides "in the event of any controversy or claim arising out of or relating to this Agreement, or breach, termination, or validity thereof,...the controversy shall be settled by binding arbitration which shall be conducted by a single arbitrator in accordance with the American Health Lawyers Association Alternative Dispute Resolution Rules for Arbitration ("AHLA Rules")."

any surplus cash as well as to be compensated for his outstanding accounts receivable as a part of his regular compensation as an employee and production interests incidental to his performance as a physician in the entities. He specifically plead that failure to pay such amounts gave rise to breach of contract and breach of fiduciary duties. **(See Parmar Initial Mem. in Opp., Exhibit A,** p. 10-13**).**

On September 30, 2014, after Minhas refused to accept service of the Demand, Parmar filed a Declaratory Judgment Complaint seeking arbitration ("the Complaint") and a contemporaneous Motion to Compel Arbitration. (Complaint attached as **Exhibit F,** Motion to Compel attached as **Exhibit G).** In his Complaint, Parmar described the disputes between the parties in detail, alleging that "the parties disagreed as to the amount to be paid for Parmar's ownership interests and how much, if any, Parmar would be entitled to receive prior to the purchase date for outstanding accounts receivable...cash on hand in the bank accounts for both entities, his retirement account amounts a Nissan Murano automobile and other matters." (hereinafter "the Disputes"). (Complaint ¶12, **Exhibit F**).

On October 24, 2014, Minhas Answered the Complaint and asserted various counterclaims against Parmar. (Answer attached as **Exhibit H**). In his Answer, Minhas asserted that the relief sought by Parmar relating to the Disputes is prohibited pursuant to the "clear provisions" of the governing Agreements. (Answer ¶14 & ¶20, **Exhibit H**). Minhas also filed a contemporaneous Motion to Dismiss the Declaratory Judgment Action, arguing that there was no binding contractual provision requiring arbitration of any dispute among the parties. (Motion to Dismiss attached as **Exhibit I**).

On November 17, 2014, Minhas filed a Motion for Temporary Injunction or, In the Alternative, For A Stay of Arbitration pending a ruling from this Court that a binding arbitration

agreement exists. (Motion to Stay Arbitration, **Exhibit J**). On December 3, 2014, Parmar filed a Reply to Minhas's Motion to Dismiss. (Reply to Motion to Dismiss attached as **Exhibit K**). In the Reply, Parmar again asserted that Minhas had expressly agreed to arbitrate the remaining open issues of A/R and Bank Account distribution.

On January 1, 2015, a hearing was held before Judge Benjamin on Parmar's Motion to Compel Arbitration and Minhas's Motion to Dismiss. At the hearing, Parmar argued extensively that the governing Agreements contain valid arbitration provisions, that the remaining Disputes arise out of the Agreements and are subject to arbitration, and that Minhas expressly agreed to arbitrate the Disputes before and after the May 23, 2014 closing.[4] In addition, Parmar introduced the sworn affidavits of Edward White, Corey Manning, and Rajinder Parmar as evidence of Minhas's unequivocal agreement to arbitrate the Disputes. (White Affidavit, **Exhibit L**; Manning Affidavit, **Exhibit M**, Parmar Affidavit, **Exhibit B**).

Finally, on July 22, 2015, Judge Benjamin issued an Order denying Minhas's Motion to Dismiss and granting Parmar's Motion to Compel Arbitration. **(See Parmar Initial Mem. in Opp., Exhibit B).** The Order not only compelled arbitration of Parmar's claims but also Minhas's counterclaims. Id. As a result, the parties engaged in the arbitration process and a hearing was held before Arbitrator Kelly on December 8-9, 2015. The issues that were presented to and decided by the arbitrator were limited to those remaining open issues that were ordered by the Trial Court to arbitration which had been raised in the Complaint, Demand for Arbitration and Counterclaim. There were no objections raised at any point during the arbitration hearing concerning the arbitrator's authority to consider the A/R and bank account issues. Rather, these issues were

[4] The undersigned counsel attempted to obtain a transcript of the January 1, 2015 hearing, however, Court Administration advised that the records are unavailable due to technical issues accessing the audio recording of the hearing. (See Email from Desiree Allen, **Exhibit N**).

vigorously debated and litigated throughout the arbitration hearing. Ultimately, Parmar prevailed on the majority of the Disputes and was awarded ½ of the accounts receivable, ½ the operating accounts and his production variance for 2013 and 2014. (Arbitration Award attached as **Exhibit O**). Minhas's counterclaims were denied. Id.

Counsel for Minhas represented to the Court at the hearing on this matter that Minhas is not seeking to vacate the award based on that Arbitrator's manifest disregard for the law. Rather, it appears Minhas now seeks to vacate this award on the ground that the Arbitrator did not have authority to determine the Disputes that Judge Benjamin compelled to arbitration.[5]

ARGUMENTS

I. The Arbitrator did not Exceed His Authority

The threshold question before this Court is whether the arbitrator decided an issue that the parties agreed to arbitrate. The South Carolina Uniform Arbitration Act provides the court shall vacate an award where "the arbitrators exceeded their powers." S.C. Code Ann. §15-48-130. While the definition of "exceeded their powers" is not expressly defined in the statute, "the question of whether arbitrators have exceeded their powers relates to the arbitrability of the issue they have attempted to resolve. Arbitrators exceed their powers only if the issue resolved by them is not within the scope of the agreement to arbitrate." Pittman Mortg. Co. v. Edwards, 327 S.C. 72, 488 S.E.2d 335, 1997 S.C. LEXIS 131 (S.C. 1997); Batten v. Howell, 300 S.C. 545, 548, 389 S.E.2d 170, 1990 S.C. App. LEXIS 7 (S.C. Ct. App. 1990).[6] If arbitrators resolved the very issue presented to them, they did not exceed their powers, even assuming factual and legal errors. Id.;

[5] Notably, Minhas does not seek to vacate the denial of his counterclaims or argue that the arbitrator lacked the authority to consider them.

[6] A party may not attempt to re-litigate the merits of the arbitrator's resolution of the arbitrable issues under the guise of questioning the arbitrators' power. Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 107, 333 S.E.2d 781 (1985).

see also Harris v. Bennett, 332 S.C. 238, 503 S.E.2d 782, 1998 S.C. App. LEXIS 92 (S.C. Ct. App. 1998).

The Award must be confirmed because the issues relating to the ancillary accounts were within the arbitrator's authority to resolve for three reasons: (1) Judge Benjamin decided the Disputes were arbitrable when she compelled them to arbitration; (2) the Disputes are squarely within the scope of the parties' Agreement because the contract was silent and ambiguous as to the ancillary accounts; and (3) misapplication or misinterpretation of a contract provision is not a legally sufficient ground to vacate the Award.

A. The arbitrability of the Disputes is the law of the case and cannot be denied by the very Court that compelled the matter to arbitration.

Judge Benjamin unequivocally determined the arbitrator had authority to decide whether Parmar was entitled to any portion of the ancillary accounts pursuant to the terms of the governing Agreements when she compelled that very issue to arbitration.

Here, the arbitrability of the Disputes arises out of the governing Agreements. The parties agreed to arbitrate "any controversy or claim arising out of or relating to" the Agreements. *See* MG Agreement Section 8.11 and MEC Agreement Section 12.6. There is no question that the parties agreed to arbitrate a dispute relating to the application of the buyout terms of the MG Agreement[7]. Minhas argues the dispute is not arbitrable because the scope of relief Parmar sought was not authorized by the Agreements, which in his view are clear and unambiguous, specifically as to section 3.8(ii) of the MG Agreement. In contrast, Parmar argues the Agreements are

[7] Describing the issues in Dispute in his Complaint, Parmar noted that "there exists a justiciable controversy between the parties regarding the construction, interpretation and enforcement of the written Agreements at issue and written agreements and representations made between counsel on behalf of their clients and judicial determination is necessary to determine whether the parties must arbitrate" and requested this Court "construe, analyze, and determine the enforceability of [the] Agreements' arbitration provisions and their rights and obligations under South Carolina law and to compel the matters which are in dispute into binding arbitration." (Complaint ¶¶26-28, **Exhibit F**).

ambiguous by omission. Specifically, Pamar argues section 3.8(ii) addresses payments for the ownership interest only and that, upon withdrawal Parmar would also be entitled to his share of the accounts receivable and cash on hand. **(See Parmar Initial Mem. in Opp., Exhibit A, ¶12)**. Because the Agreement did not address how these payments were to be calculated, Parmar asserted these issues did in fact "arise out of or relate to" the implied terms of the MG Agreement. These issues were presented to and decided upon by this Court.

The arbitrable issues were specifically raised by Parmar in the Demand for Arbitration filed with the AHLA. In the Demand for Arbitration, Parmar asserted a cause of action for breach of contract and breach of fiduciary duties. Parmar alleged that the payments under section 3.8(ii) would represent payments for ownership interest only and that upon that sale and separation of the owners, Parmar would be entitled to his distributional share of any surplus cash as well as to be compensated for his outstanding accounts receivable as a part of his regular compensation as an employee and production interests incidental to his performance as a physician in the entities. He specifically plead that failure to pay such amounts gave rise to breach of contract and breach of fiduciary duties. **(See Parmar Initial Mem. in Opp., Exhibit A, ¶¶ 10-13)**. To further crystalize the issues to be arbitrated, the Declaratory Judgment Complaint and contemporaneous Motion to Compel Arbitration filed by Parmar seeking arbitration of the Disputes between the parties clearly relates to Parmar's entitlement to the bank accounts, accounts receivable and production variances. (Complaint, **Exhibit A**; Motion to Compel, **Exhibit B**). Specifically, Parmar alleges "the parties disagreed as to the amount to be paid for Parmar's ownership interests and how much, if any, Parmar would be entitled to receive prior to the purchase date for outstanding accounts receivable for 2011 and 2014, cash on hand in the bank accounts for both entities, his retirement account

amounts, a Nissan Murano automobile and other matters ('the Disputes')." (Compl. ¶12, **Exhibit A**).

By Order dated July 22, 2015, this Court compelled arbitration of all claims that relate to and arise out of the parties' Shareholder's Agreement and Operating Agreement. (**See Parmar Initial Mem. in Opp., Exhibit B**). In her Order, Judge Benjamin specifically found the arbitration clauses in the MG and MEC Agreements "are both valid and enforceable on the parties, and therefore, *requires that the parties arbitrate all remaining issues in dispute between them after the May 31, 2014 purchase* by Defendant Minhas of Plaintiff Parmar's interests in Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC." Id. (Emphasis added). Significantly, the Order expressly compels "the parties immediately arbitrate *all remaining issues in dispute currently pending before the American Health Lawyers Association in case number 2648*". (Emphasis added). Those issues in dispute that were currently pending before the AHLA undeniable encompassed the issues of entitlement to the accounts receivable and cash on hand. To conclude that Judge Benjamin did not effectively order the issues of entitlement to the accounts receivables and cash on hand would require turning a blind eye to the specific issues raised in the Demand for Arbitration, the Declaratory Judgment Complaint, the Motion to Compel Arbitration and the Motion to Dismiss considered by the Court. Most importantly, it would require giving no effect to the specific terms of the Order compelling arbitration "of all remaining issues in dispute currently pending before the [AHLA], which expressly included the issues that were ultimately arbitrated and decided by the arbitrator in his award. As stated previously, where an arbitrator resolves the very issue presented to him, he has not exceeded his powers, even assuming factual and legal errors. Pittman Mortg. Co. v. Edwards, 327 S.C. 72, 488 S.E.2d 335, 1997 S.C. LEXIS 131 (S.C. 1997).

To vacate the Award on the ground of excess of powers would conceive an absurd result. Whether this Court or Minhas disagree as to the ambiguous nature of the MG Agreement is immaterial to Arbitrator Kelly's authority to issue a determination on that very issue. The parties agreed to submit to binding arbitration, presumably to expedite the resolution of the Disputes and minimize the expense associated with litigation. It is not within this Court's power to now contradict the Arbitrator's finding that a contractual ambiguity exists by characterizing it as an "excess of authority". If this were the case, every dispute where an alleged contractual ambiguity is the central issue to be decided is subject to being overturned by the court. The construction of a contract would always be reviewable by the court in a *de novo* fashion, rendering the arbitration process meaningless.

It is indisputably contrary to the function of the judicial system for a court to compel the construction, interpretation and enforcement of a contract to arbitration, only for that same court to later vacate the award on the ground that the arbitrator did not have the authority to make the determination in the first place. Indeed, an arbitration award is meant to signify the end, not the commencement, of litigation. For these reasons, Arbitrator Kelly did not exceed his authority when he determined the Agreement was ambiguous and awarded Parmar his interest in the ancillary accounts.

B. The Disputes are squarely within the scope of the parties' Agreement

Even assuming this Court somehow concludes that Judge Benjamin did not expressly compel arbitration of the issues ultimately decided by the Arbitrator, the arbitrator was within his authority to award Parmar ½ of the operating accounts, ½ of the accounts receivable and his production variance. The MG Agreement was ambiguous in that it was silent as to how the

compensation and distributional interests of a departing shareholder would be treated, and the arbitrator implied the missing terms to effectuate the intent of the parties.

The general aim of contractual interpretation is to effectuate the intent of the parties. It is well settled that when a contract is ambiguous, a court may consider extrinsic evidence to fill in its terms to reflect the intention of the parties. However, where there is an omission or a contract is silent as to certain terms, courts may consider extrinsic evidence not only to resolve the ambiguity itself, but to first determine whether an ambiguity exists at all. Many courts have recognized that the ambiguity of a document cannot be assessed merely by looking within its four corners. In re Estate of Fabian, 326 S.C. 349, 353, 483 S.E.2d 474, 476 (Ct. App. 1997) ("Extrinsic evidence may be admitted to determine whether a latent ambiguity exists"); Haeberle v. Texas Int'l Airlines, 738 F.2d 1434, 1439 (5th Cir. 1984); See also, Carlton J. Snow, *Contract Interpretation: The Plain Meaning in Labor Arbitration*, 55 Fordham L. Rev. 681, 684, 688 (1987) (Available at: http://ir.lawnet.fordham.edu/flr/vol55/iss5/1); *See, e.g.,* Griesmann v. Chemical Leaman Tank Lines, Inc., 776 F.2d 66, 72 (3d Cir. 1985) (extrinsic evidence admissible to show parties attached special meaning to wording of contract); Mellon Bank, N.A. v. Aetna Business Credit, Inc., 619 F.2d 1001, 1011 (3d Cir. 1980) (linguistic reference points of parties should be examined to determine if ambiguity exists); Keene Corp. v. Insurance Co. of N. Am., 597 F. Supp. 946, 950 (D.D.C. 1985) (court should consider reasonable alternative meanings set forth by parties); Mayer v. Development Corp. of Am., 541 F. Supp. 828, 857 (D.N.J. 1981) (same), *aff'd mem.,* 688 F.2d 822 (3d Cir. 1982); Z & L Lumber Co. of Atlasburg v. Nordquist, 348 Pa. Super. 580, 583, 502 A.2d 697, 700 (1985).

A latent ambiguity is an ambiguity that does not readily appear on the face of a document. The ambiguity becomes apparent only in the light of knowledge gained from a collateral matter,

which render the meaning of a written contract uncertain although the language, on its face, appears clear and unambiguous. Extrinsic evidence can be used to make an initial determination of whether a latent ambiguity exists. Beaufort County Sch. Dist. v. United Nat'l Ins. Co., 392 S.C. 506, 709 S.E.2d 85 (Ct. App. 2011) (noting extrinsic evidence is admissible when there is a latent ambiguity but finding extrinsic evidence inappropriate where ambiguity is patent and arising from the language of the policy itself. Silence as to certain terms may create a latent ambiguity. Franklin v. Jackson, 847 S.W.2d 306, 309 (Tex. App. El Paso 1992); Berkowitz v. Delaire Country Club, 126 So.2d 1215 (Fla. Ct. App. 2012).

The preliminary issue before the arbitrator was whether or not the governing Agreements were ambiguous as to Parmar's interest in the remaining accounts receivable, operating accounts, and bank accounts. At the arbitration hearing, Parmar presented extrinsic evidence to prove the Agreements are in fact ambiguous because they are silent as to those issues. The arbitrator, the deciding body charged with interpreting the contracts at issue, considered the testimony of Edward White, the attorney who drafted the MG Agreement, Donny Burkett, the corporate accountant, and Dr. Parmar, and ultimately concluded the omission of any reference to the method of compensation and entitlement to distributional interest of cash accounts and A/R amounted to a latent ambiguity. This finding can be reasonably inferred from the Award itself. **(See Parmar Initial Mem. in Opp., Exhibit E).**

Indeed, Mr. White acknowledged that the value of the ownership interest was separate and apart from compensation and that to the extent there was compensation owed upon separation that would have to be addressed outside the four corners of the MG Agreement. (See Arb. Hearing Tran. Dec. 9, 2015, p. 12:15-24; p.34: 3-16 attached as **Exhibit P**). White further testified that historical treatment of A/R was considered at the time of closing with regards to compensation and

that White ultimately instructed the CPA, Burkett, to calculate the A/R for purposes of concluding the withdrawal of Parmar. (See **Exhibit P,** p. 45:5 – 47:15). He stated that this was part of the process of determining what compensations or distributions would be due a departing shareholder. (See **Exhibit P,** p. 60:3 – 61:8.) Similarly, Burkett testified that there was a separate compensation component that had to be determined post-closing. (See **Exhibit P,** p. 126:11 – 127:12.)

It is clear from the record that at the time of the buy-in and throughout the course of their relationship the parties contemplated that Parmar owned a 50% interest in the bank accounts and accounts receivable that accrued from the date he bought in forward. (See **Exhibit P**178:9-179:6.) Indeed, Minhas stripped out all of the cash on hand in both entities as of May 30, 2011 and paid himself. Id. From the time the parties executed the MG Agreement until the relationship terminated, the cash in those accounts were distributed evenly. In fact, Parmar paid income taxes on the cash that existed in the bank accounts at the time of the closing. Id. After the dispute arose, Minhas requested the corporate accountant calculate Parmar's interest in the ancillary accounts, further evidence that the parties did not intend to limit the buyout only to the value of the shares plus 4% interest and exclude separation compensation. The Arbitrator was entitled to consider that the parties' conduct and course of dealings did not indicate that they intended for Parmar to forfeit those accounts upon separation from the entities.

C. Even assuming the arbitrator incorrectly applied the law, it was within the arbitrator's authority to interpret the Agreements and misapplication of the contract terms is not a valid basis for vacating the Award.

At the hearing on his Motion to Vacate, Minhas relied on Grover v. Universal Underwriters Ins. Co., 80 N.J. 221, 403 A.2d 448 (1979) to support his position that Arbitrator Kelly ruled contrary to the authority granted him in the contract by disregarding the contractual requirements as set forth in section 3.8(ii) of the MG Agreement. Grover involved a dispute over UM coverage

and the definition of "uninsured highway vehicle". In that case, an insured motorcyclist was run off the road by a vehicle that was travelling in the wrong direction, causing the insured to lose control and throwing him from his motorcycle. Id. The policy required the award be based on a factual finding corroborated by competent evidence other than the testimony of the insured to trigger coverage where the vehicle causing the accident did not make physical contact with the insured. Id. at 225-226. The arbitrator found in favor of coverage even though the only evidence presented at the arbitration hearing was the insured's own description of how the accident occurred.

The Grover court first determined that the parties agreed to consider the coverage issue and thus it was "arbitrable". Id. The court nevertheless vacated the award because the arbitrator "imperfectly executed his power" and "was not free to disregard the contractual requirements of corroboration and competence." Id. at 231. Importantly, Grover was decided pursuant to the New Jersey Arbitration Act, which varies from significantly from the South Carolina Arbitration Act in that an award may be vacated "where the arbitrators exceeded *or so imperfectly executed their powers*." N.J.S.A. 2A:24-8(d) (emphasis added). In New Jersey, "imperfect execution" amounts to an arbitrator's mistake of law or fact, which deviates from the clear law in South Carolina. It is well established that where an arbitrator resolves the very issue presented to him, he does not exceed their powers, even assuming factual and legal errors. Pittman Mortg. Co. v. Edwards, 327 S.C. 72, 488 S.E.2d 335, 1997 S.C. LEXIS 131 (S.C. 1997). Moreover, the South Carolina Arbitration Act goes so far as to explicitly provide that "the fact that the relief that was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm the award." S.C. Code Ann. § 15-48-30(a). Therefore, Grover is distinguishable and not applicable to the issue of arbitrability before this Court. Rather, it would

be more akin to an analysis of whether the arbitrator manifestly disregarded the law. As stated, counsel for Minhas conceded at the hearing that Minhas was not pursuing vacating the award based on manifest disregard of the law. Rather, Minhas was limiting the requested review as to whether the arbitrator exceeded his authority.

As previously stated, parties are not without recourse if an arbitrator manifestly disregards the law or ignores a clear contract provision when issuing an award. However, th is analysis is separate and distinct from the issue of an arbitrator's authority to render an award. The standard to vacate an award on the basis of manifest disregard is not a *de novo* review of the underlying arbitration proceedings, rather it requires an intentional defiance of a clear and undeniable contract provision or applicable law. Misapplication or misinterpretation of a provision is not sufficient to overturn an award.

Minhas suggested at the hearing on his Motion to Vacate the Award that the arbitrator erroneously applied section 3.8(iii) instead of 3.8(ii) of the Buyout Provision of the MG Agreement. Section 3.8(ii) provides if the parties terminate their relationship before 3 years of the effective date of the MG Agreement, then Minhas is entitled to purchase all of Parmar's interest in both MG and MEC for the original buy-in price (a fixed sum of $50,000 for MG and $300,000 for MEC) plus 4% interest. If the relationship is terminated more than 3 years after the effective date of the MG Agreement, Section 3.8(iii) applies and Minhas is entitled to purch ase Parmar's interest in both MG and MEC at fair market value as determined by an independent third party appraiser.

It is undisputed that the parties terminated their relationship 2 years after the effective date of the MG Agreement, thereby triggering Section 3.8(ii) of the Buyout Provision. Minhas suggests that the arbitrator applied Section 3.8(iii) because he awarded Parmar ½ of the accounts receivable

and ½ of the operating accounts despite having tendered the fixed sum for both entities plus 4% interest at the closing. This is simply incorrect.

Fair market value of company can be calculated in many different ways, often by applying a multiple of EBITDA (earnings before interest, taxes, depreciation, and amortization). Fair Market Value encompasses not only the cash on hand and accounts receivable, but also the liabilities, the value of the physical assets of the company, fixtures, goodwill, expectations of future profits and return on investment, property assets and accumulated depreciation, etc. Had Section 3.8(iii) applied, Parmar would have been entitled to something entirely different than a fixed sum plus 4% interest and ½ of the accounts.

At no time did Parmar request or assert that he was entitled to the fair market value of his interest at the arbitration hearing. The parties conceded, and Parmar's counsel acknowledged, that Section 3.8(ii) controlled. Parmar did not engage an expert to calculate or present any evidence of the fair market value of his interests at the time of closing.

Instead, Parmar argued that the entire contract, including Section 3.8 of the MG Agreement, was silent as to compensation <u>at the time separation</u>. (Hearing Transcript, December 9, 2015, 9:24-12:24; 186:11-192:19, **Exhibit P**). The Agreement provided for the distribution of compensation to Shareholders in their capacity as employees only, however, the parties understood that a portion of the accounts receivable and operating accounts would be distributed as compensation at the time of separation in addition to the fixed value of the shares and membership interest. In fact, Minhas directed the corporate accountant to calculate Parmar's allocation of these funds as of the date of the closing. Furthermore, at a Shareholders Meeting prior to the closing, the parties specifically agreed these calculations would be made for purposes of determining the "buy-out" price similar to the method of Parmar's "buy-in". See Transcript of Special Joint Meeting,

April 7, 2014, p.4:18-23 attached as **Exhibit Q**). Parmar and Minhas were compensated based on their individual production. The accounts receivable and the monies in the operating accounts reflects Parmar's distributional interest for the performance of his services at the time of separation.

The arbitrator considered the fact that the MG Agreement did not address compensation at the time of separation, found that it was ambiguous in that regard, and awarded Parmar the value of his services at the time of closing. Minhas's assertion that the Arbitrator awarded the fair market value of the entities pursuant to 3.8(iii) is wholly unsupported by the record in this case.

CONCLUSION

This was a mutually agreed upon non-reasoned award. The award was made based upon the arbitrable issues placed squarely in front of the Arbitrator. This is evidenced by the agreement between the lawyers, the issues presented to the Court, the Order to Compel and the conduct of the parties throughout this dispute. At no point did Minhas object to the Arbitrator's authority to consider the issues before him. Rather, the defense to the claims were limited to the application of the facts and the law to the claims presented. As evidenced by the arguments raised in Minhas's post award filings and the Motion to Vacate, this is nothing more than a thinly veiled effort to relitigate the claims by a party disappointed in the binding arbitration award. For the reasons set forth above and contained in Parmar's Initial Memorandum in Opposition to Motion to Vacate, or in the Alternative to Modify or Correct Arbitration Award should be denied. As a result, Parmar's Motion to Confirm Award should be granted and an order of judgment entered for $339,568.48 plus pre-judgment interest from the date of award, or May 17, 2016 at a per diem rate of $81.40.

BRUNER, POWELL, WALL & MULLNS, LLC

By: _____

E. Wade Mullins, III
Caitlin C. Heyward
Post Office Box 61110
1735 St. Julian Place, Suite 200
Columbia, South Carolina 29260
(803) 252-7693
Attorneys for Rajinder Parmar

Eric S. Bland

From: Ed White [ed.white@nelsonmullins.com]
Sent: Friday, May 30, 2014 3:36 PM
To: Eric S. Bland; Lowndes Pope <lpope@rplfirm. com>; Donny Burkett (donnyb@burkettcpas.com)
Cc: Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: RE: MEC/MG/Minhas and Parmar

Eric,

My understanding is that Lowndes and Dr. Minhas tendered the full amount required under the Shareholders Agreement for Dr. Minhas' election under Section 3.8(ii) for both MG and MEC. As such, the ownership interests of Dr. Parmar in both MG and MEC have transferred effective today to Dr. Minhas who is now the 100% owner of both entities. We hope Dr. Parmer will comply with his obligations under the Shareholders Agreement to deliver the transfer documents and representations required of him under the Agreement.

All other issues are issues are still open between the parties. The Companies are willing to mediate the issues concerning any additional compensation due to Dr. Parmar (after Donny Burkett completes his accounting) and the issue of the amount of distributions payable to Dr. Parmar through May 30, 2014. Cory Manning, in our firm, will take the lead on the mediation and, if necessary, the arbitration of these issues with me assisting as necessary. Cory can work with you and Lowndes in selecting a mutually agreeable mediator.

The Companies are not willing to amend any of the present agreements (as you requested concerning the fees) and will have the issues mediated/arbitrated with the documents as the parties signed them.

Dr. Minhas, as the officer of MG, has a concern about transferring the corporate owned car to Dr. Parmar. MG paid $26,000 for the car a couple of years ago and, in Dr. Minhas' business judgment, he is not sure it is in the corporation's best interest to transfer the car today at a price of $13,228. Since today is Dr. Parmar's last day of employment with MG he will need to return this corporate asset. Please ask Dr. Parmar to return the car in clean condition with all keys today.

Thank you,

Ed

From: Eric S. Bland [mailto:ericbland@blandrichter.com]
Sent: Friday, May 30, 2014 1:50 PM
To: Eric S. Bland; Ed White; Lowndes Pope <lpope@rplfirm. com>; Donny Burkett (donnyb@burkettcpas.com)
Cc: Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: RE: MEC/MG/Minhas and Parmar

Ed and Lowndes. I just received Lowndes' hand delivery of checks and other inclusions. If there is an acceptance of the shareholder and member buy out consideration and execution of docts by Rajinder, can we have an agreement to table the issues of A/R distribution, Bank Account Distribution, retirement account distribution, automobile purchase, 2011 A/R amount that Balbir took as opposed to actual amount, production differences, working capital issues, other owner/employee issues, etc. until Donny finishes his work product and final numbers. Eric

---

From: Eric S. Bland
Sent: Friday, May 30, 2014 11:43 AM
To: 'Ed White'; Lowndes Pope <lpope@rplfirm. com>

Cc: Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: RE: MEC/MG/Minhas and Parmar

Ed and Cory, I wish the shareholders agreement was more clear on the prevailing party on attorneys fees as opposed to just "costs". The arbitration provision only refers to "costs", I am happy if our clients consent that means "Fees" as well. Will Minhas agree? Ed we just have a fundamental disagreement on this matter. No matter how many times you say it or how loud you say that the transfer takes place without my client's consent, doesn't make it a truth. It doesn't. My client still owns 50% of both entities and is an employee of both. The amount your clients and Dr. Minhas seek to ascribe as to the buyout amount, distributions, A/R and working capital figures are not correct according to the accountant and not agreeable to my client. We are burning tremendous dollars debating what never can be resolved between us. It will take a mediator and/or an arbitrator. I have watched Dr. Minhas do exactly what he is doing now when the separation of the original members of MEC occurred and watched how he handled himself in front of the SCAPI (Asian physicians) and the tremendous enmity that was felt by many on the board and members based on his accusations and actions. I would actually prefer to deal with Cory on these issues. It just plays out the same when Dr. Minhas is involved based on my experience. We usually disagree but we both recognize the value and positives of mediation and we work towards resolutions. If it cannot be resolved, then Cory, Lowndes and I can agree on an arbitrator and maybe some ground rules as to time periods, minimal discovery and arbitration time. I say this with all due respect Ed, you are just too much in the thick of this. I am supposed to speak with Lowndes at 1:00 PM. eric

Eric S. Bland

From: Cory Manning [Cory.Manning@nelsonmullins.com]
Sent: Monday, June 02, 2014 3:32 PM
To: Eric S. Bland
Cc: Ed White; Lowndes Pope <lpope@rplfirm. com> (lpope@rplfirm.com)
Subject: RE: MEC/MG/Minhas and Parmar

I spoke with Krystal at Wills's office. He is booked on 8/13 and 8/14 and has 8/11 and 8/12 on hold. Those just came up this morning. Ugh. I pencilled us in for 8/15 just to get a date down. Krystal is going to let me know if 8/11 or 8/12 open up. I've also pinged Dt. Minhas to make sure that he is available on those dates. CM

From: Eric S. Bland [mailto:ericbland@blandrichter.com]
Sent: Monday, June 02, 2014 2:37 PM
To: Cory Manning
Cc: Ed White; Lowndes Pope <lpope@rplfirm. com> (lpope@rplfirm.com)
Subject: RE: MEC/MG/Minhas and Parmar

11-14 August. I am in Scotland from 29th through 6th

From: Cory Manning [mailto:Cory.Manning@nelsonmullins.com]
Sent: Monday, June 02, 2014 2:30 PM
To: Eric S. Bland
Cc: Ed White; Lowndes Pope <lpope@rplfirm. com> (lpope@rplfirm.com)
Subject: RE: MEC/MG/Minhas and Parmar

n I get us on Wills's calendar for the first week of August? Do you have any preferred dates during that week?

From: Eric S. Bland [mailto:ericbland@blandrichter.com]
Sent: Monday, June 02, 2014 2:00 PM
To: Cory Manning
Cc: Ed White; Lowndes Pope <lpope@rplfirm. com>; Ronnie Richter; Donny Burkett; Rajinder Parmar; Ed White; Lowndes Pope <lpope@rplfirm. com>; Scott Mongillo; balbminh@aol.com
Subject: RE: MEC/MG/Minhas and Parmar

Ok. good luck in your trial. we will speak soon. eric

From: Cory Manning [mailto:Cory.Manning@nelsonmullins.com]
Sent: Monday, June 02, 2014 1:31 PM
To: Eric S. Bland
Cc: Ed White; Lowndes Pope <lpope@rplfirm. com>; Ronnie Richter; Donny Burkett; Rajinder Parmar; Ed White; Lowndes Pope <lpope@rplfirm. com>; Scott Mongillo; balbminh@aol.com
Subject: RE: MEC/MG/Minhas and Parmar

Eric,

We would prefer Wills. Dr. Minhas would prefer August, given the demands of his business over the next 60 days. I am also jammed in July with a trial in Spartanburg that looks like it is going to go. I will work with you in the meantime to see if we can't cut through some of the issues and make any necessary mediation more efficient.

From: Eric S. Bland [mailto:ericbland@blandrichter.com]
Sent: Monday, June 02, 2014 1:18 PM
To: Cory Manning
Cc: Ed White; Lowndes Pope <lpope@rplfirm. com>; Ronnie Richter; Donny Burkett; Rajinder Parmar; Ed White; Lowndes Pope <lpope@rplfirm. com>; Scott Mongillo; Cory Manning; balbminh@aol.com
Subject: Re: MEC/MG/Minhas and Parmar

Cory. Look forward to working with you. Can we try another mediator in july. Tom traxler. John masselon at wills office. I would like not to wait until August if possible. Can we meet over next two weeks to go over open issues. Eric

Eric S. Bland
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www.blandrichter.com
www.legalmalpracticeforum.com

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On Jun 2, 2014, at 12:30 PM, "Cory Manning" <Cory.Manning@nelsonmullins.com> wrote:

Eric,

We also think that Wills would appropriate for this matter and agree to use him as a mediator as necessary. Let's try to work through some of the issues before getting to Wills. I don't see this as that complicated (as compared to the latest matter we resolved), so I am hopeful that you and I (and Lowndes) can work through some of the remaining issues.

As for the timing of any mediation, June is out given the need for accurate numbers from the accountant. Also, Dr. Minhas is not available in July for a mediation on the few dates that show as open on Wills's online calendar. We would prefer the first week of August to mediate this—8/4 through 8/8 would be ideal dates, all of which show as open on Wills's calendar at the moment. This time frame will not only allow for all parties involved to participate in the mediation consistent with their busy schedules, but it will allow you and me to work through some of the open issues with the goal of making a mediation more efficient or not necessary at all. Hope springs eternal.

Let me know which of the early August dates work and I will confirm a time with Wills.

CM

From: Eric S. Bland [mailto:ericbland@blandrichter.com]
Sent: Monday, June 02, 2014 11:48 AM
To: Ed White
Cc: Lowndes Pope <lpope@rplfirm. com>; Donny Burkett (donnyb@burkettcpas.com); Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: RE: MEC/MG/Minhas and Parmar

ok

From: Ed White [mailto:ed.white@nelsonmullins.com]
Sent: Monday, June 02, 2014 11:41 AM
To: Eric S. Bland
Cc: Lowndes Pope <lpope@rplfirm. com>; Donny Burkett (donnyb@burkettcpas.com); Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: RE: MEC/MG/Minhas and Parmar

Eric,

Cory has recommended Tom Wills to Dr. Minhas. Based on scheduling conflicts it looks like August is going to be the earliest time for the mediation.

Cory will be following up with you.

Thanks,

Ed

From: Eric S. Bland [mailto:ericbland@blandrichter.com]
Sent: Monday, June 02, 2014 10:45 AM
To: Ed White
Cc: Lowndes Pope <lpope@rplfirm. com>; Donny Burkett (donnyb@burkettcpas.com); Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: RE: MEC/MG/Minhas and Parmar

Thank you Ed. Let me know about mediators. eric

From: Ed White [mailto:ed.white@nelsonmullins.com]
Sent: Monday, June 02, 2014 10:41 AM
To: Eric S. Bland
Cc: Lowndes Pope <lpope@rplfirm. com>; Donny Burkett (donnyb@burkettcpas.com); Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: RE: MEC/MG/Minhas and Parmar

Eric,

I will have my assistant send a runner over shortly to pick up the documents.

Thank you,

Ed

From: Eric S. Bland [mailto:ericbland@blandrichter.com]
Sent: Monday, June 02, 2014 10:39 AM
To: Eric S. Bland; Ed White
Cc: Lowndes Pope <lpope@rplfirm. com>; Donny Burkett (donnyb@burkettcpas.com); Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: RE: MEC/MG/Minhas and Parmar

Are you guys sending a runner over or should I just put them in an envelope that Lowndes gave me and mail the signed docts to Lowndes. eric

---

From: Eric S. Bland
Sent: Friday, May 30, 2014 7:12 PM
To: Eric S. Bland; Ed White
Cc: Lowndes Pope <lpope@rplfirm. com>; Donny Burkett (donnyb@burkettcpas.com); Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: RE: MEC/MG/Minhas and Parmar

Cory and Lowndes. Attached are the signed and initialed agreements in connection with Dr. Minhas' purchase of Dr. Parmar's shareholder interests in MG and his member interests in MEC. You can send a runner over Monday to pick up the originals. Cory, I think that Tom Wills would be perfect for to mediate the remainder of the open issues between the physicians and the two entities. As per Ed's email below, we will mediate first. You have my promise that we will do it in good faith. I believe and hope you will give me the same promise. The mediation will have to await Donny completing the closing amounts on A/R, expenses and bank accounts through May 30th. I think he said he would be able to complete it by the middle of June. Let's try to lock in a date with Tom by the end of June. Let me know. Maybe in the interim some of the issues will work themselves out. Have a nice weekend gentlemen. eric

---

From: Eric S. Bland
Sent: Friday, May 30, 2014 4:00 PM
To: Ed White
Cc: Lowndes Pope <lpope@rplfirm. com>; Donny Burkett (donnyb@burkettcpas.com); Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: Re: MEC/MG/Minhas and Parmar

All good thoughts and agreeable except the car where an agreement was reached for which donny burkett will confirm. I have the money for the car. Meeting with dr parmar tonight. Will keep you posted. Thanks ed.

Eric S. Bland
Bland Richter, LLP

Collins & Lacy
ATTORNEYS AT LAW
Joel W. Collins, Jr. | D: 803.255.0423 | E: jcollins@collinsandlacy.com

July 15, 2014

VIA U.S. MAIL and EMAIL
Eric S. Bland, Esquire
Bland Richter, LLP
P.O. Box 72
Columbia, South Carolina 29202
ericbland@blandrichter.com

Re: Balbir S. Minhas, MD adv. Rajinder Parmar, MD
C&L File No. 001836-00100

Dear Eric:

I want to let you know I was recently retained to represent Dr. Balbir S. Minhas in his capacity as the managing member of Midlands Endoscopy Center, LLC and in his capacity as the President of Midlands Gastroenterology, PC. He and I recently met to discuss the current situation. My client advises me you represent his former partner, Dr. Rajinder Parmar.

I recently met with attorney Ed White who represents both the Endoscopy Center and the Gastroenterology medical practice. He told me plans have been made for mediation with Tom Wills, on August 8, 2014. Mr. White advises me he has a substantial conflict on that date. I also have a conflict on August 8. I will be participating in a teacher's law school in Sacramento, California, a program of the American Board of Trial Advocates.

Before we set another date for mediation, I would like to meet with you to discuss these matters. Before then, hopefully we will have the final calculations from the Burkett accounting firm. My understanding is that work is currently being performed by that firm and that you are aware of this.

I noted the Shareholders Agreement which both of our clients signed when they organized Midlands Gastroenterology, PC contains an arbitration clause (Section 8.11) and this clause makes reference to the National Health Lawyers Association Alternative Dispute Resolution service rules. According to my understanding, those rules allow for the arbitration proceeding to be before a single arbitrator. While my client has made no firm and final decision, we are interested in exploring with you the possibility of having an arbitration proceeding rather than a mediation. There may be other issues for us to discuss as well, and I am certainly willing to consider your suggestions.

I look forward to working with you. Thank you in advance for your cooperation and assistance. Please let me know when you are available to meet with me.

Sincerely,

Joel W. Collins, Jr.

JWCjr./kyn

cc: Balbir Minhas, M.D.
Edward White, Esquire
Christian Stegmaier, Esquire
M. Larry Nelson

Collins & Lacy
ATTORNEYS AT LAW
Joel W. Collins, Jr. | D: 803.256.0423 | E: jcollins@collinsandlacy.com

August 26, 2014

Thomas J. Wills, IV, Esquire
Wills Massalon & Allen, LLC
P.O. Box 839
Charleston, SC 29402

Re: Midlands Gastroenterology PC and Midlands Endoscopy, LLC
C&L File No. 001836-00100

Dear Tom:

Our firm has undertaken the representation of Midlands Gastroenterology, PC and Midlands Endoscopy, LLC. I am advised by your office that you are holding open Monday, September 29, 2014, for a mediation to resolve the differences between Dr. Parmar and Dr. Minhas.

I am coordinating a substantial investigation into important issues relating to this matter. This investigation will likely not be complete by that time. Accordingly, please cancel the plans for mediation in this matter on September 29, 2014. If at a later time, it appears we need your services, we will be in touch.

Best wishes to you.

Sincerely,

Joel W. Collins, Jr.

JWCjr/kyn

cc: Dr. Balbir Minhas
Edward White, Esquire
Eric Bland, Esquire

1 A Both entities, correct.
2 Q And if you turn to provision 3.8, which is on page
3 5.
4 A Okay.
5 Q Do you recall drafting the language that
6 essentially provided Dr. Minhas, what we call in
7 this litigation, a free look? So for a period of
8 three years, Dr. Parmar is a full-blooded partner,
9 but at any time within the first three years, Dr.
10 Minhas has the absolute right to buy him out
11 essentially for what he has paid in. Is that
12 correct?
13 A This is really blurry, this section. But this
14 provision, yes. I did draft this, but I drafted
15 it with instructions from both Dr. Parmar and Dr.
16 Minhas on what to put in here.
17
18 MR. MONGILLO: A better version of that is
19 our 4 if you want to --
20 MR. BLAND: Go back to 4, Ed. After your
21 Stock Purchase Agreement -- the three-page Stock
22 Purchase Agreement -- you'll see it.
23
24 A I believe that's correct.
25 Q Okay. And I appreciate your testimony. As I

1 understand your testimony, what you're telling me
2 is that you tried to capture what the agreement of
3 the parties was by reducing that to writing on
4 3.8, correct?
5 A Correct.
6 Q And so the agreement was for the first three years
7 of their relationship, if for any reason Dr.
8 Minhas decided he wanted to part company, he had
9 the absolute right to pull the trigger, correct?
10 A I'm looking at it now. It's been a long time
11 since I've read it. Which provision in here,
12 exactly, are you looking at?
13 Q Section 3.8.2.
14 A Correct.
15 Q All right. And the fixed number was $50,000,
16 right?
17 A Correct.
18 Q Which represents Dr. Parmar's buy-in to the
19 entity, correct?
20 A I don't know if that represents the buy-in or not.
21 In this document, it represents the buyout.
22 Q Okay. And if you look to Section small number 3
23 that follows. If we are beyond the three-year
24 period and Dr. Minhas elects to part company with
25 Dr. Parmar, then we're going to go to a

1 full-blown, fair-market evaluation on the value of
2 Dr. Parmar's interest, correct?
3 A Yeah, that's what the document says.
4 Q All right. You and I would agree that in a
5 fair-market evaluation, lots of things are being
6 taken into consideration, such as goodwill,
7 accounts receivable, bank balances, assets; it
8 would be a full-blown, fair-market evaluation,
9 correct?
10 A Yes. Those things would be taken into
11 consideration to the extent they were applicable,
12 by a third-party expert.
13 Q All right. And that's materially different than
14 the first three years, where it's just a fixed sum
15 that's agreeable, correct?
16 A Correct.
17 Q And we would agree also that in either
18 circumstance, the value of the ownership share is
19 not the same as compensation, correct?
20 A Correct.
21 Q So that upon a future separation, there could
22 still be a compensation component that would have
23 to be addressed.
24 A To the extent that there's performance of services
25 by the individual, yes.

1 Q Sure. And it was anticipated the way these
2 physicians would get paid was through the
3 performance of services, correct?
4 A I believe so. I was not involved in how they
5 compensated themselves. I've never been
6 consulted, and I don't have the details.
7 Q Okay. So you don't know if it was production
8 based or just based upon the percentage of
9 ownership?
10 A I have never seen an employment agreement. Beyond
11 that, if they have a course of practice or
12 dealings, I was never asked to get involved with
13 that. And they had a CPA that helped them, but I
14 think they did it internally.
15 Q Okay. In either event, you and I would agree that
16 the value of the ownership interest is separate
17 and apart from compensation?
18 A Correct.
19 Q Okay. And so to the extent there was a
20 compensation component owed upon a future
21 separation, that would have to be addressed
22 outside of the four corners of this document,
23 correct?
24 A Yes.
25 Q And that would be defied either by a separate

1 takes into the account the transfer of the shares?
2 A Yes.
3 Q And that the compensation is a separate issue,
4 correct?
5 A Yes.
6 Q And that's you looking back at the control
7 documents and reminding the parties just what you
8 said: You can agree to whatever you want to, but
9 absent agreement, we're reverting back to the
10 documents. And this is what they said, correct?
11 A Yes.
12 Q All right. And so your advice as corporate
13 counsel was the $50,000 only addressed the
14 transfer of the share and did not address other
15 issues such as compensation, correct?
16 A Yes.
17 Q All right. Take a look at Exhibit 28. And
18 Exhibit 28 is a long Exhibit. It is your e-mail
19 with a series of transaction documents attached to
20 it. So take a moment and tell me what you are
21 familiar with it, and I'll ask you a few
22 questions.
23 A Okay.
24 Q All right. You recall that at some point in time,
25 these discussions mature their way to the point

1 Q All right. It goes backwards in time, so if we
2 could, let's start on page 2 at the bottom and
3 come forward from there.
4 A Okay.
5 Q You see your e-mail to Dr. Minhas dated May 27,
6 2014, at 4:14 p.m.?
7 A Correct.
8 Q And you say, "Balbir attaches a draft of the
9 proposed agreements to settle the amount of
10 distributions due to Dr. Parmar." Correct?
11 A Yes.
12 Q All right. Nowhere in this e-mail, or in any
13 e-mail I've seen, for that matter, do you
14 communicate to Dr. Parmar -- I'm sorry, to Dr.
15 Minhas -- we don't have to worry about
16 distributions owed to Dr. Parmar because they're
17 all going to be subsumed within the $50,000 and
18 the $300,000?
19 A I don't see it, but that's not what I was saying.
20 Q All right. That e-mail doesn't say that?
21 A No.
22 Q No e-mail that you are aware of says that,
23 correct?
24 A Not that I'm aware of.
25 Q And, in fact, to the contrary, it was your view

1 that those were issues outside the mere transfer
2 of the interest, that were compensation
3 components, correct?
4 A Yes.
5 Q And that's what you were advising to Dr. Minhas.
6 And that's what we were trying to reconcile by
7 looking at the historical treatment of A/R, for
8 example, to determine how do we square this up on
9 the exit.
10 A My -- it's not even recollection, but my
11 estimation is this conversation was the basis of
12 what went into the documents that we proposed that
13 included how those final payments would be
14 calculated based on the historical data.
15 Q All right. If you look at page 1 of the Exhibit,
16 there's an e-mail.
17 A Okay.
18 Q In the center, there's an e-mail back to you from
19 Balbir Minhas at 5:57 p.m. He says that A/R is a
20 fixed number, on May 30, both for MG and MEC. Do
21 you see that?
22 A Yes.
23 Q All right. He doesn't say back to you that "I
24 don't know why we're engaging in this exercise,
25 because when I pay the $50,000 and the $300,000,

1 Dr. Parmar is out." He doesn't say that to you,
2 does he?
3 A I don't see it here.
4 Q And he never sends that to you, does he?
5 A I don't recall him sending that.
6 Q You send an e-mail then to Donny Burkett, correct?
7 A Yes.
8 Q And you're engaging Donny to help run some
9 calculations that you anticipate will be necessary
10 to sever the relationship once and for all,
11 correct?
12 A Yes.
13 Q All right. And what you want to know from Donny
14 is collection rates on A/R, correct?
15 A Yes.
16 Q Because there's no one right way to do the A/R,
17 right? I mean, after they separate, we can just
18 wait for the A/R to come in and disburse it as
19 it's paid, or we could try to estimate, calculate
20 what we think that A/R collection would be, and
21 buy that A/R collection today, correct?
22 A Well, I agree with you that you don't know what
23 A/R is. But I think,, from a corporate
24 perspective, the analysis is not as you described
25 it. It's not that you buy the A/R, it's what does

1 operating expenses, correct?
2 A Yes.
3 Q All right. You never said to Donny that these
4 things are not necessary because when the $50,000
5 is paid, all factors are subsumed within the
6 $50,000. You never said that, right?
7 A No. And I'm not saying that now.
8 Q Yeah. So I don't think we're disagreeing,
9 ultimately, on very much.
10 A Okay.
11 Q And you're not saying that I don't need this
12 information as to the other entity, because when
13 the $300,000 is paid, everything is subsumed
14 within the $300,000, right?
15 A No. I'm not saying that, and I'm not saying -- I
16 want to be clear on this. I'm not saying that you
17 sit down and automatically calculate receivables
18 and pay them to a departing owner.
19 Q Okay.
20 A That's an indirect component of the process of
21 deciding what compensations or distributions would
22 be due to a departing shareholder. And a company
23 officer has to make facts and circumstance
24 decisions when they decide what to pay at that
25 level. And they have fiduciary duties to the

1 corporation.
2 Q Sure.
3 A And so that is not a pure legal statement or
4 conclusion. Had it been in a contract, it could
5 be a black and white answer. But it's a judgment
6 of the people that are in charge of the company.
7 Q Right. Okay.
8 A And it's not a judgment I can make.
9 Q All right. Take a look with me at Exhibit No. 32.
10 And you see we are getting closer and closer to
11 our closing date here, correct? This is an e-mail
12 from Heather Judy to you, copying Donny Burkett,
13 correct?
14 A Yes.
15 Q All right. And producing a meeting that was held
16 to minutes, correct?
17 A Yes.
18 Q Do you recall attending this meeting?
19 A I do not.
20 Q Actually, you're not an attendee. I apologize.
21 If you look at the next page. But you were
22 provided with minutes, right?
23 A That's what it appears, yes.
24 Q All right. And if you look at the minutes, you
25 are advised, in part, that at this meeting that

1 schedule. Because each one had a little different
2 percentage.
3 Q Okay. And why would you be doing that if Dr.
4 Parmar was not entitled to any portion of this
5 A/R?
6 A Well, if you separated it, in a physician
7 practice, a lot of physicians have a different
8 payor mix. So their contractual adjustment may be
9 different. And so sometimes when we look at value
10 and A/R, we look at it by physician, not in total.
11 Q But why were you calculating A/R at all if he
12 wasn't entitled to any portion of A/R?
13 A Well -- and again, at this point in time, I was
14 under the understanding that the A/R is going to
15 be part of the purchase, okay? At this point, I
16 believe that's the way I understood that.
17 Q And I'll show you e-mails that postdated the
18 closing, and you continued to calculate A/R. When
19 were you told that it wasn't supposed to be part
20 of the closing, if any?
21 A Well, you asked me that question in my deposition,
22 and I told you I could not remember that, okay?
23 But in reviewing the exhibits that I was given for
24 this case, as I reviewed my deposition, it is an
25 e-mail on May 28 -- I'll find it. I think maybe

1 the next day or the day after. It was my
2 understanding that Ed White sent an e-mail I was
3 copied on that I remember seeing that explained
4 that it may just be the $50,000 and the $300,000.
5 Q For the purchase of his shares?
6 A That's right.
7 Q But then was there a separate compensation
8 component that had to be determined that postdated
9 the closing?
10 A In my opinion, the compensation still had to be
11 determined, okay?
12 Q Thank you. All right.
13 A And let me be -- that's the compensation we talked
14 about earlier. Because that was never reconciled.
15 Q Yes, sir. Now, I ask you to go to Exhibit No. 29.
16 Were you at a meeting with Dr. Parmar and Dr.
17 Minhas about the purchase of the 2010 Nissan
18 Murano that was owned by, I believe, MG?
19 A Yes, sir.
20 Q Okay. And were you asked to value the Nissan
21 Murano for the purchase by Dr. Parmar of that car?
22 A Yes, sir.
23 Q Please tell --
24
25 MR. STEGMAIER: Can I -- I'm just going to

1 time during that year, got the cash balances as of
2 the date of closing paid to himself.
3 Q Correct. It was all cash, it wasn't just his,
4 correct? It was that amount that he was going to
5 take from --
6 A It was the amount of cash that was on hand as of
7 the date that Dr. Parmar bought in. If I wasn't
8 clear, I'm sorry.
9 Q Now, the cash that existed on May 30 of 2014 in
10 the bank was at least 50 percent based on Dr.
11 Parmar's production, correct?
12 A It was based on his production, yes.
13 Q And Dr. Parmar actually paid income taxes on the
14 cash that existed in that bank account on May 30.
15 Isn't that correct?
16 A Yes, sir.
17 Q So he paid taxes on the cash in that bank account
18 that he didn't even receive?
19 A Yes, sir.
20 Q Now, would you agree that if Dr. Parmar remained
21 beyond May 30, that ultimately that cash would
22 have been distributed at some point in time?
23
24 MR. STEGMAIER: Objection. It calls for
25 speculation.

1 ARBITRATOR KELLY: I'm going to allow it.
2
3 A Historically, they've distributed the cash in the
4 entities. I don't know why that would not
5 continue.
6 Q Based on their course of dealing. Thank you.
7
8 MR. STEGMAIER: Sir, I'm going to move to
9 strike that last remark. That wasn't a question
10 as it relates to the course of dealing. You
11 didn't ask --
12 MR. BLAND: No. I said --
13 ARBITRATOR KELLY: Ask your question again.
14
15 Q Was that based on the course of dealing, sir?
16 A Yes, sir.
17 Q Thank you. And the $263,000 of accumulated cash
18 in MEC was, in your opinion, because Dr. Minhas
19 simply didn't do any distributions?
20 A Well, according to the -- they didn't do any
21 distribution. There is no distribution done as of
22 May 31. I can't say that it was because of him
23 that there were no distributions made at that
24 time.
25

1 been propounded by the Petitioner in this case.
2 Judgment interest is something that's required to
3 be plead, and I have not seen it plead. And by
4 virtue of the fact that it having not been plead,
5 we would ask for that damage that has been sought
6 in H to be canceled out as well and to direct a
7 verdict as it relates to that particular averment.
8 So for these reasons, we ask that particular
9 disposition from this tribunal.
10 ARBITRATOR KELLY: Petitioner?
11 MR. RICHTER: Mr. Arbitrator, it is not the
12 standard that we must demonstrate anything in
13 response to this Motion, other than to say that
14 there is a scintilla of evidence that would
15 support our claims. Mr. Stegmaier is incorrect to
16 say that we have some burden at this point. It is
17 his burden, construing all inferences in favor of
18 the non-moving party, to demonstrate that even if
19 you accept what we've introduced to be true, that
20 we cannot prevail. He cannot meet his burden.
21 First, with regard to the Operating Agreement and
22 the Shareholders Agreement, we agree about so much
23 in this case. I think ultimately the universe of
24 disagreement in this case is going to be very
25 narrow. It says what it says. It also doesn't

1 say a lot of what it doesn't say. And I think
2 maybe the most compelling witness you've heard
3 from was Ed White, who at all times was a
4 representative agent of those two entities. And
5 his testimony is not just testimony as an agent;
6 they're 801(d)(2) admissions. His testimony is
7 binding as an agent on the entities. So when he
8 testified that the agreements are silent, he said
9 that quite clearly. On issues related to A/R,
10 separation compensation, other benefits, he was
11 crystal clear in his testimony that the only thing
12 that those agreements addressed with regard to the
13 exit was the value of the share interest only.
14 And that there would have to be some other
15 arrangement made to address compensation
16 components, such as A/R, such as the bank account
17 balance and other benefits to which the departing
18 member might be entitled. That testimony was
19 crystal clear. With regard to the course of
20 conduct, we agree and disagree. It is
21 black-letter law in South Carolina that a course
22 of conduct can modify either written contract;
23 there is no question about that. And so we have
24 agreements that say certain things. Those
25 agreements are ignored almost throughout. We've

1 got an agreement that says we have to maintain
2 four months' worth of cash reserves at all times.
3 Well, within a couple months of joining these
4 entities, Dr. Minhas stripped all of the cash out,
5 100 percent. Even Donny Burkett testified that
6 historically, they didn't maintain four months
7 reserves in those accounts. And so now there's an
8 instance, I guess of last-second, 10:00-last-night
9 effort to say, we want to go back to what the
10 agreements say and say that it's got to be four
11 months. Well, they never did that. And that
12 course of conduct is important, and that course of
13 conduct is evidence as to the true agreement of
14 the parties at the time of their departure. Parol
15 evidence: Parol evidence is admissible anytime
16 there is ambiguity in the contract. I don't know
17 what could be more ambiguous than what's taken
18 place with regard to these agreements. They're
19 ambiguous not only as to what they say, they're
20 ambiguous as to what they do not say. And so they
21 like to look at the agreement now and say, this is
22 it; this is the holy grail; this is the four
23 corners; we don't need to look beyond this
24 document. But we have to, because the document
25 leaves so many important issues completely

1 undefined. That is ambiguity. And when you have
2 undefined issues like that, the only way to seek
3 to ascertain how to handle those issues is by
4 parol evidence. And so you've heard a lot of that
5 evidence. And fortunately, everybody agrees.
6 Even the corporate counsel -- the binding agent
7 for the company who says, A/R, compensation, other
8 factors are not subsumed within the $50,000 or the
9 $300,000, and they must survive the closing
10 because we don't have Donny Burkett's numbers yet.
11 And so what we're going to do is preserve those
12 issues, and we'll agree to mediate or resolve
13 those issues after the fact or the closing. And
14 then you saw evidence of actual performance on
15 that understanding of the agreement post-closing.
16 At least up until a point of time, when somebody
17 had a change of course or a change of heart about
18 what was intended by those agreements. So it's
19 impossible, I would submit to you, to look at the
20 evidence before you and say, construing all
21 inferences in our favor, that we cannot prevail in
22 demonstrating that these amounts are due. If
23 nothing else, there is testimony of Dr. Parmar.
24 And Bailey vs. Bailey says that an owner can
25 testify as their own damages; an owner can testify

1 as to the value of their own property. That
2 evidence alone would be sufficient to get these
3 causes of action past a directed verdict motion.
4 With regard to the interest, you know, Rule 15(c)
5 is crystal clear that pleadings, unlike the
6 discovery issue that we just tripped over --
7 pleadings are to be liberally amended even at the
8 close of evidence. So it would be our right under
9 Rule 14(c) to say, you know what, Mr. Arbitrator,
10 the pleading doesn't say "technically" that we
11 want prejudgment interest on liquidated sums, but
12 we're asking for it now. That would be our
13 absolute right. So even if you directed verdict
14 on it now, Rule 15(c) would preserve for us the
15 right to ask for it at the close of all evidence.
16 So nothing is gained by granting a motion on
17 post-judgment interest.
18 MR. BLAND: Prejudgment.
19 MR. RICHTER: Prejudgment interest, I'm
20 sorry. I could go through the individual evidence
21 and be here a very long time doing that. I think
22 one of the more powerful documents that you saw
23 with -- some of the more powerful documents you
24 saw were in e-mails from Dr. Minhas himself, where
25 he says, here's my understanding: Before July of

1 2012, the A/R is mine; Afterwards, it's yours and
2 I's together; it's ours together. He said that.
3 That's his interpretation, his understanding, his
4 own agreement. So clearly, we have evidence to
5 support our claims of an entitlement to the A/R,
6 of an entitlement to the balance in the bank, of
7 an entitlement of the differential -- I don't even
8 think there's a disagreement on the differential
9 pay. The company's accountant did the
10 calculations. It's clear that in the years 2013
11 and 2014, Dr. Parmar earned compensation, because
12 the variance and the productivity is greater than
13 10 percent, and never got paid that money.
14 MR. BLAND: And it's not based on patients.
15 MR. RICHTER: And it's not based on patients.
16 I mean, there the language is clear. So obviously
17 we're entitled to that money. The money in the
18 bank, the A/R. This man paid taxes on that money.
19 That money is there at least 50 percent by virtue
20 of the sweat and the work that he put in. So it
21 would be manifestly unfair on the way out to say,
22 you know what, this is what we're going to do:
23 We're going to cease all distributions for a
24 period of time, we're going to build up this bank
25 account, we're going to tax you on it because

1 you're still a member, so you're going to get a
2 K-1 as if you got the money, and then on your way
3 out, you're going to get nothing.
4 MR. BLAND: We actually want you to pay us
5 because we're short on working capital.
6 MR. RICHTER: Yeah. We actually want you to
7 put money in. We're going to cease distributions
8 to you, were going to seize all of the money that
9 you contributed to the bank. With regards to the
10 A/R looking forward, even though we're looking at
11 lots of different methods to get that A/R to you;
12 we can pay it out over time as it is collected, we
13 can forecast how much we think we're going to get
14 and pay you lump sum now, or we can just take it
15 all. So here's what we're going to do: We opt to
16 take it all. That's the evidence you have before
17 you. Clearly, there's sufficient evidence to
18 support all of our claims. We respectfully
19 request that you deny the Motion.
20 ARBITRATOR KELLY: Okay. You got a response?
21 MR. STEGMAIER: Briefly in response. We've
22 made mention and we've asked Mr. White, as well as
23 some other witnesses, about Section 4.5 that
24 you've heard today. Notwithstanding anything in
25 this agreement to the contrary, a departing

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC,	)	C/A No. 2014-CP-40-06017
Applicants.	)	**AMENDED APPLICATION TO VACATE, OR IN THE ALTERNATIVE, MODIFY OR CORRECT ARBITRATION AWARD AND MEMORANDUM IN SUPPORT**
v.	)	
Rajinder Parmar,	)	
Respondent.	)	

2016 SEP 16 PM 4:39
RICHLAND COUNTY
FILED
JANETTE W. McBRIDE
C.C.P. & G.S.

TO: THE PRESIDING CIRCUIT JUDGE OF THE FIFTH JUDICIAL CIRCUIT:

Pursuant to, inter alia, S.C. Code Ann. §§ 15-48-130 and -140, Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC ("Applicants") respectfully apply to this Honorable Court for an order vacating an arbitration award to Rajinder Parmar ("Respondent"), or in the alternative, an order modifying or correcting the same. An order of this Court compelled arbitration of the parties' dispute to be conducted according to the AHLA Rules of Procedure, as specified in the Midlands Gastroenterology, P.C. contractual agreement signed by both parties on June 30, 2011.

Applicants bottom and premise their motion upon the following grounds:

(1) This matter is not ripe disposition of as, inter alia, Applicants' petition seeking the removal of the current arbitrator, James P. Kelly, from the instant matter pursuant to AHLA Rule 4.5(c) and replacing an arbitrator to conduct a de novo arbitration (AHLA Rule 4.6), and request for Review Board (AHLA Rule 4.4) remains pending with AHLA.

(2) The Arbitrator's Order # 7 (issued May 17, 2016) does not qualify as a Final Award per AHLA Rule 7.10. ("A final award fully and finally resolves **all** claims and counter claims presented in arbitration. An award may be entered and enforced in any state or federal court with jurisdiction over a case."). See Exhibit 1. (emphasis added). The Arbitrator's Order # 7 does not meet the above definition because of the following reasons:

(a) The Arbitrator did not address the matter of costs in accordance with the Operating Agreement of Midlands Gastroenterology, P.C. in Order #7. Order #7 is silent concerning the matter despite unambiguous language in Midlands Gastroenterology Operating agreement concerning costs of arbitration. The parties were compelled to brief that issue post-order (contrary to AHLA Rule 7.10). The Arbitrator continued to adjudicate the costs portion of the claim post since the issuance of Order #7. The matter of costs has still not been decided despite briefing on that issue was submitted June 10, 2016. Further, Applicants note AHLA Rules do not permit post-final award motion for costs

(b) The Arbitrator did not dispose of automobile counterclaim until June 3, which was after issuing the initial award on May 17, 2016 (Order # 7).

(3) Vacation of the arbitration award is also warranted due to procedural irregularities and errors with regard to several AHLA Rules; specifically, Rules 4.3, 7.1; 7.5, 7.6, 7.9 and 7.10 (See Exhibit 2).

(a) The Arbitrator's disposition of the matter with finality was delayed without explanation and without the grant of extension. Per AHLA Rule 7.1, the award

was arguably to be made on or about January 21, 2016 ("30 days after the hearing is closed unless the Arbitrator and all parties agree to extend this deadline."). The parties were neither asked nor did they consent to an extension in the proceedings (AHLA Rule 9.6).

(b) AHLA Rule 4.3(a) states: "An Arbitrator should issue a final award within 8 months after being appointed." Applying the initial conference date of August 20, 2015, the 8 month timeframe contemplated by Rule 4.3 expired on or about April 20, 2016. Hence, the Arbitrator's delay automatically divested him of jurisdiction in the case at bar. The May 17, 2016, initial award of the Arbitrator, along with his subsequent rulings and awards are void as a matter of law.

(4) Notwithstanding Applicants' jurisdictional arguments, the Arbitrator exceeded his power and authority. The Arbitrator's initial award, which is found within Order #7 (dated May 17, 2016), is not in accordance with AHLA Rules 7.2 (Basis) and 7.5 (Scope of Relief). These rules require an award/relief to be based on evidence presented at hearing and authorized by contract or applicable law. The relief granted by the Arbitrator in his award, Order #7 is not authorized by the contract the parties signed and/or applicable law as per AHLA Rule 7.5 "Scope of Relief." The exchange between the parties and the Arbitrator, as well as the Arbitrator's Order No. 8 ("Mr. Bland has brought to my attention a clause which may represent an agreement between the parties on allocation of costs of the arbitration. If it is such an agreement, then AHLA rules require that the agreement be followed") appears to make clear that provisions concerning cost (as well

as many other provisions of Midlands Gastroenterology and Midlands Endoscopy Center) had not been reviewed by the Arbitrator during consideration regarding disposition of this and other issues.

(5) Alternatively, the Arbitrator's decision was procured by undue and unreasoned means. Respondent's trial counsel misrepresented provisions of Midlands Gastroenterology, P.C. agreement, assembled and comingled Midlands Gastroenterology, P.C. and Midlands Gastroenterology Center, LLC bank accounts and accounts receivable), and referenced various cases including a prior MLG, LLC dispute during the December 8-9, 2015, arbitration hearing as a basis for an inappropriate argument that Dr. Minhas is a litigious person who is unable to get along with his partners. Dr. Minhas took exception to the reference to this case and this argument due to the fact, inter alia, the settlement was to have been confidential.

(6) As a further alternative, there was an evident miscalculation of figures by the Arbitrator when arriving at his award to Respondent.

STANDARD OF REVIEW

Sections 15-48-130 and 15-48-140 provide the exclusive procedures for vacating or modifying arbitration awards where arbitrators exceed their powers or award upon a matter not properly submitted to them.

Specifically, § 15-48-130, which pertains to the vacation of arbitration awards, states:

(a) Upon application of a party, the court shall vacate an award where:

(1) **The award was procured by corruption, fraud or other undue means;**

(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the Arbitrators or misconduct prejudicing the rights of any party;

(3) **The Arbitrators exceeded their powers;**

(4) The Arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 15-48-50, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 15-48-20 and the party did not participate in the arbitration hearing without raising the objection;

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in item (5) of subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with § 15-48-30, or, if the award is vacated on grounds set forth in items (3) and (4) of subsection (a) the court may order a rehearing before the Arbitrators who made the award or their successors appointed in accordance with § 15-48-30. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

(emphasis added).

Section 15-48-140 governs the modification of arbitration awards and provides:

(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) **There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award**;

(2) The Arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

(emphasis added).

FACTS/PROCEDURAL BACKGROUND

The instant dispute arises out of the termination of the business relationship between Applicants and Respondent. Respondent and Dr. Minhas, both physicians, were joint owners of two medical practices, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC. This relationship ended on May 30, 2014, when Respondent sold his interests in the two entities to Dr. Minhas. An ancillary dispute arose pertaining to the termination of this relationship.

The dispute, which arose after May 30, 2014, involved, in pertinent part, the division the accounts receivable and division of funds on deposit in bank accounts. Stated succinctly, Respondent averred he was entitled to 50% of the accounts receivable as well as 50% of the

deposit in bank accounts in addition to the sums Respondent realized from Respondent's sale of his interests in the two entities. As per Midlands Gastroenterology, P.C. Operating Agreement Section 3.8(ii), Applicants maintain Respondent was not entitled to these funds because Respondent departed before the end of 3 years with the entities. Applicants maintain Respondent was not entitled to these funds (in addition to the sums Respondent realized from Respondent's sale of his interests in the two entities).

Respondent filed an action in this Court on September 30, 2014, seeking a declaratory judgment that there was a binding arbitration agreement between the parties. Respondent moved to compel arbitration on the same date. Applicants answered, counterclaimed, and moved to dismiss. On September 16, 2014, Respondent filed a "Demand for Arbitration" with the American Health Lawyers Association. Applicants Balbir. S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC alleged numerous counterclaims in response to the same.

Pursuant to Rule 65, SCRCP, Applicants moved for an order temporarily enjoining Respondent from proceeding with arbitration of the parties' dispute pending the outcome of this declaratory judgment action. In the alternative, Applicants requested the arbitration proceeding be stayed pursuant to § 15-48-20(b).

Following a hearing on the matter, the presiding circuit judge denied Applicants' pursuit of injunctive relief, or in the alternative, stay of the arbitration proceedings.

With the matters in the Circuit Court decided upon, the dispute moved towards arbitration. The parties conferenced the case with the appointment arbitrator, James P. Kelly, of

Atlanta via telephone on August 20, 2015. That same day, the Arbitrator issued an order, which created a schedule in the case that included a hearing date of December 8, 2015.

Testimony and argument was presented during December 8 and 9, 2015. Upon completion of final arguments on December 9, the matter was submitted for disposition. Companion with the matter's submission for disposition was the Arbitrator's inquiry regarding whether the parties desired a reasoned or summary decision. Desirous of resolution as soon as possible and believing that a summary decision would result in the same, Applicants selected that mode with regard to disposition.

By order dated May 17, 2016—five months after the close of the proceedings at the hearing–Arbitrator James P. Kelly awarded certain relief to Respondent and denied counterclaims pursued by Applicants. See Exhibit 1.

At the arbitration hearing, Applicants averred Respondent was owed nothing else monetarily. Respondent had been paid for his shares and interest in Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC. Furthermore, Applicants maintained Respondent had substantially damaged them monetarily, which Applicants sought to recover. Notwithstanding Applicants' presentation and arguments, the Arbitrator made the following determinations concerning disposition:

[Respondent] is awarded:

1.	½ of operating accounts	$179,104.98
2.	½ of trailing accounts receivable:	$78,463.50
3.	2013 MG variance:	$53,000.00
4.	2014 MG variance:	$29,000.00

[Respondent] is denied:

1.	MEC Account Receivable Differential (posted vs. actual Collection):	$7,225.50
2.	2012 & 2013 VA weekend:	$8,900.00
3.	Profit Sharing:	$7,100.00
4.	Prejudgment interest	
5.	The Nissan automobile; and	

[Applicants'] counterclaims are denied.

Pursuant to Rule 7.9 of the AHLA Rules of Procedure for Arbitration, Applicants sought an order from the Arbitrator correcting various errors—particularly computational errors–extant in the instant award. This motion, however, was denied.

This application to vacate, or in the alternative, to modify or correct follows.

SUMMARY OF ARGUMENT

Applicants maintain there are multiple bases for vacation of the subject arbitration award. Specifically, Applicants state:

- This matter is not ripe as disposition of , inter alia, Applicants' petition seeking the removal of the current arbitrator, James P. Kelly, from the instant matter pursuant to AHLA Rule 4.5(c), replacing an arbitrator to conduct de novo arbitration (AHLA Rule 4.6), and request for Review Board (AHLA Rule 4.4) remains pending with AHLA.
- The Arbitrator's Order # 7 does not qualify as a Final Award as per AHLA Rule 7.10. ("A final award fully and finally resolves **all** claims and counter claims presented in arbitration. An award may be entered and enforced in any state or federal court with jurisdiction over a case.") (emphasis added).
- Vacation of the arbitration award is warranted due to procedural irregularities and error. The Arbitrator's disposition of the matter with finality was delayed without explanation and without the grant of extension by Applicants. The Arbitrator's delay without any explanation and without any extension granted by the parties automatically divested him of jurisdiction in the case at bar. The May 17, 2016, initial award of the Arbitrator, along with his subsequent rulings and awards are void as a matter of law; and regarding the scope of relief, the May 17, 2016, award does not draw its essence from the Midlands

Gastroenterology, P.C agreement parties signed and is therefore impermissible per AHLA Rule 7.5.

- Regarding the award for accounts receivable and operating accounts, error exists because § 8.1(A) of Midlands Endoscopy Center operating agreement strictly (e.g., "shall not be distributed") prohibits distribution to its shareholders without having reserves for 4 months of operating expenses (required $260,000.00).[1] The distribution to Respondent of 1/2 of the operating accounts in sum of $179,104 does not account for or leave the required balance in the Midlands Endoscopy Center operating account. Respondent received $37,058.04 + $6,176.00 (as interest) plus the principal amount ($300,000 + $50,000) for his shares/interest in Midlands Endoscopy Center and Midlands Gastroenterology as a result of the parties' May 30, 2014, transaction. If 50% of operating accounts ($179,104.98) is ultimately awarded to Respondent, this award is not only duplicative for the interest amount, but § 3.8 (ii) of Midlands Gastroenterology agreement does not entitle Respondent 50% of operating accounts and /or accounts receivables.
- Midlands Endoscopy Center and Midlands Gastroenterology have entirely different compensation formulas; however, the Arbitrator completely ignored that fact and inappropriately combined accounts receivables and bank accounts of these two independent entities

[1] See Exhibit 3.

- The award of $78,463.50, which was half of the trailing accounts receivables amount, is incorrect. This award does not subtract half of the accounts payables, including but not limited to accounting fees for financial analysis which was mandated by Respondent, and calculation of productivity variance, legal fees, and other expenses.
- Concerning Midlands Gastroenterology, there is error as the formula used for calculation in § 3.15 of the Midlands Gastroenterology shareholder agreement brings to the total amount of $12,124.00 (vs. the $82,000.00 actually awarded).
- The sums awarded in §§ 3 and 4 of the Arbitrator's May 17, 2016, order are already included in the operating accounts ($179,104.98) and trailing accounts receivables ($78,463.50).
- In the May 17, 2016, arbitration order, it was determined: "Respondent is denied ... the Nissan automobile." The Arbitrator failed to recognize that automobile was not claimed by Respondent. Respondent had abandoned any claim to the automobile prior to the arbitration and reiterated this abandonment at the beginning of the arbitration hearing. Nevertheless, Arbitrator "denied" the automobile to Respondent in Order #7, but did not ascertain or effectuate its disposition till June 3, 2016. Respondent kept the subject vehicle in his possession for 2 years since his departure from the entities, though he had no legal right to keep it. The vehicle is titled to

Midlands Gastroenterology. Midlands Gastroenterology sustained a loss of use of the vehicle since May 30, 2014. Moreover, Midlands Gastroenterology paid the property taxes and insurance on the car in the interim. The Arbitrator's May 17, 2016, award contained no disposition as it pertains to the automobile. Furthermore, Respondent drove this automobile for about 6000 miles after May 30, 2014, while Midlands Gastroenterology paid for insurance and taxes the order was without any award as it pertains to value, loss of use, taxes, insurance, etc,, which are owed to Midlands Gastroenterology. Applicants maintain this omission was inadvertent typographical error and/or computational error and should be corrected.

- The Arbitrator failed to fulfill two primary objectives of efficiency and cost effectiveness of ADR by conducting arbitration proceedings in a sub optimal manner by undue delay and continued adjudication of lingering issues after declaring his award in Order #7 on May 17, 2016.

LAW/ANALYSIS

I. Vacation of the Arbitration Award is Warranted Due to Procedural Irregularity/Impropriety

On September 30, 2014, Respondent filed a declaratory judgment action, seeking an order requiring the parties to arbitrate their dispute. On the same day, Respondent also filed a motion to compel arbitration. Applicants responded by filing an answer with counterclaims and a motion to dismiss the action on October 24, 2014, averring the Court lacked the jurisdiction

and authority to award the relief sought by Respondent, which was to compel the parties to engage in arbitration before the American Health Lawyers Association. On November 17, 2014, Applicants supplemented their existing pleadings with a motion for temporary injunction or, in the alternative, for a stay of arbitration under S.C. Code Ann. § 15-48-20(b).[2]

The parties argued their respective motions to the Circuit Court on January 5, 2015. Following argument, the Court took the matter under advisement. Thereafter, the Court issued an order granting Respondent's motion to compel arbitration and denied Applicants' motions for temporary injunction, or in the alternative, for a stay and to dismiss the complaint. On July 22, 2015, the Circuit Court issued an order denying Applicants' motion for reconsideration of its previous order. Accordingly, although over Applicants' objections, the instant dispute (including Applicants' counterclaims) was set for disposition via arbitration.

With the matters in the Circuit Court decided upon, the dispute moved towards arbitration. The parties conferenced the case with the appointment arbitrator, James P. Kelly, of Atlanta via telephone on August 20, 2015. That same day, the Arbitrator issued an order, which created a schedule in the case that included a hearing date of December 8, 2015. The scheduling

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[2] S.C. Code Ann. § 15-48-20(b) states:

> On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

in the case was never altered or amended and the arbitration hearing in this matter did in fact commence on December 8, 2015.

Testimony and argument was presented during December 8 and 9, 2015. Upon completion of final arguments on December 9, the matter was submitted for disposition. Companion with the matter's submission for disposition was the Arbitrator's inquiry regarding whether the parties desired a reasoned or summary decision. Desirous of resolution as soon as possible and believing that a summary decision would result in the same, Applicants selected that mode with regard to disposition.

Weeks and months passed, but without any decision. Applicants were disappointed with the delay. On March 7, 2016, the Arbitrator emailed the parties that a decision was forthcoming within 7 days. Upon information and belief, March 7, 2016, was still inside the 8 month window. However, an order disposing of the arbitration did not in fact come.

Finally, on May 17, 2016, the Arbitrator issued Order #7 as disposition of the parties' dispute. However, despite it being called the "Final Order," the order was incomplete inasmuch as several of the matters forwarded for disposition remained unresolved.

Subsequent to the issuance of Order #7, Respondent inquired by email to the Arbitrator concerning the matter of costs. See Exhibit 4. In response, the Arbitrator related that absent any agreement to the contrary, all parties were to bear their own costs, referencing (though not specifically citing) Rule 7.6(b) of the AHLA Rules of Procedure.[3] See Exhibit 5.

[3] Rule 7.6(b) of the AHLA Rules of Procedure states:

On May 18, 2016, Respondent's counsel emailed the Arbitrator again and asserted section 8.11 of the Midlands Gastroenterology Shareholders Agreement—which was in evidence in the record from the hearing and presumably reviewed by the Arbitrator prior to the issuance of Order #7–contemplated the award of costs to the prevailing party. Respondent maintained the disposition in Order #7 made him the prevailing party; accordingly, Respondent was aggrieved Order #7 did not award him costs in addition to the other awards. Stated specifically, Respondent's counsel averred:

> Arbitrator Kelly. Pursuant to your email of last evening regarding attorney's fees and costs requested by the Petitioner, please see section 8.11 of the June 30, 2011 signed Midlands Gastroenterology Shareholders Agreement. I have highlighted the relevant portion. While it is arguable that attorney's fees are sometimes not considered "costs", it is clear that my client is entitled to recover all of its "costs" from the arbitration. These include but are not limited to filing fees, arbitration fees, court reporter costs, etc. and others. This is not discretionary on the panel's part. It is mandatory. The language that "all costs shall be borne by the party against whose interest the arbitration is adversely determined" could not be more clear. It is not debatable that my client was the prevailing party and that the Respondents were not. You awarded my client over 90% of the entire monetary relief he requested in his demand for arbitration. The Respondents' counterclaims were denied in their entirety. Please let us know whether you want us to submit an affidavit itemizing the costs and provide the invoices and payments for the. Thank you. Eric Bland

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> (b) STANDARD ALLOCATION: Except as is set forth in subsection (c) below, if the parties have not specified how fees and expenses should be allocated, an arbitrator will:
>
> (1) require the parties to pay their own attorney's fees and the expenses of the witnesses they produce; and
>
> (2) split the costs of the arbitration process, including the arbitrator's fees and expenses, evenly between the parties.

> Section 8.11 Disputes. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, which shall be conducted in Columbia, South Carolina, in accordance with the NHLA Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the arbitration, shall be binding not only on all parties to the Agreement, but on any other entity controlled by, in control of or under common control with the party to the extent that such affiliate joins in the arbitration. Judgment upon the award rendered by the Arbitrators may be enforced in any court having jurisdiction thereof and all costs shall be borne by the party against whose interest the arbitration is adversely determined.

See Exhibit 6.[4]

In response, the Arbitrator issued Order #8 on May 18, 2016, after advising the parties "Mr. Bland has brought to my attention a clause which may represent an agreement between the parties on allocation of costs of the arbitration. If it is such an agreement, then AHLA rules require that the agreement be followed." See Exhibit 7. To that end, "[t]o flesh out this matter," the Arbitrator ordered:

> 1. Respondents to respond, by midnight, Thursday, May 26, 2016, in writing to Petitioner's positions on (a) application of the MG Shareholders Agreement to allocation of costs, (b) whether in this case costs include attorney fees, and (c) determination of the prevailing party when the Award split as did Order No. 7. Petitioner will have seven calendar days after receipt of Respondents response to reply to that response;
>
> 2. Petitioner to submit, by midnight, Thursday, May 26, 2016, an affidavit itemizing the costs with attached invoices and evidence of Petitioner's payments for the costs of the arbitration.

[4] While not expressly characterized as such, Applicants maintain Respondent sought correction of Order #7 pursuant to Rule 7.9 due to the matter of the award of costs being absent from the original disposition.

See id.

The parties prepared responses concerning the matter of costs in accordance with the directive of Order #8. Since Order #8 continued adjudication of the matter (as it related to costs), the Arbitrator by his own action, while ignoring AHLA Rules, made any "finality" found within of Order #7 null and void. The matter of costs remains pending without any disposition. Thus, there has not any "final" order issued in this case, which finally disposes of all of the purported issues and relief sought by the parties in the original action.

Due to the fact that there had not been any final order issued in this case, on June 27, 2016, Applicants filed a written objection to any award ultimately issued (along with previous companion rulings) in the instant case as null and void inasmuch as the disposition of this matter is untimely. Applying Rules 4.3(a)[5] and 7.1[6] (and 7.9)[7] of the AHLA Rules of Procedure, Applicants asserted the Arbitrator was divested of jurisdiction.

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[5] Rule 4.3(a) of the AHLA Rules of Procedure states:

> 4.3 Case Management
>
> (a) DEFAULT TIMELINE. Except as provided below [in subsections (b) and (c), which are not applicable in the instant case], an arbitrator should issue a final award within eight (8) months after being appointed. Arbitrators should schedule pre-hearing proceedings and hearings accordingly.

[6] Rule 7.1 of the AHLA Rules of Procedure states:

> 7.1 Deadline
>
> An arbitrator **must** issue an award within 30 days after the hearing is closed unless the arbitrator and all parties agree to extend the deadline.

(emphasis added).

More than 8 months have elapsed since the arbitration was convened. The initial award (Order #7) was issued following the elapse of 8 months. See Rule 4.3(a) of the AHLA Rules of Procedure. There was/has been no extension sought by the Arbitrator. [8] See Rule 9.6 of the AHLA Rules of Procedure.[9]

The hearing was closed in the instant case on December 8, 2015. The initial award was issued on May 17, 2016. A final order, disposing of all issues forwarded for disposition in the case at bar has still not been issued.

[7] Rule 7.9 of the AHLA Rules of Procedure states:

> 7.9 Corrections
>
> Within 15 days after receiving an award, a party may request the arbitrator to correct clerical, typographical, or computational errors in the award. The other parties will have 15 days to respond to this request. The arbitrator must respond within 30 days after receiving the request. An arbitrator may not reconsider the merits of an award after it has been issued. He or she may alter the award only after it has been issued. He or she may alter the award only to correct inadvertent mistakes.

[8] While Respondent may have unilaterally initiated the arbitration in November 2014, the proceedings did not commence at that time because there was not bilateral approbation. Applicants objected to the arbitration. This objection was litigated in the Circuit Court via a declaratory judgment action initiated by Respondent. In the interim, any arbitration of the matter had not commenced, or in the alternative, was in abeyance. It was not until after disposition of the objection by the circuit judge did the arbitration begin in earnest in August 2015. It was at that time a schedule for disposition was created. It was at that time the 8 month clock began to run.

[9] Rule 9.6 of the AHLA Rules of Procedure states:

> 9.6 Extension of Appointment
>
> After an arbitrator rules on a petition, the parties may agree to extend the arbitrator's appointment for the duration of the case. If the parties do not agree on

As a matter of axiomatic law, jurisdiction can be raised at any point of the proceedings. Therefore, Applicants assert there is and was no waiver when they objected to jurisdiction and averred the Arbitrator had been divested of the same due to his delay after having exceeded timelines and scope prescribed by the AHLA Rules.)

Applicants maintain the expiration of the 8 months operated as an automatic terminus by default of the proceedings. Thus, Applicants assert jurisdiction in this matter was automatically divested upon the 8 month mark. See Rules 4.3(a) and 7.1 (and 7.9) of the AHLA Rules of Procedure.[10]

II. Regarding the Merits Arbitrator Exceeded His Power and Authority with His Awards to Respondent. Alternatively, the Arbitrator's Decision Was Procured by Undue and Unreasoned Means. As a Further Alternative, There Was an Evident Miscalculation of Figures by the Arbitrator When Arriving at His Award to Respondent.

As noted above, in his May 17, 2015, order, the Arbitrator made the following determinations concerning disposition:

(A) [Respondent] is awarded:

5.	½ of operating accounts	$179,104.98
6.	½ of trailing accounts receivable:	$78,463.50
7.	2013 MG variance:	$53,000.00

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an extension, or the arbitrator declines to accept it, the Administrator will appoint an arbitrator in accordance with Rule 3.2.

[10] In a return filed by Respondent subsequent to Applicants' objection based on jurisdiction, Respondent averred Applicants' made a "mockery" of the AHLA. To the contrary, Applicants have reviewed the rules governing the arbitration process, reviewed the various contemplated timelines articulated therein, and sought to assert what they believe are their rights concerning timely and complete disposition and the parameters of the arbitrator's jurisdiction.

8.	2014 MG variance:	$29,000.00

(B) [Respondent] is denied:

6.	MEC Account Receivable Differential (posted vs. actual Collection):	$7,225.50
7.	2012 & 2013 VA weekend:	$8,900.00
8.	Profit Sharing:	$7,100.00
9.	Prejudgment interest	
10.	The Nissan automobile; and	

(C) [Applicants'] counterclaims are denied.

As argued below, notwithstanding Applicants' jurisdictional arguments, the Arbitrator exceeded his power and authority with his award to Respondent. Alternatively, the Arbitrator's decision was procured by undue and unreasoned means. As a further alternative, there was an evident miscalculation of figures by the Arbitrator when arriving at his award to Respondent.

Section 3.8 of the Shareholder Agreement states, in pertinent part, what Respondent would be entitled to monetarily with regard to any and all interests he possessed in the entities in the event of his exit:

> Founding Shareholder Protection Provisions. As the founding shareholder of the Company, the following provisions shall apply to Balbir S. Minhas for so long as he remains a Shareholder of the Company:
>
> ii. **From the period beginning one (1) year from the Effective Date and ending [three] (3) years from the Effective Date, in the event of a dispute that cannot be resolved by the Shareholders after good faith efforts, Balbir S. Minhas shall be entitled to elect in writing to purchase all of the Shares owned by Rajinder Parmar for the sum of $50,000 plus interest**

> **computed from the Effective Date at a per annum rate of Four and No/100 Percent (4.00%) with a closing to occur within ninety (90) days of the election with [Respondent] making the representations contained in Section 4.6.3 and subject to the conditions in Seciton 4.6.4.**

See id. (emphasis added).

As well, Section 3.9 of the Shareholder Agreement states:

> New Shareholder Protection Provision. As the new shareholder of the Company, the following provisions shall apply to [Respondent] for aso long as he remains a Shareholder of the Company:
>
> ii. **From the period beginning one (1) year from the Effective Date and ending [three] (3) years from the Effective Date[,] [Respondent] shall be entitled to elect in writing to sell of his shares to Balbir S. Minhas for the sum of $50,000 plus interest computed from the Effective Date at a per annum rate of Four and No/100 Percent (4.00%) with a closing to occur within ninety (90) days of the election with [Respondent] making the representations contained in Section 4.6.3 and subject to the conditions in Seciton 4.6.4.**

Respondent departed both entities by selling his shares before the end of three years.

At no time did Respondent object to this exit clause. His signature on the agreement evinces the same as a matter of law. There is no mention of any right to one-half of the operating accounts or one-half of the accounts receivable.

With regard to what he purchased, Respondent was gifted both a generous and gentle entrance into the practice of medicine in South Carolina. For $300,000 and $50,000 respectively, Respondent purchased a 50% percent interest in Midlands Endoscopy, LLC and a

50% share in Midlands Gastroenterology, PC.[11] The $300,000 purchase price for the Midlands Endoscopy, LLC interest was fronted to him by Midlands Endoscopy Center—interest free–over the course of 3 years (i.e., there was no upfront out-of-pocket expense incurred by Respondent for Midlands Endoscopy Center in connection with joining this as a full partner). Payment for the Midlands Endoscopy, LLC interest by Respondent was via **pretax** dollars by way of periodic distributions.

Additionally, irrespective of the amount of procedures he was performing on the endoscopy side, Respondent enjoyed essentially passive income of 50% of the profits of Midlands Endoscopy, LLC, which was not an insignificant sum. Respondent was compensated generously and on par with Applicant Minhas during his time in the practices.

After practicing medicine together for nearly three years, Respondent articulated his desire to sell his ownership interest in both entities during the late winter/early spring of 2014. Accordingly, Applicant Minhas elected to purchase Respondent's interests in both entities—as was his right to do so–in March 2014.

In connection with this sale, Respondent and Applicant Minhas ultimately executed an "Agreement for Sale of Limited Liability Company Interest" regarding Midlands Endoscopy Center, LLC on May 30, 2014. See Exhibit 8. Also on May 30, 2014, Respondent and Applicant Minhas executed a Stock Sale Agreement, regarding Midlands Gastroenterology, PC. See Exhibit 9.

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[11] Respondent's purchase of his interest in Midlands Endoscopy, LLC and a 50% share in Midlands Gastroenterology, PC **did not include purchase of any existing accounts receivable or cash in the bank. This was at the express direction of Petitioner**.

Pursuant to the parties' 2011 agreement outlining sale price, Respondent received $337,058.04 (principal + 4% interest) for his interest in Midlands Endoscopy, PC and $56,176.34 (principal + 4% interest) for his shares in Midlands Gastroenterology, PC. These amounts constituted the complete aegis of what Respondent was entitled to. No other written agreement—executed by the parties–was created that entitled Respondent to any other sum.[12] The sale documents Respondent executed on May 30, 2014, were done so in the presence of his lawyer and with the advice of counsel.

Upon the sale of Respondent's interest, Applicant Minhas became the sole member of Midlands Endoscopy Center, LLC and the sole shareholder of Midlands Gastroenterology, PC.

Though the written sales agreements are completely silent regarding any additional amounts due and owing to him, Respondent maintained he was entitled, inter alia, to one half of the accounts receivable and one half of the cash on hand for both entities at the time of his departure. Prior to the hearing in the instant case, Respondent asserted he was entitled to an additional $405,195.53.

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[12] See also, e.g., Paragraph 4 of the Stock Sale Agreement regarding Respondent's sale of his shares of Midlands Gastroenterology, PC, which states:

> Entire Agreement. This Agreement is the entire agreement among the parties hereto with respect to the transaction contemplated hereby and supersedes all prior or contemporaneous agreements or understandings, whether written or oral, among the parties, or any of them, with respect to the subject matter hereof.

See Exhibit 9.

In his disposition, the Arbitrator elected to award Respondent one half of the accounts receivable and one half of the cash on hand for both entities. The Arbitrator calculated these sums to be $179,104.98 and $78,463.50, respectively. As well, Respondent was awarded $53,000.00 and $29,000.00 in alleged Midlands Gastroenterology shareholder compensation variance for years 2013 and 2014, respectively. As explicated below, Applicants aver these awards were the product of computational error, which should be corrected.

A. Accounts Receivable and Operating/Bank Accounts: (Section A, Subsections 1 & 2 of Arbitration Order)

In his order, the Arbitrator awarded Respondent one half of the operating accounts ($179,104.98) and one half of the accounts receivable ($78,463.50) of Midlands Gastroenterology and Midlands Endoscopy Center as of May 30, 2014. This was the exact sum sought by Respondent in his pre-hearing brief.

Applicants aver this award was the product of a computational error, which requires correction. Applicants reason/argue their position upon the following, among other reasons:

- There is no mention of bank accounts and/or accounts receivable to be given to Respondent in the agreements Respondent signed on June 30, 2011, or the sale documents Respondent signed on May 30, 2014.
- The calculations of accounts receivable and reconciled bank accounts for both Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC **ignore** both the realities of overhead **and** the calculations by accountant Donny Burkett post May 30, 2014. Assuming, arguendo, Respondent was entitled to anything post May 30, 2014, dollars, it would be net rather than gross. Respondent received a windfall to which he was not entitled.[13]

[13] Notwithstanding Applicants' assertion that Respondent is not entitled to one half of the operating accounts and one half of the accounts receivable, the award to Respondent overlooks the existence of accounts payable. Respondent seeks all the benefit without any of the obligation

Moreover, the subject bank accounts and accounts receivable belong to the entities. Respondent did not buy any interest in the bank accounts and accounts receivable at the time of purchasing shares of Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC. During his tenure with Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC Respondent was not expecting any more than what he paid for those shares. Respondent received 4% interest on the original amounts he paid for Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC. In fact, for Midlands Endoscopy Center, LLC, since Respondent obtained ownership of 50% shares on day one, in essence, Midlands Endoscopy Center, LLC loaned $300,000 to him. Contrary to normal convention, Respondent, as a borrower, received 4% interest on borrowed money (from Midlands Endoscopy Center, LLC) on May 30, 2014 when he forced Applicant Minhas to personally buy the Midlands Endoscopy Center, LLC shares back. That was all that was contemplated, **just to avoid the very dispute that Applicants have been dragged into right now**, if the sale occurred after first year but before the third anniversary of June 30, 2011. There is no mention of bank accounts and/or accounts receivable to be given to Respondent in the agreements Respondent signed on June 30, 2011, or the sale documents Respondent signed on May 30, 2014.

Further, Respondent bought shares of Midland Gastroenterology and Midlands Endoscopy Center in 2011. The value of these shares did not include bank accounts and accounts receivable. That fact is undeniable and indisputable. Applicant Minhas merely acted as

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attendant to operating these entities. An award without such a consideration constitutes a miscalculation and computational error.

officer of the entities to complete the transactions. The shares are integral and inherent part of the entities. Applicant Minhas is not the "shares." Respondent's sale agreement on May 30, 2014, returned his shares to the entities and he received the amount in return, which he bargained for in 2011. By referring to provisions 3.8(ii) and 3.9(ii) of the Midlands Gastroenterology Shareholder Agreement,[14] Respondent forced Applicant Minhas to personally buy the shares because there was an error recognized by both parties in the drafted agreement where "Dr. Balbir S. Minhas" name was inserted instead of "[Midlands Gastroenterology/]Midlands Endoscopy Center." This is well documented in the April 7, 2014, meeting where Respondent agreed that the entities could buy his shares. Had the entities paid the $393,234.34—the amount Applicant Minhas was forced to personally pay–for the shares/interests, there would have been much less money in the entities. **The order, therefore, computes incorrectly to award the Respondent "sale amount" twice.**[15]

The same provisions 3.8(ii) and 3.9(ii) within the Midlands Gastroenterology Shareholder Agreement that were used by Respondent to demand and successfully get payment for his shares personally from Applicant Minhas also specifically lack mention of bank accounts and accounts receivable. The buy-sell provisions 3.8(ii) and 3.9(ii) are clearly worded and **unambiguous**

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[14] See Exhibit 10.

[15] The typographical error using "Balbir S. Minhas" instead of "Midlands Gastroenterology/Midlands Endoscopy Center" is no different than "THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C CODE ANN. 15-48-10, *et seq*." written on the title page of the Midlands Gastroenterology Shareholder Agreement and "NHLA Alternative Dispute Service Rules of Procedure for Arbitration" (Section 8.11) within the Agreement's text. This was also recognized by the Defendant's legal counsel.

because they include 4% interest (unconventionally to be paid by the lender to the borrower) added to the "amount deemed paid to buy shares" by Respondent, but does not include bank accounts and accounts receivable. Whereas, provisions 3.8(iii) and 3.9(iii), which are the buy-sell after 3 years, do not include 4% interest, but include bank accounts and accounts receivable as part of the well-established "Fair market evaluation" determination. Respectfully, the arbitration award contains a computational error with its lack of recognition of this clear distinction between 3.8(ii)/3.9(ii) and 3.8(iii)/3.9(iii) clauses of the shareholder agreement.

Bank accounts and accounts receivable are assets of the companies. This was a buy-sell transaction of shares, and not liquidation of the company assets and distribution of the proceeds to the shareholders.[16]

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[16] Applicants maintain that some sort of (artificial) economic justice has been employed to bring the Midlands Gastroenterology and Midlands Endoscopy Center operating accounts and accounts receivable to zero on May 30, 2014, as it was misrepresented by Respondent to be on July 1, 2011. What is being overlooked in the award are the true economic positions of Respondent, Applicants Minhas and Midlands Gastroenterology and Midlands Endoscopy Center on July 1, 2011.

The true economic positions were the following: Respondent paid $50,000.00 for 50% stock of Midlands Gastroenterology. He also gained $300,000.00 worth of Midlands Endoscopy Center 50% shares while contributing nothing to Midlands Gastroenterology and Midlands Endoscopy Center's operating accounts. Combined, Midlands Gastroenterology and Midlands Endoscopy Center had approximately $297,000.00 dollars of Applicant Minhas' money in the operating accounts and accounts receivables. Midlands Endoscopy Center needed to pay Applicant Minhas $300,000 for the shares purchased by Petitioner. The gap between economic positions of Respondent and Applicant Minhas (favorable to Petitioner and unfavorable to Applicant Minhas) was $897,000.00 if Midlands Gastroenterology and Midlands Endoscopy Center had zero money. This economic gap was not dissipated until December 2013. All of this was demonstrated/testified to at the arbitration proceeding.

When Respondent bought shares of Midlands Gastroenterology and Midlands Endoscopy Center, Respondent did not pay any money for his shares for Midlands Endoscopy Center. To

B. 2013 & 2014 Midlands Gastroenterology Shareholder Compensation Variance (Section A, Subsections 3 & 4 of Arbitration Order)

Section 3.15 of the Midlands Gastroenterology Shareholder Agreement governs shareholder compensation. This section states, in pertinent part:

> Shareholder Compensation. Shareholder compensation for physician services provided to the Corporation shall be equal for all Shareholders as long as each Shareholder's production is within ten percent (10%) of each other Shareholder. If a Shareholder's production is not within 10%[,] but is within twenty percent (20%) of each other Shareholder, then Shareholder compensation shall be fifty

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satisfy all mutual financial obligations, Midlands Gastroenterology and Midlands Endoscopy Center could not have been able to conduct their business with no money without a loan. For equal contribution, Respondent could have contributed $297,000 to match the amount Applicant Minhas had in the operating accounts and accounts receivables in Midlands Gastroenterology and Midlands Endoscopy Center, which Respondent did not. Or, as dictated by Midlands Endoscopy Center operating agreement and business rule for Midlands Gastroenterology, a total $365,797.00 (as calculated by Donny Burkett, the entities' accountant) was needed to conduct business of the two entities. To satisfy the Midlands Endoscopy Center obligation to pay $300,000.00 to Applicant Minhas on July 1, 2011, there would have been additional loan needed, making the total amount of money to be borrowed $665,797. Or, Respondent could have borrowed money independently to pay to Midlands Endoscopy Center for his shares. This would have been the fairest economic just configuration to all parties on July 1, 2011. Respondent elected not to opt for any of these options.

Applicants posit the following: Assume Midlands Gastroenterology and Midlands Endoscopy Center had borrowed that amount $665,797 from a lender, such as a bank. Midlands Gastroenterology and Midlands Endoscopy Center would have had the obligation to pay back that amount before distribution of cash to their shareholders (50% for Respondent and 50% for Minhas). Under this scenario, needless to say, had Midlands Gastroenterology and Midlands Endoscopy Center paid its debt in full on May 30, 2014, there would be no remaining amount for distribution without making Midlands Gastroenterology's and Midlands Endoscopy Center's operating accounts go to less than zero.

In reality, Applicant Minhas was the "lending party," but did not compel Defendant to pay half of the loan. Respondents again maintain that this is the reason Section 3.8(ii) and 3.9(ii) do not have bank accounts and accounts receivable. Defendant—with full knowledge–signed the Shareholder Agreement, as drafted.

percent (50%) equal and fifty (50%) based upon personal production of each Shareholder . . . .

In the arbitration award, Respondent was awarded $53,000.00 and $29,000.00 in alleged Midlands Gastroenterology shareholder compensation variance for years 2013 and 2014, respectively. As explicated below, this award was incorrect.

In the award, the Arbitrator misapprehended or overlooked the following when calculating variances:

Year 2013: For 2013, the productivity numbers were $590,968.00 for Respondent and $469,237.00 for Applicant Minhas. The variance was $121,731.00, which was a percentage difference of 11.48% in favor of Respondent.

With 50% overhead considered, net distributable income was approximately $61,000.00. Calculated per formula: 50% equal (Respondent $15,250.00) and 50% as per percentage difference (Respondent $18,605.00) equals to a total of $33,855.00 and 50% equal (Applicant Minhas $15,250.00) and 50% as per percentage difference (Applicant Minhas $11,895.00) equals to a total of $27,145.00. Therefore, difference in favor of Dr. Parmar was $6,710.00 (vs. the awarded $53,000.00).

Year 2014: For 2014, the productivity numbers were $281,859 for Respondent and $209,046 for Applicant Minhas. The variance was $72,813.00, which was a percentage difference of 14.83% in favor of Respondent.

With 50% overhead considered, net distributable income was approximately $36,000.00. Calculated as per formula 50% equal (Respondent $9,102.00) and 50% as per percentage difference (Respondent $11,832.00) equals to a total of $20,934.00 and 50% equal (Applicant Minhas $9,102.00) and 50% as per percentage difference (Applicant Minhas $6,418.00) equals to a total of $15,520.00. Therefore, difference in favor of Dr. Parmar was $5,414.00.

These figures add up to a grand total of $12,124.00 ($6,710.00 + $5,414.00) in favor of Respondent for the years 2013 and 2014. In light of the sum that was actually awarded for

production variance ($82,000.00), Applicants respectfully maintain computational error exists, which requires correction.

To the extent, Respondent is entitled to any sums from the accounts receivable or operating/bank accounts, Applicants assert the sums awarded for shareholder compensation variance are contained in the bank accounts and accounts receivables; accordingly, Applicants maintain the sums awarded for shareholder compensation are duplicative and should be subtracted from any award including amounts from accounts receivable or operating/bank accounts.

Applicants further note that to calculate these productivity numbers for purposes of this analysis, Midlands Gastroenterology paid its accountant in excess of $28,000.00 after May 30, 2014. Respondent did not participate at all in paying for that analysis, something he should have done and something that should have been accounted for in the award. In fact, the accountant did all the dispute-related financial analyses before and after May 30, 2014 for both parties. Only Midlands Gastroenterology and Midlands Endoscopy Center paid the accounting fees totaling approximately $70,000.00. As 50% shareholder before May 30, 2014, Respondent should have been responsible for 50% of the accounting fees, and if bank accounts and accounts receivables are not justifiable claims, then almost for 100% of these fees.

C. Nissan Automobile

In the arbitration order, it was determined: "Respondent is denied ... the Nissan automobile." Applicants submit the arbitration award should not deny something Respondent is not asking for.

The 2010 Nissan Murano is titled to Midlands Gastroenterology and has been in Respondent's possession since his departure from the entities. Respondent had no legal basis to keep the vehicle in his possession after he left. Respondent stated in his pre hearing brief that he will return the vehicle. At the time of the hearing, Midlands Gastroenterology did not have the benefit of the use of the automobile for 555 days. The vehicle was not returned until June 4, 2016, which added that much more time the vehicle was outside the possession of Midlands Gastroenterology. Moreover, Midlands Gastroenterology paid the property taxes and insurance on the car in the interim. The Arbitrator's award contained no disposition as it pertains to the automobile; further, the order was without any award as it pertains to loss of use, taxes, etc, which are arguably owed to Midlands Gastroenterology. Applicants maintain this omission was error and should be corrected.

CONCLUSION

For the reasons stated herein, Applicants respectfully request an order of vacating the Arbitrator's award of May 17, 2016, and the orders/awards issued thereafter. In the alternative, Applicants aver modification or correction of the subject award is warranted.

Specifically, Applicants assert the following relief is appropriate:

- Denial of sums/revision of award relating to accounts receivable and operating/bank accounts to Respondent due to the facts that, inter alia: there is no mention of bank accounts and/or accounts receivable to be given to Respondent in the agreements Respondent signed on June 30, 2011, or the sale documents Respondent signed on May 30, 2014; the duplicative award of interest on the principal; and the calculations of

accounts receivable and reconciled bank accounts for both Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC ignore both the realities of overhead and the calculations by accountant Donny Burkett post May 30, 2014.

- A revised award of $12,124.00 ($6,710.00 + $5,414.00) for variance in Midlands Gastroenterology shareholder compensation in favor of Respondent for the years 2013 and 2014 (vs. the awarded $82,000.00); and
- Regarding the 2010 Nissan Murano to Respondent Midlands Gastroenterology, an award of loss of use and diminution of value and reimbursement for property taxes and insurance incurred by Midlands Gastroenterology during Respondent's unauthorized use (more than 5000 miles) and possession of the vehicle.

[SIGNATURE PAGE ATTACHED]

Respectfully submitted,

COLLINS&LACY, P.C.

By: _____

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ATTORNEYS FOR APPLICANTS BALBIR S. MINHAS, M.D., MIDLANDS GASTROENTEROLOGY, PC, AND MIDLANDS ENDOSCOPY CENTER, LLC

AMENDED APPLICANTS' APPLICATION TO VACATE, OR IN THE ALTERNATIVE, MODIFY OR CORRECT ARBITRATION AWARD AND MEMORANDUM IN SUPPORT

Columbia, South Carolina
August 15, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC,	)	C/A No. 2014-CP-40-06017
Applicants.	)	**SUPPLEMENTAL BRIEFING TO THE AMENDED APPLICATION TO VACATE, OR IN THE ALTERNATIVE, MODIFY OR CORRECT ARBITRATION AWARD AND MEMORANDUM IN SUPPORT**
v.	)	
Rajinder Parmar,	)	
Respondent.	)	

TO: THE PRESIDING CIRCUIT JUDGE OF THE FIFTH JUDICIAL CIRCUIT:

On November 29, 2016, this Court heard Applicants Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC's Application to Vacate, or in the Alternative, Modify or Correct the arbitration award[1] granted to Respondent Rajinder Parmar in the instant case. Following argument by Applicants and Respondent, the Court advised the parties it would entertain supplemental briefing, responding to matters as to any agreement between the parties to allow the Arbitrator the authority to render the award outside of the Agreements both parties signed on June 30, 2011. These issues arose during the proceeding. Pursuant to the Court's invitation, the following is Applicants' supplemental briefing in the matter.

[1] See Exhibit 1.

LAW/ANALYSIS

I. Both Before and After Closing, Applicants Stated Consistently that Respondent Was Not Entitled to Half of the Accounts Receivable and Cash in the Bank; Moreover, Applicants Did Not Agree Separately to Arbitrate the Issue of Whether Respondent Was Entitled to the Same

Applicants are entitled to an order vacating the arbitration award to Respondent, or in the alternative, an order modifying or correcting the same based upon the following argument: The arbitrator exceeded his power and authority when he awarded relief to Respondent because the award, which included one-half of the accounts receivable and cash in the bank, was in manifest disregard of the express terms of the Parties' contractual agreements that governed their relationship, particularly the elements of Respondent's recovery upon his departure from the entities. Those agreements included: the Midlands Gastroenterology, P.C. Shareholder Agreement,[2] the Midlands Endoscopy Center, LLC Operating Agreement,[3] the Stock Sale Agreement regarding Midlands Gastroenterology, PC,[4] and the Agreement for Sale of Limited Liability Company Interest regarding Midlands Endoscopy Center, LLC.[5] The arbitrator's "blue penciling" of the agreements to award relief not contemplated by the agreements is not permitted and is the basis for Applicant's request that this Court vacate the arbitration award. The appellate courts of South Carolina have not expressly adopted or rejected the rule that a court may vacate an award when an arbitrator disregards the express terms of the parties' agreement. However, our courts have acknowledged that arbitration is contractual by nature, and that courts must rigorously enforce arbitration agreements according to their terms. Cape Romain

[2] See Exhibit 2.

[3] See Exhibit 3.

[4] See Exhibit 4.

[5] See Exhibit 5.

Contractors, Inc. v. Wando E., LLC, 405 S.C. 115, 747 S.E.2d 461 (2013). It follows, then, that when an arbitrator awards relief that does not fall within the expressions in the agreement, the arbitrator engages in rewriting that agreement and exceeds his authority. South Carolina's courts turn routinely to the express terms of the parties' agreement when deciding whether the parties intended to permit an arbitrator to award specific relief. See Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, 678 S.E.2d 435 (2009) (arbitration is a matter of contract, and the parties to an arbitration agreement are at liberty to choose the terms under which they will arbitrate); Zabinski v. Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) ("[T]he range of issues that can be arbitrated is restricted by the terms of the agreement."); Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 333 S.E.2d 781 (1985) (an arbitrator exceeds his powers and authority when he attempts to resolve an issue that is not arbitrable because it is outside the scope of the arbitration agreement). Although these cases dealt with the issue of arbitrability, both the issue of arbitrability and the scope of relief available are controlled by the express terms of the parties' agreement. When an arbitrator disregards the writing (whether it be in determining arbitrability or relief available), that arbitrator acts outside his authority.[6]

[6] At the November 29, 2016, hearing, Applicants provided the Court with numerous citations from around the country supporting this proposition. See Patten v. Signator Ins. Agency, 441 F.3d 230 (4th Cir. 2006) (holding that, in certain instances, when the contracting parties have failed to specify a term that is essential to the determination of their rights and duties under an arbitration agreement, the arbitrator may supply a term that is reasonable in the circumstances. However, the term may not contradict the plain and unambiguous terms of the agreement. When the arbitrator ignores the unambiguous language chosen by the parties, the arbitrator simply fails to do his job. Where the arbitrator amended or altered the agreement, he acted without authority. The Court found the arbitrator's ruling resulted in an award that "simply was not rationally inferable from the contract."); Missouri River Services, Inc. v. Omaha Tribe of Nebraska, 267 F.3d 848 (8th Cir. 2001) (ruling that under the FAA, the arbitrator may interpret ambiguous language, but he may not disregard or modify unambiguous contract provisions. In other words, if the arbitrator interprets unambiguous language in any way different from its plain meaning, the

The Court has defined the key issue at this juncture as this: Was the arbitrator's decision to award half of the accounts receivable and cash in the bank for both entities to Respondent appropriate from a jurisdictional/procedural standpoint? Or in other words, did the parties submit the matter of dividing the accounts receivable and cash in the bank to arbitration in addition to, or ancillary to, any dispute arising from what Respondent would be entitled to under the governing agreements? In response, Applicants resoundingly state "No." There was no agreement by Applicants to arbitrate a division of the accounts receivable and cash in the bank as an ancillary issue (or at all).

Under the terms of the actual agreements, Respondent was never entitled to any of these sums the arbitrator awarded. Respondent asserts that absence of bank accounts and accounts

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arbitrator amends or alters the agreement and acts without authority. An arbitrator is not free to disregard unambiguous language and craft her own remedy); Yusuf Ahmed Alghanim & Sons v. Toys 'R' Us, 126 F.3d 15 (2nd Cir. 1997) (ruling that arbitrator's award may be vacated under the FAA in the limited circumstances where the arbitrator's award is in manifest disregard of the terms of the agreement. The Court will overturn an award "where the arbitrator merely makes the right noises-noises of contract interpretation while ignoring the clear meaning of contract terms); Norton v. California Ins. Guar., 155 P.3d 1161 (Id. 2007) (stating courts construe the phrase "exceeded his power" to mean that the arbitrator exceeded the bounds of the contract between the parties); Clark County Education Assoc. v. Clark County School Dist., 131 P.3d 5 (Nev. 2006) (stating there are two common-law grounds recognized in Nevada under which a court may review private binding arbitration awards: (1) whether the award is arbitrary, capricious, or unsupported by the agreement; and (2) whether the arbitrator manifestly disregarded the law. While the latter standard ensures that the arbitrator recognizes applicable law, the former standard ensures that the arbitrator does not disregard the facts or the terms of the arbitration agreement. In determining a question under an arbitration agreement, an arbitrator enjoys a broad discretion, but that discretion is not without limits. He is confined to interpreting an applying the agreement, and his award need not be enforced if it is arbitrary, capricious, or unsupported by the agreement); Grover v. Universal Underwriters Ins. Co., 403 A.2d 448 (N.J. 1979) (holding the arbitrator may not rewrite the contract terms for the parties. If so, the award cannot stand as it represents an "imperfectly executed" power and was procured by "undue means." Undue means" occurs where arbitrator's mistake of law or facts results in failure of intent).

Additionally, the arbitration was subject to the rules of procedure promulgated by the American Health Lawyers Association. The relief the Arbitrator granted was not authorized by the agreements the parties signed per AHLA Rule 7.2 (Basis) or Rule 7.5 (Scope of Relief). See Exhibit 6.

receivables in 3.8(ii) somehow creates silence and ambiguity. To the contrary 3.8 (i), 3.8(ii) and 3.8(ii) are unambiguously distinct expressions on the basis of time of departure of the shareholder and there is expressed inclusion of bank accounts and A/Rs in 3.8(iii) **but not in 3.8(i) and 3.8(ii)**. See Jordan v. Sec. Group, Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993) (holding silence alone does not create an ambiguity); Davis v. Orangeburg-Calhoun Law Enforcement Com'n, 344 S.C. 240, 542 S.E.2d 755 (Ct. App. 2001) (silence within a document on an issue does not create an ambiguity).

Applicants never abandoned that position or otherwise conceded to a point that division of these monies was subject to any discussion following Respondent's May 30, 2014, sale of his interests in both entities to Applicant Minhas. While Respondent may have been entitled to additional sums characterized as "compensation" under § 3.15 of the Midlands Gastroenterology, PC Shareholder Agreement[7] or distributions under the Midlands Endoscopy Center Operating Agreement,[8] Respondent was never entitled to half of the accounts receivable and cash in the bank of either entity.

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[7] See Exhibit 2. This section states, in pertinent part:

> Shareholder Compensation. Shareholder compensation for physician services provided to the Corporation shall be equal for all Shareholders as long as each Shareholder's production is within ten percent (10%) of each other Shareholder. If a Shareholder's production is not within 10%[,] but is within twenty percent (20%) of each other Shareholder, then Shareholder compensation shall be fifty percent (50%) equal and fifty (50%) based upon personal production of each Shareholder . . . .

[8] See Exhibit 3. Payment of any distributions to shareholders are subject to the limitations found within § 8.1 of the Midlands Endoscopy Center Operating Agreement. This section states, in pertinent part: "At no time shall the Company have less than four (4) months operating expenses in reserve ...." As testified to at the arbitration proceeding, the sum to be held in reserve for Midlands Endoscopy Center was $260,000.

The matter of the parties' communications and purported understandings contemporaneous with the May 30, 2014, closing in relation to arbitration was the subject of inquiry and argument at the November 29, 2016, hearing. To that end, Applicants present the Court with the following, which clearly demonstrate that Applicants **did not agree** to submit the matter of dividing the accounts receivable and cash in the bank to arbitration:

- Emails between, inter alia, Ed White, counsel to Applicants Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC, Eric Bland, counsel to Respondent, and Lowndes Pope, counsel to Dr. Minhas on May 28, 2014.[9]

In a May 28, 2014, email at 4:51 p.m., Attorney White made it abundantly clear to Attorney Bland and his partners that:

- "The parties agreed upon three different prices to buy-out Dr. Parmar depending on the timing of the buy-out. **Only the fair market value price in Section 3.8(iii) [of the Midlands Endoscopy Center Operating Agreement] would consider bank accounts and AR[,] but that provision is not applicable in this situation**."

- "Pursuant to Section 3.8(ii) of the Shareholders [sic] Agreement, the buy-out price for MG is $50,000 plus 4% accrued interest from June 30, 2011 to the date of transfer. **There is no reference to AR or bank accounts in that price provision**. Section 8.9 of the Agreement is clear that the Shareholders [sic] Agreement contains the entire agreement of the parties with respect to the subject matter. **Section 8.12 of the Shareholders [sic] Agreement is clear that agreement can only be amended in writing with both shareholders executing the amendment**. **There is no basis to change the redemption price to add AR and bank balances without the written agreement of both shareholders.**"

- "The buy-out price for MEC in Section 3.8 of the Shareholders [sic] Agreement is the 'amount deemed paid' for the interest. My initial concern with **this language** was that it might require picking up the calculations the shareholders made with Donny Burkett related to AR and bank balances at the time of buy-in. **However, after reviewing the documents in further detail[,] the express provisions of the agreements provide otherwise**."

[9] See Exhibit 7.

- "We know today that the full $300,000 was the amount "deemed" paid by this method. **Pursuant to the Shareholders Agreement the price for the MEC interest is the $300,000 with interest. - calculated at the rate of 4% from June 30, 2011 until the transfer of the interest.**(emphasis added) Irrespective of any interpretation put on their prior actions, it is still irrelevant to the buy-our price because they contractually agreed to a price. **Just like MG, there is no basis to change the redemption price of MEC to add AR and bank balances without the written agreement of both members.**"

- "Absent an agreement otherwise, there is no basis for a shareholder or member to simply demand the cash and the AR of a corporation or LLC from which they are departing as an owner."

- "I have advised Dr. Minhas that a proper tender of the purchase price will be effective to transfer the ownership of the MG and MEC interests without regard to whether Dr. Parmar executes the transfer documents. However, I have advised Dr. Minhas that Dr. Parmar must consent to the assignment as it is not expressly provided for in the Shareholders Agreement. I have also advised Dr. Minhas that if Dr. Parmar does not consent to the assignment then he can still tender the purchase price in accordance with the agreement in his individual capacity to effectuate the transfers but he will need to use Lowndes Pope to assist him with those transactions."

(emphasis added).

Attorney White made it clear that nothing in the Midlands Gastroenterology, PC Shareholder Agreement or the Midlands Endoscopy Center Operating Agreement required or allowed that Respondent be given half of the accounts receivable or cash in the bank as a component of the purchase price for his interests upon his departure prior to three years.

- Emails between, inter alia, Ed White, counsel to Applicants Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC, Eric Bland, counsel to Respondent, and Lowndes Pope, counsel to Dr. Minhas on May 30, 2014.[10]

In a May 30, 2014, email at 3:36 p.m. (the day of the closing), Attorney White agreed to keep discussions with Attorney Bland open post-sale concerning additional "compensation" and

[10] See Exhibit 8.

"distributions." Counsel, however, made no mention or agreement or reference to "accounts receivable" or "cash in the bank" in this communication.

> - My understanding is that Lowndes and **Dr. Minhas tendered the full amount** required under **the Shareholders Agreement for Dr. Minhas' election under Section 3.8(ii) for both MG and MEC.** As such, the ownership interests of Dr. Parmar in both MG and MEC have transferred effective today to **Dr. Minhas who is now the 100% owner of both entities.**
>
> All other issues are issues that are still open between the parties. **The Companies are willing to mediate the issues concerning any additional compensation** due to Dr. Parmar (after Donny Burkett completes his accounting) and the issue of the amount of distributions payable to Dr. Parmar through May 30, 2014.
>
> **The Companies are not willing to amend any of the present agreements (as you requested concerning the fees) and will have the issues mediated/arbitrated with the documents as the parties signed them.**
>
> . . . .
>
> Since today is Dr. Parmar's last day of employment with MG he will need to return this corporate asset. Please ask Dr. Parmar to return the car in clean condition with all keys today.

(emphasis added).

Under fundamental rules of accounting, neither "accounts receivable" nor "cash in the bank" constitute "compensation" or "distributions"; instead, they are assets of the entities (not unlike the entities' computers, furniture, or durable medical equipment). The Court observed the same during the November 29, 2016, hearing. "Compensation" is instead a separate and distinct term of art and is **expressly** defined in § 3.15 of the Midlands Gastroenterology, PC Shareholder Agreement. "Distributions" and what they are in the context of Midlands Gastroenterology, PC

and Midlands Endoscopy Center, LLC are clearly defined in, inter alia, § 8.1 of the Midlands Endoscopy Center Operating Agreement.[11]

As the author of the Midlands Gastroenterology, PC Shareholder Agreement and the Midlands Endoscopy Center Operating Agreement, Attorney White obviously knew about these specified terms and used them with precision in his communications with Attorney Bland.[12]

Attorney White also made it clear in his May 30, 2014, 3:36 p.m. email: "The Companies **are not willing to amend any of the present agreements** (as you have requested concerning the fees) and will have the issues mediated/arbitrated with the documents **as the parties have signed them**." (emphasis added).

Again, none of the agreements the parties signed—the Midlands Gastroenterology, PC Shareholder Agreement, the Midlands Endoscopy Center, LLC Shareholder Agreement, or the May 30, 2014, sales agreements for Respondents' interests in both entities–stated or otherwise contemplated Respondent be given half of the accounts receivable or cash in the bank upon his departure prior to three years.

- Emails between, inter alia, Ed White, counsel to Applicants Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC, Eric Bland, counsel to Respondent, and Lowndes Pope, counsel to Dr. Minhas on May 18, 28, 29, and 30, 2014, and June 2, 2014.[13]

In a June 2, 2014, email at 1:45 p.m., regarding the matter of reimbursement for the value of the use of and the insurance for the Nissan Murano belonging to Applicant Midlands

[11] See also Exhibit 2 at § 3.11 of the Midlands Gastroenterology, PC Shareholder Agreement, which states that all compensation "shall be paid to shareholders ... all operating expenses of the corporation shall be paid prior to any distribution of profits of the corporation."

[12] See Exhibit 9.

[13] See Exhibit 10.

Gastroenterology, PC, Attorney White made mention of only "mediation" as the mechanism to resolve these disputes (rather than arbitration).[14]

In the emails between counsel, both pre- and post-sale, singularly or in aggregate, at no place does Attorney White agree to mediate or arbitrate the division of accounts receivable or cash in the bank with Respondent. To the contrary, Attorney White categorically and unequivocally disagreed with the averment by Attorney Bland and his partners that accounts receivable or cash in the bank were to be included in the § 3.8(ii)-governed sale of interests in both entities to the Respondent. Division of accounts receivable and cash in the bank are not contemplated under § 3.8(ii) or § 3.11 of the Midlands Gastroenterology, PC Shareholder Agreement as it is clearly and unambiguously written (and communicated by Ed White in multiple emails to Eric Bland and his colleagues prior to the closing on May 30, 2014). The only issues Attorney White agreed to mediate were the matters of "additional compensation," possible "distribution," and the Nissan Murano.

II. The 2013 & 2014 Midlands Gastroenterology Variance Award

The arbitrator awarded Respondent additional sums in the form of $53,000 for "2013 MG Variance" and $29,000 for 2014 "MG Variance."[15] There is no provision for awarding Variance in the Midlands Gastroenterology, PC Shareholder Agreement the parties signed on June 30, 2011.

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[14] Applicants note the mention of accountant Donny Burkett of West Columbia in the June 2, 2015, emails. Burkett was the accountant to Applicants Midlands Gastroenterology, PC, and Midlands Endoscopy Center. Burkett was employed at this stage to provide calculations concerning "additional compensation," as defined in § 3.15 of the Midlands Gastroenterology, PC Shareholder Agreement and "distributions," as defined in § 8.1 of the Midlands Endoscopy Center Operating Agreement and § 3.11 of the Midlands Gastroenterology, PC Shareholder Agreement.

[15] See Exhibit 1.

The arbitrator granted this "relief outside the contract" to Respondent for the exact sums and in the exact terminology (characterized as "variance") which Respondent sought in his prehearing brief[16], even though the term "variance" does not exist in any part of the Midlands Gastroenterology, PC Shareholder Agreement. Like the award of accounts receivable and cash in the bank, the arbitrator's award of this additional relief was in manifest disregard of the express terms of the contractual agreement that governed the parties' relationship—namely the Midlands Gastroenterology, P.C. Shareholder Agreement. Again, the arbitrator's "blue penciling" of relief not contemplated by the parties' agreements in the case at bar is not permitted and is a basis for vacating the arbitration award.

As previously recited in note 7, § 3.15 of the Midlands Gastroenterology Shareholder Agreement governs shareholder compensation. This section states, in pertinent part:

> Shareholder Compensation. Shareholder compensation for physician services provided to the Corporation shall be equal for all Shareholders as long as each Shareholder's production is within ten percent (10%) of each other Shareholder. If a Shareholder's production is not within 10%[,] but is within twenty percent (20%) of each other Shareholder, then Shareholder compensation shall be fifty percent (50%) equal and fifty (50%) based upon personal production of each Shareholder . . . .

Applicants maintain the arbitrator blindly accepted Respondent's misrepresentation of "variance" as "compensation."

The term "variance" does not appear or exist in § 3.15 Shareholder Compensation. This Court should correct this mistake. See, e.g., Patten v. Signator Ins. Agency, 441 F.3d 230 (4th Cir. 2006) (holding that, in certain instances, when the contracting parties have failed to specify a term that is essential to the determination of their rights and duties under an arbitration agreement, the arbitrator may supply a term that is reasonable in the circumstances. However,

[16] See Exhibit 11.

the term may not contradict the plain and unambiguous terms of the agreement. When the arbitrator ignores the unambiguous language chosen by the parties, the arbitrator simply fails to do his job. Where the arbitrator amended or altered the agreement, he acted without authority). The parties in the instant case agreed to further discuss and possibly mediate the matter of additional "Compensation" potentially owed to Respondent, but not to pay "Variance" to Respondent.

III. Nissan Murano

In his prehearing brief,[17] as well as at the beginning of the arbitration, Respondent abandoned his pursuit of the Nissan Murano, which was titled to Midlands Gastroenterology, PC at the time of the May 30, 2014, sale of interests by Respondent. Accordingly, for purposes of resolving the parties' dispute, the automobile was a non-issue. Nevertheless, in the arbitration award, the arbitrator issued a ruling pertaining to the Nissan: "Respondent is denied ... the Nissan automobile."[18]

As an initial matter, the arbitrator's unnecessary award concerning the vehicle creates serious questions for Applicants regarding the arbitrator's focus on the proceedings. This lack of focus and attention to detail indicates the arbitrator's lack of focus when it came to the more material issues of disposing of the accounts receivable, cash in the bank, and compensation issues.

[17] See Exhibit 11.

[18] See Exhibit 1.

Further, as it pertains to the automobile, Respondent never possessed a colorable legal basis to keep the vehicle in his possession after he left the entities. The vehicle was damaged and not returned until June 4, 2016.[19]

CONCLUSION

For the reasons stated herein and in previous filings, the Court should find the arbitrator exceeded his authority by awarding relief without regard to the expressions within the parties' agreements. The Court should therefore vacate the arbitrator's award regarding Bank accounts and accounts receivables.

Furthermore, the Court should find that the Arbitrator disregarded the parties' expressions regarding "compensation" in awarding Respondent a "variance" for 2013 and 2014 and hence it should be vacated.

Finally, the Court should vacate the Arbitrator's decision regarding the Nissan Murano and remand for the Arbitrator to address this issue under this Court's instructions or any other way enable the applicant to pursue remedies in another judicial forum.

[SIGNATURE PAGE ATTACHED]

[19] Respondent should have turned the vehicle over to Midlands Gastroenterology, PC on May 30, 2014, without condition or reservation. Notwithstanding his apparent belief that he was entitled to half of the accounts receivable or cash in the bank or "variance," he was never entitled to keep the vehicle. At the very least, by virtue of his asseveration on the eve of the arbitration proceeding and at the first day of the hearing that he no longer claimed the vehicle, the Nissan should have been turned over in November/December 2015. It wasn't. It took an express directive by the arbitrator during a June 3, 2016, conference call between the parties and the arbitrator to the Respondent for the vehicle to be turned over. When it was turned over the following day, the vehicle was found to be un-drivable, needing repair, and possessing approximately 6,000 additional miles on it from May 30, 2014. Respondent's actions regarding the Nissan are indefensible.

Respectfully submitted,

COLLINS & LACY, PC

By: _____

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ATTORNEYS FOR APPLICANTS BALBIR S. MINHAS, M.D., MIDLANDS GASTROENTEROLOGY PC, AND MIDLANDS ENDOSCOPY CENTER, LLC

SUPPLEMENTAL BRIEFING TO THE AMENDED APPLICANTS' APPLICATION TO VACATE, OR IN THE ALTERNATIVE, MODIFY OR CORRECT ARBITRATION AWARD AND MEMORANDUM IN SUPPORT

Columbia, South Carolina
December 6, 2016

Eric S. Bland

From:	Ed White [ed.white@nelsonmullins.com]
Sent:	Wednesday, May 28, 2014 4:51 PM
To:	Eric S. Bland
Cc:	Lowndes Pope <lpope@rplfirm. com>; Ronnie Richter; Scott Mongillo; Raj Parmar, balbminh@aol.com; Donny Burkett (donnyb@burkettcpas.com)
Subject:	Stock Sale Agreement - Parmar.docx
Attachments:	Agreement for Sale of LLC Interest - Parmar - 4852-4927-5931 v 5.docx; Assignment of LLC Interest - Parmar - 4840-1116-9819 v 1.docx; Stock Sale Agreement - Parmar.docx; Stock Power - Parmar to Midlands Gastroenterology PC - 4824-2480-5659 v ....docx; Settlement Agreement - Parmar and Midlands Endoscopy Center - 4822-2761-....docx; Settlement Agreement - Parmar and Midlands Gastroenterology - 4837-9719-....docx

Eric,

Attached please find the transfer agreements for Dr. Parmar's interest in MG and MEC and proposed settlement agreements for each of the entities that contains the terms of the AR/bank account payouts and a mutual release.

In reference to you last email and these documents I wanted to clarify a couple of points:

1. I have reviewed agreements again and the buy-out terms for the two entities are included in the written agreements these parties executed on June 30, 2011. The terms are unambiguous and complete. The contracts that were signed in 2011 are conclusive as to the buy-out prices. There is nothing to negotiate or add to the buy-out price other than what the parties agreed to in 2011. The transfer agreements we have prepared only contain the terms the parties previously agreed to in the Shareholders Agreement.
2. There is no legal requirement that the buy-out price have any relationship to the buy-in price and the parties are free to decide among themselves (which they have done) how to structure each of the buy-in and buy-out prices.
3. The parties agreed upon three different prices to buy-out Dr. Parmar depending on the timing of the buy-out. Only the fair market value price in Section 3.8(iii) would consider bank accounts and AR but that provision is not applicable in this situation.
4. Pursuant to Section 3.8(ii) of the Shareholders Agreement, the buy-out price for MG is $50,000 plus 4% accrued interest from June 30, 2011 to the date of transfer. There is no reference to AR or bank accounts in that price provision. Section 8.9 of the Agreement is clear that the Shareholders Agreement contains the entire agreement of the parties with respect to the subject matter. Section 8.12 of the Shareholders Agreement is clear that the agreement can only be amended in writing with both shareholders executing the amendment. There is no basis to change the redemption price to add AR and bank balances without the written agreement of both shareholders.
5. The buy-out price for MEC in Section 3.8 of the Shareholders Agreement is the "amount deemed paid" for the interest. My initial concern with this language was that it might require picking up the calculations the shareholders made with Donny Burkett related to AR and bank balances at the time of the buy-in. However, after reviewing the documents in further detail the express provisions of the agreements provide otherwise. First, the minutes dated June 30, 2011 in the MEC corporate book (which I sent to you previously) reference that Dr. Parmar is purchasing the interest for "the consideration" set forth in the attached Agreement for Sale of Limited Liability Company Interest (the "Purchase Agreement") executed on the same date. The Purchase Agreement states that the consideration consists of Dr. Parmar's agreement that up to $300,000 of the MEC distributions otherwise due to him for the first three years will be paid instead to Dr. Minhas. Section 6 of the Purchase Agreement states that it is the entire agreement of the parties with respect to the transaction and supersedes all prior or contemporaneous agreements, whether oral or written. The "amount deemed paid" language in the Shareholders Agreement was used to reference an undetermined amount that would be paid by Dr. Parmar deferring his distributions to Dr. Minhas as opposed to Dr. Parmar paying the purchase price directly. We know today that the full $300,000 was the

amount "deemed" paid by this method. Pursuant to the Shareholders Agreement the price for the MEC interest is the $300,000 with interest calculated at the rate of 4% from June 30, 2011 until the transfer of the interest. I was not involved in the discussions where the shareholders worked with Donny Burkett to allocate the AR and bank accounts to Dr. Minhas but one interpretation of their actions is that Dr. Parmar paid $300,000 for an interest in a company without AR and cash on the balance sheet. Irrespective of any interpretation put on their prior actions, it is still irrelevant to the buy-our price because they contractually agreed to a price. Just like MG, there is no basis to change the redemption price of MEC to add AR and bank balances without the written agreement of both members.

6. Absent an agreement otherwise, there is no basis for a shareholder or member to simply demand the cash and the AR of a corporation or LLC from which they are departing as an owner. The profits of each company are available for distribution to the owners which is where the bank balance and AR are relevant. However, prior to distributing profits (i) each of these companies has an obligation to pay their current expenses and (ii) it is within the business judgment of the corporate officers/boards, as applicable, to maintain reasonable levels of working capital to meet the needs of the business. In this regard, 3.11 of the Shareholders Agreement for MG provides that all operating expenses must be paid before any distribution of profits. Section 6.3 of the Shareholders Agreement provides that the President, after consultation with the Board, shall make a final decision about the amount of distributions with respect to the Shares subject to the condition the President is to consider the reasonably required needs of the company and maintain sufficient funds for the working capital and business needs of the company's operations. Similarly, Section 8.1.A of the MEC Operating Agreement provides that 80% of the member votes may agree upon the level of reserves needed for the company but in no event shall the company have less than 4 months operating expenses in reserves.
7. You will note that the transfer documents are between the companies and Dr. Parmar consistent with Dr. Minhas's request that he be permitted to assign his election right to the companies. We included an assignment with the personal guaranty of Dr. Minhas as you requested. I have advised Dr. Minhas that a proper tender of the purchase price will be effective to transfer the ownership of the MG and MEC interests without regard to whether Dr. Parmar executes the transfer documents. However, I have advised Dr. Minhas that Dr. Parmar must consent to the assignment as it is not expressly provided for in the Shareholders Agreement. I have also advised Dr. Minhas that if Dr. Parmar does not consent to the assignment then he can still tender the purchase price in accordance with the agreement in his individual capacity to effectuate the transfers but he will need to use Lowndes Pope to assist him with those transactions.
8. One of the purposes for the releases in the Settlement Agreements is to bring certainty to the expenses (accounting, legal, arbitration fees, etc.) the companies will incur in concluding this matter prior to ascertaining the amount of reserves needed for the companies prior to making distributions to the owners. The releases do not have to be signed by May 30, but the sooner this matter is concluded the better. If the resolution of the distributions or ownership transfers drags on then the companies' anticipated expenses and reserves for the companies to deal with the issues will further deplete the assets of the companies available for distribution.
9. The working capital reserves in the Settlement Agreements were set by Dr. Minhas based upon his business judgment. For MEC the Shareholders Agreement expressly grants him that authority. For MEC the two members can decide otherwise but it has to be at least 4 months of operating expenses.
10. Any compensation true up amounts that may be needed after Donny Burkett's review is complete can be added to the MG Settlement Agreement.
11. The companies need to determine the last 12 months of receivables collection rates to apply in the valuation of the AR which has not been computed yet.
12. If Dr. Parmar does not agree with any of the terms he can always make a proposal as to what he thinks the terms should be.
13. The parties can agree on additional terms if they so choose.

If you have any questions please do not hesitate to contact me.

Thank you,

Ed

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

On May 30, 2014, at 3:36 PM, "Ed White" <ed.white@nelsonmullins.com> wrote:

Eric,

My understanding is that Lowndes and Dr. Minhas tendered the full amount required under the Shareholders Agreement for Dr. Minhas' election under Section 3.8(ii) for both MG and MEC. As such, the ownership interests of Dr. Parmar in both MG and MEC have transferred effective today to Dr. Minhas who is now the 100% owner of both entities. We hope Dr. Parmer will comply with his obligations under the Shareholders Agreement to deliver the transfer documents and representations required of him under the Agreement.

All other issues are issues are still open between the parties. The Companies are willing to mediate the issues concerning any additional compensation due to Dr. Parmar (after Donny Burkett completes his accounting) and the issue of the amount of distributions payable to Dr. Parmar through May 30, 2014. Cory Manning, in our firm, will take the lead on the mediation and, if necessary, the arbitration of these issues with me assisting as necessary. Cory can work with you and Lowndes in selecting a mutually agreeable mediator.

The Companies are not willing to amend any of the present agreements (as you requested concerning the fees) and will have the issues mediated/arbitrated with the documents as the parties signed them.

Dr. Minhas, as the officer of MG, has a concern about transferring the corporate owned car to Dr. Parmar. MG paid $26,000 for the car a couple of years ago and, in Dr. Minhas' business judgment, he is not sure it is in the corporation's best interest to transfer the car today at a price of $13,228. Since today is Dr. Parmar's last day of employment with MG he will need to return this corporate asset. Please ask Dr. Parmar to return the car in clean condition with all keys today.

Thank you,

Ed

From: Ed White [mailto:ed.white@nelsonmullins.com]
Sent: Sunday, May 18, 2014 10:23 AM
To: Eric S. Bland
Cc: Lowndes Pope <lpope@rplfirm. com>; Ronnie Richter; Scott Mongillo; Raj Parmar; Donny Burkett (donnyb@burkettcpas.com)
Subject: RE: RE Dr. Minhas/Dr. Parmar.

Eric,

I am a little dismayed at your response below because I very clearly apprised you of this process last week in an earlier email.

First, your client is an equal owner in both entities and the contractual agreements he entered into with the companies are clear as to how and at what price he gets redeemed from the companies. At this time I don't see a lot confusion over the buy- out prices and I believe Donny has what he needs to make both of those calculations.

Second, the question of how much compensation Dr. Parmar is due from MG is less clear because Dr. Parmar and the company did not enter into written agreements for compensation that MG agreed to pay Dr. Parmar. Dr. Minhas is an officer of the company with authority (subject to the Shareholder Agreements terms) over the operations MG. In

contrast, Dr. Parmar is not an officer but is only an employee who is leaving the company and has the potential to be adverse to the company. Right now, Dr. Minhas has raised many questions about the proper handling of many facets of the MG/Dr. Parmar compensation relationship. As counsel to the company, I asked for a meeting of Dr. Minas, as the officer of MG, and Donny Burkett, as MG's accountant, to finalize questions with the compensation that the company owes Dr. Parmar. Donny was a witness to many of the conversations between MG and Dr. Minas dealing with compensation and Donny also can provide me answers about the accounting records that Dr. Minhas is not always knowledgeable about.

Some of the decisions I need to help Dr. Minhas with in concluding the compensation questions involve his fiduciary duties as an officer of company and questions about the enforceability of some of the prior understanding between MG and Dr. Parmar about matters of compensation, working capital etc., that were not reduced to writing. As an employee of the company, Dr. Parmar does not have the right to attend this meeting where risks of litigation may be discussed with MG's officer concerning Dr. Parmar's relationship with MG. There is nothing improper about this meeting. I am simply doing my job to attempt to bring this matter to the most expedient conclusion.

As I suggested in a prior email, as soon as Dr. Minhas has made the decisions to bring these compensation issues to conclusions then we are more than willing to have another meeting with Donny, if you desire, to review the conclusions.

Thank you,

Ed

----Original Message-----
From: Ed White <ed.white@nelsonmullins.com>
To: Eric S. Bland <ericbland@blandrichter.com>
Cc: Lowndes Pope <lpope@rplfirm. com> <lpope@rplfirm.com>; Ronnie Richter <Ronnie@blandrichter.com>; Scott Mongillo <Scott@blandrichter.com>; Raj Parmar <rparmar67@gmail.com>; balbminh <balbminh@aol.com>; Donny Burkett (donnyb@burkettcpas.com) <donnyb@burkettcpas.com>
Sent: Wed, May 28, 2014 4:51 pm
Subject: Stock Sale Agreement - Parmar.docx

Eric,

Attached please find the transfer agreements for Dr. Parmar's interest in MG and MEC and proposed settlement agreements for each of the entities that contains the terms of the AR/bank account payouts and a mutual release.

In reference to you last email and these documents I wanted to clarify a couple of points:

1. I have reviewed agreements again and the buy-out terms for the two entities are included in the written agreements these parties executed on June 30, 2011. The terms are unambiguous and complete. The contracts that were signed in 2011 are conclusive as to the buy-out prices. There is nothing to negotiate or add to the buy-out price other than what the parties agreed to in 2011. The transfer agreements we have prepared only contain the terms the parties previously agreed to in the Shareholders Agreement.
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13. The parties can agree on additional terms if they so choose.

If you have any questions please do not hesitate to contact me.

Thank you,

Ed

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If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.
To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

From: Eric S. Bland [mailto:ericbland@blandrichter.com]
Sent: Thursday, May 29, 2014 9:19 AM
To: Lowndes Pope <lpope@rplfirm. com>; Ed White; Donny Burkett (donnyb@burkettcpas.com)
Cc: Ronnie Richter; Scott Monglillo; Eric S. Bland; Raj Parmar; balbminh@aol.com
Subject: FW: VA moneys

Lowndes. I do believe it is time that you and I start communicating directly with you on this matter and no longer do it through Ed White. When you read the email below, coupled with Dr. Minhas' last minute change on the automobile last night and further compounded with the last minute document drop last night, I think we are headed to arbitration. The MEC Operating agreement requires arbitration with American Health Lawyers Association ("AHLA"). The MG Shareholders Agreement is inconsistent on arbitration. On the cover page it says it will be pursuant to SC Code Ann 15-48-10 et. seq. and yet the arbitration provision in Section 8.11 says with AHLA. I am disappointed in how this matter has proceeded. Ed White provided very one sided documents to me last night for a supposed closing on Friday. The closing will not go forward unless major changes to the documents are made and adjustments to the amounts. There will be no promissory note for the purchase. The Shareholder Agreement that was drafted (presumably by Ed White) clearly provides that the promissory note only applies if it is a fair market value purchase. There is no ambiguity there. Ed White is just plain wrong on this one and is not acknowledging the obvious. My guy paid 50k in a lump sum, he should get his 50k back in a lump sum. Ed continues to forcefully advocate for Dr. Minhas and not the entity he clearly represents despite his duties and my requests that he refrain from doing so. I sue lawyers all the time. Ed is in a precarious position here. I spoke to Donny Burkett. Here is what is clear. Donny said that Dr. Minhas agreed for Donny to come up with a price for the car to be paid by Dr. Minhas. He did. He did it in front of both physicians. It was agreed. Now Minhas backs up. Donny also is incensed about the email below and the attributions that Dr. Minhas has tried to put on Donny, for which Donny did not say or agree to. Donny doesn't approve anything. Donny just calculates and compiles the numbers that are given to him.

As to MEC buy in, I believe Ed is wrong and the arbitrator will have to decide. Donny Burkett has a schedule from June 2011 forward that shows the Buy In was 303k, plus A/R and Bank Accounts and some 22k in expenses. Both Drs. Have repeatedly seen this document and have worked from this document and Donny will testify, if need be, that he discussed it with them and its numbers many times, notwithstanding the written agreement.

Here is what I propose. Ed White has done his work. It is unacceptable and will not be acted on. Let's you and me deal with trying to resolve or arbitrate this. Right now there will be no closing tomorrow or in the near future. The agreements, despite what Ed White says, does not provide that this will be a one sided ram it down your throat closing. What I propose is we go to mediation. Tom Traxler or Fred Crawford are perfect for this type of dispute. My client requests that Ed White be passive in this mediation. He can continue to represent the entity but I am going to frame the

litigation around Ed and it will be about our two clients. Let me know what you want to do. Ed I called you this morning, no need to call me back because after speaking with Donny, this is not going to get resolved. Eric

-----Original Message-----
From: Ronnie Richter <Ronnie@blandrichter.com>
To: Ed White <ed.white@nelsonmullins.com>; Eric S. Bland <ericbland@blandrichter.com>
Cc: Lowndes Pope <lpope@rplfirm. com> <lpope@rplfirm.com>; Scott Mongillo <Scott@blandrichter.com>; Raj Parmar <rparmar67@gmail.com>; balbminh <balbminh@aol.com>; Donny Burkett (donnyb@burkettcpas.com) <donnyb@burkettcpas.com>
Sent: Thu, May 29, 2014 11:15 am
Subject: RE: Stock Sale Agreement - Parmar.docx

Ed. Like Eric, I am at a loss on a number of points here. In no particular order (and not to be exhaustive of other issues), I respectfully disagree with you that:

1. The agreements are self-effectuating such that you can proceed to close without our client executing documents which appropriately capture the agreements which are already in place. Minimally, for the transfer to be self-effectuating, there would have to be the transfer of consideration in amounts and on terms which are consistent with the existing agreements. You cannot unilaterally and arbitrarily pick a figure for closing and then financing the purchase price through Notes which are not provided for in the agreements.

2. The transfer here is a clear 3.8(ii) transfer which requires a lump sum payments.

3. If the physicians are going to cease being partners, then the purchasing physician who will continue in the practice must pay for the A/R of the departing physician. It is nonsensical to withhold future expense against past A/R. The A/R owed to our client is based upon past work and the expense associated with creating the A/R has already been incurred and absorbed by the practice (and correspondingly by each physician). To withhold future expense against past A/R is to have our client subsidize his former partner's future generation of income and A/R. This makes no sense whatsoever.

4. Surplus profit should be distributed in the ordinary course prior to closing. We are not selling cash. To conduct the closing any other way would be to encourage and reward the decision to suspend distributions for a period of time in advance of a future closing.

The agreements which you prepared and presented certainly look as if they were prepared on behalf of Dr. Minhas. There is such a wide gap between the existing agreements and the proposed transaction documents that closing

has been made effectively impossible. We should try to mediate before wasting untold time and dollars in arbitration. Ronnie

From: Eric S. Bland [mailto:ericbland@blandrichter.com]
Sent: Friday, May 30, 2014 1:50 PM
To: Eric S. Bland; Ed White; Lowndes Pope <lpope@rplfirm. com>; Donny Burkett (donnyb@burkettcpas.com)
Cc: Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: RE: MEC/MG/Minhas and Parmar

Ed and Lowndes. I just received Lowndes' hand delivery of checks and other inclusions. If there is an acceptance of the shareholder and member buy out consideration and execution of docts by Rajinder, can we have an agreement to table the issues of A/R distribution, Bank Account Distribution, retirement account distribution, automobile purchase, 2011 A/R amount that Balbir took as opposed to actual amount, production differences, working capital issues, other owner/employee issues, etc. until Donny finishes his work product and final numbers. Eric

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From: Eric S. Bland
Sent: Friday, May 30, 2014 11:43 AM
To: 'Ed White'; Lowndes Pope <lpope@rplfirm. com>
Cc: Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: RE: MEC/MG/Minhas and Parmar

Ed and Cory. I wish the shareholders agreement was more clear on the prevailing party on attorneys fees as opposed to just "costs". The arbitration provision only refers to "costs", I am happy if our clients consent that means "Fees" as well.

Will Minhas agree? Ed we just have a fundamental disagreement on this matter. No matter how many times you say it or how loud you say that the transfer takes place without my client's consent, doesn't make it a truth. It doesn't. My client still owns 50% of both entities and is an employee of both. The amount your clients and Dr. Minhas seek to ascribe as to the buyout amount, distributions, A/R and working capital figures are not correct according to the accountant and not agreeable to my client. We are burning tremendous dollars debating what never can be resolved between us. It will take a mediator and/or an arbitrator. I have watched Dr. Minhas do exactly what he is doing now when the separation of the original members of MEC occurred and watched how he handled himself in front of the SCAPI (Asian physicians) and the tremendous enmity that was felt by many on the board and members based on his accusations and actions. I would actually prefer to deal with Cory on these issues. It just plays out the same when Dr. Minhas is involved based on my experience. We usually disagree but we both recognize the value and positives of mediation and we work towards resolutions. If it cannot be resolved, then Cory, Lowndes and I can agree on an arbitrator and maybe some ground rules as to time periods, minimal discovery and arbitration time. I say this with all due respect Ed, you are just too much in the thick of this. I am supposed to speak with Lowndes at 1:00 PM. eric

---

From: Ed White [mailto:ed.white@nelsonmullins.com]
Sent: Friday, May 30, 2014 11:11 AM
To: Eric S. Bland; Lowndes Pope <lpope@rplfirm. com>; Donny Burkett (donnyb@burkettcpas.com)
Cc: Ronnie Richter; Scott Mongillo; Raj Parmar; balbminh@aol.com; Cory Manning
Subject: RE: VA moneys

Eric,

First, I represent both MG and MEC and in those roles deal with Dr. Minhas as the President of MG and the Managing Member of MEC. My being engaged by these entities to provide legal advice requires that I communicate with Dr. Minhas, as an officer of each entity, and other company advisors from time to time. There are no legal requirements that you or your client must approve or be present during those communications.

Second, had you returned my phone call yesterday morning I would have been able to provide the explanation of why the promissory notes were included in the transfer agreements before you went into your incorrect understanding of the facts below. Here is my explanation:

- I agree Section 3.8(ii) of the Shareholders Agreement ("Agreement") does not provide for payment by a 24 month promissory note. However, Section 4.6 of the Agreement is an overlapping provision that grants the right to payment by a 24 month promissory when a payment is due to a "Departing Shareholder" after a termination of employment. A Departing Shareholder is defined (on page 2) as a Shareholder who is transferring Shares in accordance with "any provision" of the Shareholders Agreement (which would include a buyout under a Section 3.8(ii) election).

- Pursuant to Section 3.10 of the Agreement Dr. Minhas cannot terminate Dr. Parmar's employment with MG unless Dr. Parmar agrees (even with the Section 3.8(ii) election to buy out Dr. Parmar he would remain an employee).

- When I met with Dr. Minhas (the officer) he indicated he wanted to use the 24 month promissory note for both entities to redeem Dr. Parmar. My initial reaction to him was that the application of the 24 month promissory note in Section 4.6 only applied in the case of death, disability or termination of employment. At that time, Dr. Minhas relayed to me that he and Dr. Parmar had already agreed that Dr. Parmar's employment would end on May 30, 2014 (I was not consulted nor involved in that discussion). Because Dr. Parmar agreed to his own termination of employment, Section 4.4 of the Agreement has been triggered and MG has a compulsory obligation to purchase his shares under Section 4.5 and 4.6 (for the same price as an election under 3.8(ii)).

- I explained to Dr. Minhas that Section 4.6 of the Agreement was an overlapping provision of the Agreement that applied simultaneously with the Section 3.8(ii) election provision and there was nothing in the Agreement to preclude using the 24 month promissory note provision afforded by Section 4.6. I also explained that if Dr. Parmar had not agreed to the termination of his employment this interpretation would not exist. I explained to Dr. Minhas that reasonable people could disagree over the application of 4.6 in an overlapping situation but that I could not tell him, as

company counsel, that utilizing the 24 month promissory note provision with the 3.8(ii) provision was wrong under the Agreement they had signed (more on that below). However, since the companies needed Dr. Parmar to consent to the assignment of the election right anyway, I advised Dr. Minhas that we could present the transfer agreements with the 24 month promissory note provision, if that was his decision to do so, and if there were objections he could decide what to do at that time.

Third, I drafted the Shareholders Agreement and the buy-in agreements in my capacity as the counsel to each entity. At that time, both Dr. Parmar and Dr. Minhas together met with me and communicated with me specifically what they wanted me to do and not do. They each told me they had met with Donny Burkett to work out the purchase price for the buy-ins and told me exactly what to put in the purchase agreements.

- When I learned that Donny was doing some calculations about AR on MEC I inquired about the process and whether we should reflect that process in the agreements. I was told that was separate and they did not want me to include any of those calculations in the buy-in agreements and they did not want to incur the legal fees to explain to me what they were doing with Donny. I drafted the buy-in agreements exactly as I was instructed to do and they reviewed and approved those agreements.

- I put in the language that the MEC purchase agreement supersedes any written or oral, both prior or simultaneous, agreements to expressly exclude the conversations they were having because they directed me to keep those conversations out of the purchase agreement and I was not privy to the details of those conversations. I also recommended that we restate the MEC Operating Agreement because it was old and had provisions that were negotiated when MEC had a different group of investors. Dr. Parmar and Dr. Minhas went away and later came back to me and said they did not want to spend the legal fees to restate the operating agreement and were ok with continuing that agreement and asked me to simply reflect Dr. Parmar's admission, which I did as instructed.

- When they told me they needed a shareholders' agreement we discussed some provisions I would recommend based on what they were telling me they wanted to do. I put together a draft with some of the management provisions they discussed by cobbling together similar provisions we had used in agreements for other clients. They instructed me to make some modifications to the governance provisions but when we began discussing buy-out rights they went away again and came back with their own conclusions of what they wanted in the election provisions and asked me to insert those in the agreement. After they had done so they reviewed the language and told me they were ready to sign the agreement. I advised both of them that additional integration of the provisions was recommended for this working draft. I suggested that the parties go through a couple rounds of drafting and commenting to address any unintended consequences (including the implications of dealing with MEC buy-out terms in the MG Shareholders Agreement and synchronizing MEC buy-out terms with the remaining MG buy-out terms). This was not a routine Shareholders Agreement. I was told that they had read the entire agreement and were fine with the language and did not want to spend any more money on legal fees with that agreement. The point is that these agreements reflect what the these two shareholders (and Dr. Minhas as the corporate officer) decided on their own and brought to me to include in the written agreements. They very carefully directed me what to do and not to do in these documents. These are their agreements, they are enforceable obligations that each of them and the companies are now bound by.

Fourth, when Dr. Parmar bought into MEC, he bought those interests from MEC, not Dr. Minhas. The question of the buy-in price is purely a company question. MEC is party to that purchase agreement and the MEC operating agreement. MG is party to the Shareholders Agreement. The questions of the amount distributions from MEC and MG are also company issues. The amount of compensation due from MG to Dr. Parmar is a company issue. Regardless of whether this matter is concluded through negotiations or arbitration MG and MEC will be will have their own representation. If a matter is a company issue it will be handled by company counsel and not Dr. Minhas's personal counsel.

Fifth, I am assuming from the communication below Dr. Parmar will not consent to an assignment of Dr. Minhas's election rights to the companies. I outlined the analysis of the documents in my last email to you but I will reiterate that if Dr. Minhas wants to tender in his individual capacity he can do so with the assistance of Lowndes. There is no

requirement for Dr. Parmar to sign a transfer agreement to effectuate the transfer. He has already committed to the terms of the transfer and cannot hold up a transfer by simply refusing to sign the representations he agreed to deliver. If the tender is made in full then the transfer of the interests will be effective upon the tender. If Dr. Parmar does not deliver the representations and transfer document referenced in the Shareholders Agreement then Dr. Minhas and his personal counsel can file an arbitration action to compel him to do so. The loser pays arbitration fees under the Shareholders Agreement.

Sixth, Ronnie Richter asked how the company can reserve funds for future expenses, i.e., past Dr. Parmar's last day. If expenses have accrued and are due for goods or services in the month of May but the invoices do not come in until June then there needs to be a window to gather those invoices. If the company has outstanding needs that have been accruing at the time of Dr. Parmar's departure then it within the company's discretion to withhold reserves to meet those needs prior to distributing profits to the shareholders or members. The amount of reserves is within the business judgment of the officer/board that is authorized to make the decision. The amount of reserves is going to be based on the facts and circumstances that confront the company at that time. This is not a novel question and is well ingrained in principal of corporate law. In this situation, Dr. Minhas has raised concerns about MECs equipment being outdated and behind in upgrades due to Dr. Parmar not approving the upgrades. From an economic perspective, if the upgrades had been made sooner the amount to distribute in the past would have been less. A mismatch occurs if the money is not reserved and future revenues (with different owners) have to pay for upgrade expenses that should have been made in the past. Similarly, where you have been threatening litigation in almost every conversation we have had to date it would be unwise for either company to distribute all of its profits to the owners and then have Dr. Parmar sue the company and cause the company additional expenses. All the company expenses related to the issues between Dr. Parmar and the companies are relevant to the decision of how much money to reserve before a distribution is made. The risk of litigation and funds to address that risk is present today. This is the reason I (on behalf of the companies) proposed a release. If we reach a resolution of the issues and sign an appropriate release, then the companies do not need to maintain reserves to fund litigation in this matter.

Finally, if you want to attempt to resolve this matter in the most efficient manner possible then I would suggest you, or another member of your firm, pick up the phone and we identify any issues and try determine if there are ways to find common ground to address those issues. Perhaps an inperson meeting would be helpful as well. I will make myself available. My understanding is that Donny Burkett is continuing to work on the accounting for the compensation questions. However, Donny is not an attorney or a judge and the proper application of any accounting is going to require a legal conclusion. For example, the charts Donny prepared at time of the buy-in are not relevant to these legal questions. Nor are the labels he put on those charts. Donny's assessment of the buy-in price is parol evidence which is not allowed to be used to interpret an agreement that is complete and unambiguous on its face. The interpretation is limited to the four corners of the contract. We have signed contracts that completely answer the question of how to calculate both buy-in and buy-out prices.

I don't understand why you or your client keeps going back to the issue and wasting time on it. The pattern that I have observed in this matter is that you make demands, make accusations and then make threats. Each time I provide a conclusion you do not like it is back to demand, accuse and threaten. If you want to be constructive then let's deal with the real issues and that is whether any compensation is due to Dr. Parmar (which Donny is working on) and what reserves are reasonable for the companies to maintain prior making distributions of profits to the owners. Nobody is cramming conclusions on these issues down on your client. I have explained to Dr. Minhas that the level of reserves has to be established based on the reasonable needs of the companies, which are based on his business judgment. Dr. Minhas understands that standard and used that standard to come up with the reserve levels. If Dr. Parmar thinks the reserves should be something different we invited him to propose what he thinks is reasonable and why. If they can reach an agreement and sign a release then the distributions can be made.

If you would like to set a time to discuss the issues and try to resolve this matter in an amicable manner please let me know.

Thank you,

Ed

-----Original Message-----
From: Eric S. Bland <ericbland@blandrichter.com>
To: Ed White <ed.white@nelsonmullins.com>
Cc: Lowndes Pope <lpope@rplfirm. com> <lpope@rplfirm.com>; Donny Burkett (donnyb@burkettcpas.com) <donnyb@burkettcpas.com>; Ronnie Richter <Ronnie@blandrichter.com>; Scott Mongillo <Scott@blandrichter.com>; Raj Parmar <rparmar67@gmail.com>; balbminh <balbminh@aol.com>; Cory Manning <Cory.Manning@nelsonmullins.com>
Sent: Fri, May 30, 2014 04:00 PM
Subject: Re: MEC/MG/Minhas and Parmar

All good thoughts and agreeable except the car where an agreement was reached for which donny burkett will confirm. I have the money for the car. Meeting with dr parmar tonight. Will keep you posted. Thanks ed.

Eric S. Bland
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www.legalmalpracticeforum.com

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From: Eric S. Bland [mailto:ericbland@blandrichter.com]
Sent: Monday, June 02, 2014 2:07 PM
To: Ed White; Cory Manning
Cc: Lowndes Pope <lpope@rplfirm. com>; Ronnie Richter; Donny Burkett; Rajinder Parmar; Lowndes Pope <lpope@rplfirm. com>; Scott Mongillo; Cory Manning; balbminh@aol.com
Subject: RE: MEC/MG/Minhas and Parmar

Thank you Ed for your response. I am in agreement to add the car to the list of issues to mediate. I guess Dr. Minhas' and Donny Burkett's words are of no value. I trust Donny when he tells me that there was an agreement. You should too. I sat there in the same meeting that you did when Dr. Minhas agreed to have the car sold to Dr. Parmar for a figure to be arrived at by Donny. Donny then did the work and sat in a meeting with the both of them last week when the price was agreed upon. It would be a grave mistake if a police report would be filed. I am telling you that I will sue Dr. Minhas and anyone else that assists him in filing such a report. Please let reason prevail here. Status qou until Donny finishes his work and Cory and I can meet. I really would like to just communicate with Cory about these issues. No offense, I just don't like how you roll Ed. eric

---

From: Ed White [mailto:ed.white@nelsonmullins.com]
Sent: Monday, June 02, 2014 1:45 PM
To: Eric S. Bland; Cory Manning
Cc: Lowndes Pope <lpope@rplfirm. com>; Ronnie Richter; Donny Burkett; Rajinder Parmar; Lowndes Pope <lpope@rplfirm. com>; Scott Mongillo; Cory Manning; balbminh@aol.com
Subject: RE: MEC/MG/Minhas and Parmar

Eric,

Since the car was not returned by 5:00 pm on Friday as requested we will be adding the issue concerning the car to the matters to be resolved at mediation.

Just to be clear, Dr. Minhas has not approved the sale despite your assertions to the contrary. Absent a written bill of sale and a written transfer of title the car is still a corporation asset. At this time we have persuaded Dr. Minhas to refrain from filing a police report pertaining to the appropriation of the car (there are no assurance that will not change in the future) and the corporation will continue to insure its asset until it has been returned but reimbursement for the value of the use and the insurance will be submitted as one of multiple issues for resolution at mediation.

Thank you.

Ed

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Rajinder Parmar,	)	Civil Action No. 2014-CP-40-6017
	)	
Applicant,	)	
	)	**MOTION FOR RECONSIDERATION AND**
v.	)	**TO ALTER OR AMEND THE JUDGMENT**
	)	
Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC,	)	
	)	
Respondents.	)	

2017 MAR 17 AM 11:52
RICHLAND CO. FILED
MARIETTE W. MOZRUCKI
C.C.P. & G.S.

Pursuant to Rules 52 and 59, SCRCP, and *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004), Respondents Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, move the court for reconsideration of its decision confirming the arbitration award and denying Respondents' motion to vacate or, in the alternative, to modify or correct the arbitration award. The court entered the order on March 2, 2017, and Respondents received written notice of the entry of the order on March 3, 2017.

The grounds for this Motion are as follows:

1. Pursuant to *Elam*, Respondents request that the court reconsider its decision confirming the award and denying Respondents' motions to vacate or, alternatively, to modify or correct the award. Respondents reassert the grounds stated in their previous filings and in their written comments to the proposed order Applicant's counsel provided to the court on February 17, 2017.

2. Although the court rejected Respondents' contention that the arbitrator manifestly disregarded the law (p. 14, n. 6), the court failed to rule on the alternative

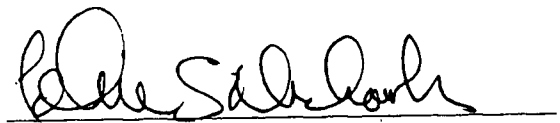
argument Respondents presented that the court should vacate the award as unfaithful to the clear and unambiguous terms of the parties' agreement under the common law ground of manifest disregard of the terms of the arbitration agreement. The parties' intent is specifically, expressly and unambiguously set forth in § 3.8(ii) of the Agreement, but the arbitrator failed to follow that paragraph or honor its intent. It is also not disputed that Dr. Parmar failed to complete the required three (3) year term to receive any of the relief the arbitrator granted to him – there is, therefore, a complete disregard of the unambiguous and express terms of the parties' agreement.

3. The award of pre-judgment interest as part of the judgment is contrary to the arbitrator's Order No. 7. While this court follows *Fatigues, Inc. v. Varat Enters.*, 813 F. Supp. 1336 (N.D. Ill. 1992), a U.S. District Court case out of Illinois (p. 23, n. 9), the district court's decision predicts South Carolina law and, in the 25 years since that decision no court has cited it with approval on this point.

4. The order confirming the arbitration award contains issues as to the background and procedural history. Respondents have included their comments to a version of the order attached to this motion and would incorporate those comments here. Respondents request that the court consider those remarks when reviewing this motion.

For the reasons stated, Respondents request that the court reconsider the order previously entered in this matter, withdraw that order, and enter a new order vacating the arbitrator's award or modifying the award accordingly.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENTS BALBIR S. MINHAS, M.D., MIDLANDS GASTROENTEROLOGY, PC, AND MIDLANDS ENDOSCOPY CENTER, LLC

March 13, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Rajinder Parmar,	)	Civil Action No.: 2014-CP-40-6017
Applicant,	)	
vs.	)	
Balbir S. Minhas, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC ,	)	**ORDER CONFIRMING ARBITRATION AWARD AND DENYING APPLICANTS' MOTION TO VACATE, OR IN THE ALTERNATIVE, MODIFY OR CORRECT ARBITRATION AWARD**
Respondents.	)	

This matter came before this Court for a hearing on November 29, 2016 pursuant to Applicant Rajinder Parmar's ("Parmar") Motion to Confirm the Arbitration Award and Respondnets Balbir S. Minhas, Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC's (hereinafter collectively referred to as "Minhas") Motion to Vacate, or in the Alternative, Modify or Correct the Arbitration Award. Appearing on behalf of Minhas was Christian Stegmaier, Jr. John S. Nichols, and James E. Smith, Jr. Appearing on behalf of Rajinder Parmar was E. Wade Mullins, III and Caitlin C. Heyward. Based on the record and arguments presented along with the briefs submitted by counsel, I make the following findings and conclusions.

BACKGROUND AND PROCEDURAL HISTORY

Dr. Parmar and Dr. Minhas each were 50% shareholders of Midlands Gastroenterology, PC (hereinafter referred to as "MG") and 50% members of Midlands Endoscopy Center, LLC (hereinafter referred to as "MEC"), as well as employees of each entity. [Dr. Parmar and Dr. Minhas were employees of MG, but not of MEC.] Minhas was also managing shareholder and managing member of both entities. Parmar acquired his interests in MG and MEC on or about June 30, 2011. Parmar's purchase price was $50,000 for MG and $300,000 for MEC. [Dr. Parmar did not pay anything to MEC for his shares on July 1, 2011 but started earning profits and his shares

of distributions were retained by MEC to complete payment of $ 300,000.00 to Dr. Minhas in December of 2013.] The purchase price did not include A/R or the cash on hand in the operating accounts existing at the time of Parmar's purchase. [At Dr. Parmar's request, the purchase price did not include bank account and A/Rs (total of $297,000.00 for MEC and MG) that belonged to Dr. Minhas but was loaned to the entities.]

After working together for just under three years, the parties' relationship dissolved. A dispute arose between Parmar and Minhas regarding their respective rights and obligations in MG and MEC. [Dr. Parmar was fully aware of the fact that Dr. Minhas and Dr. Parmar both were expected to contribute towards rebuilding reserves for MG and MEC as evidenced by the signed MG and MEC agreements.] Both the MEC Operating Agreement and the MG Shareholder Agreement ("the governing Agreements") mandate binding arbitration of "any controversy or claim arising out of or relating to" the Agreements. The parties disagreed as to the amount to be paid for Parmar's ownership interests and how much, if any, Parmar would be entitled to receive prior to the purchase date for outstanding accounts receivable for 2011-2014, cash on hand in the bank accounts for both entities, his retirement amounts, a Nissan Murano automobile and other matters ("the Disputes"). [Ed White's email did not agree that Cash on hand/bank accounts and AR were part of dispute – as these elements were not in the contract. The only agreement as per emails was to arbitrate the amount of additional compensation and/or distribution as per MG and MEC agreements. Bank accounts and A/Rs are the corporate assets, compensation and distributions come from this only after paying the expenses of the company.]

The parties agreed that Parmar would sell his shareholder and member interests in the two entities pursuant to the terms and conditions of the governing Agreements at a May 30, 2014 closing. Parmar proceeded with the closing with the understanding that the remaining Disputes would remain to be resolved in either mediation or arbitration.[1] [Remaining disputes, however, did not include bank accounts and ARs which Ed White clarified on multiple occasions.]

[1] The parties disagree as to whether they agreed to arbitrate the issues relating to the A/R and accounts receivable prior to the closing. Parmar contends that Minhas and his counsel expressly agreed via email to proceed with the closing and hold open the remaining Disputes, including entitlement to A/R and the operating accounts, to be resolved either at arbitration or mediation after the closing. Minhas contends that he never abandoned or conceded the position that Parmar

On September 16, 2014, Parmar filed a Demand for Arbitration with the AHLA, asserting a cause of action for breach of contract and breach of fiduciary duty against Minhas. Parmar alleged that section 3.8(ii) of the MG agreement represented payments of ownership interest only and that upon the sale of his interest in the entities he would be entitled to his share of the accounts receivable, operating accounts and production variance as part of his regular compensation as an employee and performance as a physician for the entities. Parmar specifically plead that failure to pay such amounts gave rise to a breach of contract and breach of fiduciary duties. [There was no "failure to pay." In fact, the ongoing financial calculations by the company accountant were to determine **distributable income,** so Dr. Parmar could receive his share according to the compensation/distribution provisions of the MG and MEC agreements. Bank Accounts and A/Rs are company assets from where distributable income can be distributed after paying overhead expenses. Dr. Parmar was fully aware of this method of compensation and never expected any different during his entire tenure with MEC and MG.]

Minhas declined to arbitrate the matter or accept service of the Demand. As a result, On September 30, 2014, Parmar filed a Declaratory Judgment Complaint and contemporaneous Motion to Compel Arbitration of the Disputes. [In defending against the declaratory judgment, the argument was merely whether the venue to resolve these disputes should be in South Carolina courts as per sale documents of May, 30, 2014 or AHLA as per MG and MEC documents of June 30, 2011.] On October 24, 2014, Minhas answered the Complaint and asserted various counterclaims against Parmar and filed a contemporaneous Motion to Dismiss the Complaint. In defending against the declaratory judgment action, Minhas argued that the parameters of the May 30, 2014 closing documents dealt with not only the sale of Parmar's interest in the two entities, but also all ancillary compensation matters contained in the Disputes.

On July 22, 2015, this Court issued an Order denying Minhas's Motion to Dismiss and granting Parmar's Motion to Compel Arbitration. The July 22, 2015 Order referred all remaining issues in dispute between the parties after the May 31, 2014 purchase by Minhas of

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was not entitled to any of the A/R or the operating accounts under the terms of the Agreements and did not agree to submit that matter to arbitration or mediation. Both parties submitted numerous emails, letters and other correspondence to support their conflicting positions. I find any agreement relating to arbitration prior to the closing is immaterial to my findings and conclusions. [Dr. Minhas disagrees that this issue is immaterial. This award exceeds and ignores the express language in the agreements.]

Parmar's interests in MG and MEC to binding arbitration, including Minhas's counterclaims. The Order expressly identified the "remaining issues in dispute currently pending before the American Health Lawyers Association in case number 2648" as the matters to be arbitrated.

The Disputes were arbitrated before a single arbitrator, James P. Kelly, Esquire, on December 8 and December 9, 2015. The issues that were presented to and decided by the arbitrator were limited to those remaining issues that were ordered by the Trial Court to arbitration, which were raised in the Complaint, Demand for Arbitration and Counterclaim.

At the arbitration hearing, Parmar argued that the governing Agreements were ambiguous in that they did not address or define other compensation aspects of the buyout, particularly how the accounts receivables and cash on hand in the operating accounts were to be divided in the event of a buyout. Parmar maintained that he was entitled to at least half of those accounts. Parmar also claimed he was entitled to funds representing the variance in MG production for 2013-14. Parmar's claims for damages were detailed in a Pre-Hearing Brief outlining the basis for the claims and the source for such calculated amount. [How can the MG agreement be considered "silent or ambiguous" when there are separate standalone provisions regarding (a) compensation (b) distribution and (c) Buy Sell? Provision 8.3 (i), (ii) and (iii) are unambiguously distinct. 8.3 (i) has "lump sum" payment but no 4% interest or bank accounts or A/Rs. 8.3(ii) has no "lump sum" payment, bank accounts or A/Rs but has 4% interest. 8.3(iii) has bank accounts and A/Rs but no "lump sum" payment or 4% interest. Furthermore, under 8.3(ii) 4% interest is being given by the lender to the borrower. Dr. Parmar and Dr. Minhas both contributed to installing Electronic Medical Records (EMR). Just because 8.3 (ii) is "silent and ambiguous" regarding EMR, is it rational for Dr. Parmar to claim half of the money spent on installing EMR upon departure? "It is far better to interpret the agreement based on what is specified, rather than attempt to incorporate other remote rules by reference." *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 132, 678 S.E.2d 435, 439 (2009), citing *Smith Barney, Inc. v. Critical Health Systems of North Carolina, Inc.*, 212 F.3d 858, 862 (4th Cir.2000).]

After the proceedings concluded, Minhas requested the decision be issued in the form of an unreasoned award. [In fact, after the proceedings concluded, the arbitrator provided an explanation for "reasoned" and "unreasoned" mostly from the perspective of time and effort (less for unreasoned and more for reasoned) required on his part. Dr. Parmar requested "unreasoned" award on the day of the hearing but Dr. Minhas did not disagree a day after the hearing. The arbitrator never declared that an "unreasoned" award could not be challenged later despite being unreasonable.]

The Arbitrator's Award was issued by Order dated May 17, 2016 in the amount of $339,568.48 in favor of Parmar. The arbitrator awarded Parmar ½ of operating accounts; ½ of trailing accounts receivable and MG production variance for 2013-14 for the total dollar amount sought by Parmar for those particular claims. [The arbitrator denied several other claims asserted by Parmer and denied the counterclaims asserted by Minhas.]

On June 1, 2016, Minhas filed a Motion to Correct the May 17, 2016 Order on the grounds that the Order contained typographical or computational errors. Parmar opposed the motion, asserting that the Motion to Correct went far beyond the rules (AHLA Rule 7.9) permitting the correction of scriveners errors, clerical errors or inadvertent mistakes and amounted to an attempt to have the arbitrator reconsider the exact arguments, evidence and testimony presented by Minhas in the hearing and rejected by the arbitrator in his award.

A hearing on Minhas's Motion to Correct was held by telephone conference on June 3, 2016. On June 10, 2016, Minhas submitted to the arbitrator a Reply to Parmar's Response to the Motion to Correct in further support of his Motion to Correct. In the Reply, Minhas argued that the arbitrator could modify or correct some or all of the award due to inadvertence if he determined he misapprehended material facts. Notably, Minhas conceded in his Reply Brief that a denial of the Motion to Correct "demonstrates the arbitrator's calculations and ultimate disposition was the product of intentional decision making and free of computational error".

By Order dated June 21, 2016, Arbitrator Kelly denied Minhas's Motion to Correct. On June 27, 2016, Minhas filed an Objection to entry of the May 17, 2016 Award on the ground that it was untimely. Parmar filed a Response to the Objection on June 27, 2016. Minhas's Objection was denied by Order dated August 30, 2016. Minhas then petitioned the AHLA via email dated July 25, 2016, to void the proceedings and to remove and replace Arbitrator Kelly pursuant to

AHLA Rule 4.5 on the basis that the Award was not delivered timely. On August 22, 2016, the AHLA issued a ruling denying Minhas' request to remove Arbitrator Kelly.

On August 12, 2016, Parmar filed a Motion to Confirm the Award and to Render the Arbitration Award to Judgment. On August 15, 2016, Minhas filed an Application to Vacate, or in the Alternative, Modify or Correct the Arbitration Award. On August 16, 2016, Minhas filed an Amended Application seeking to vacate or modify the Award on the identical grounds set forth in Minhas's previous Motion to Correct dated June 1, 2016.

On November 23, 2016, Parmar filed a Memorandum in Opposition to Minhas's Motion to Vacate or Modify the Award. On November 29, 2016, a hearing was held before this Court on Minhas's Motion to Vacate or Modify the Award. Both parties submitted supplemental post-hearing briefs.

[Dr. Parmar opposed the motion to correct, using AHLA rule 7.9, arguing the arbitrator had exhausted his jurisdictional authority by rendering the May17, 2016 final order #7. Dr. Parmar then turned around and demanded to add cost and fees of the arbitration to the award. Arbitrator Kelly asked for additional fees from both parties for continued arbitration proceedings, invited affidavit of costs from Dr. Parmar, ordered response from Dr. Minhas and was in the process of modifying/altering May 17th, 2016 order by adding cost and fees. It was then that Dr. Minhas raised objection (same objection raised by Dr. Parmar earlier) to the arbitrator's authority to be able to add costs and fees after the "final award." The AHLA rules strictly prohibit any changes to the "final award" by the arbitrator. Arbitrator Kelly's eventual denial of "cost and fees" to Dr. Parmar and "jurisdictional objection" to Dr. Minhas on Aug 30-31, 2016 is an acknowledgement of the arbitrator's ignorance of AHLA rules until pointed out by Dr. Minhas. If the May 17, 2016 award was the "final award" then there was no need for further arbitration proceedings and if the arbitrator felt the need for further arbitration proceedings after the May 17, 2016 award then May 17 award was not the final award. Furthermore, if Dr. Parmar was convinced that May 17, 2016 award was the final award, why did he not proceed with confirmation? Why did he wait until Aug 12, 2016?]

For the reasons set forth herein, Minhas's Motion to Vacate or Modify the Award is DENIED and Parmar's Motion to confirm the May 17, 2016 Arbitration Award is hereby GRANTED.

DISCUSSION

I. MOTION TO VACATE

The South Carolina Uniform Arbitration Act sets forth the narrow circumstances in which a party may seek to vacate an arbitration award. The court may vacate the award only upon the establishment of one of the grounds set forth in South Carolina Code § 15-48-130, or the rarely applied non-statutory ground of "manifest disregard of the law."

"South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution, including arbitration." C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359 (2013). "Generally, an arbitration award is conclusive and courts will refuse to review the merits of the award." Id. As such, the standard for vacating an arbitration award is not easily overcome. An award will be vacated only under narrow, limited circumstances "when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law ...[F]or a court to vacate an arbitration award based upon an arbitrator's 'manifest disregard for the law,' the 'governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable.'" Id. (quoting Gissel v. Hart, 382 S.C. 235, 241-42, 676 S.E.2d 320 (2009)).

In addressing the Court's policy of favoring arbitration and limiting judicial review, our Supreme Court has noted:

> [t]he fundamental premise upon which this policy is grounded is the laudable goal of providing 'a relatively quick and inexpensive resolution of contractual disputes by avoiding the expense and delay of extended court proceedings.' (Citations omitted). The primary function of arbitration is to serve as a substitute for and not a prelude to litigation.....The court's function in confirming or vacating an arbitration award is severely limited. If it were otherwise, the ostensible purpose for resort to arbitration, i.e.

> avoidance of litigation, would be frustrated....(Citations omitted). Indeed, '[b]road judicial review on the merits would render resort to arbitration wasteful and superfluous....' (Citations omitted).

Trident Technical College v. Lucas and Stubb, Ltd., 283 S.C. 98, 333 S.E.2d 781 (1985).[2]

A. Authority to Issue the Award

Minhas argued the Award must be vacated because the arbitrator "exceeded his authority" to issue the Award pursuant to S.C. Code Ann. § 15-48-130(a)(3) because (1) the relief granted by the arbitrator was not authorized and (2) the Award was issued untimely.

The South Carolina Uniform Arbitration Act provides the court shall vacate an award where "the arbitrators exceeded their powers." S.C. Code Ann. §15-48-130. It is well settled in South Carolina that "the question of whether arbitrators have exceeded their powers relates to the arbitrability of the issue they have attempted to resolve. Arbitrators exceed their powers only if the issue resolved by them is not within the scope of the agreement to arbitrate. Conversely, if an issue resolved by arbitrators is within the scope of the arbitration agreement, the statutory language does not require the Court to review the merits of their decision." Batten v. Howell, 300 S.C. 545, 548, 389 S.E.2d 170, 1990 S.C. App. LEXIS 7 (S.C. Ct. App. 1990). A party may not attempt to relitigate the merits of the arbitrator's resolution of the arbitrable issues under the guise of questioning the arbitrators' power. Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 107, 333 S.E.2d 781 (1985).

i. Relief Awarded

Minhas argued the relief awarded, which included one half of the accounts receivable and cash in the operating accounts at the time of separation, was contrary to the authority granted him in the Agreements and in manifest disregard of the contractual requirements as set forth in

[2] Trident Tech considers arbitration in the context of the Federal Arbitration Act, which advances the same theory and policy favoring arbitration and limiting judicial review.

Section 3.8(ii) of the MG Agreement. According to Minhas, the Agreements are clear and unambiguous as to what Parmar is entitled to upon separation and the arbitrator improperly "blue penciled" the Agreements to award relief not contemplated by its terms. Therefore, the arbitrator exceeded his authority when he awarded Parmar those accounts.

In contrast, Parmar argued that his entitlement to the accounts receivable and operating accounts was the very issue to be resolved by the Arbitrator, was squarely within the scope of the arbitration agreement, and was precisely what was referred to arbitration by this Court. Parmar argued the Agreements are ambiguous by omission as to the accounts receivable and operating accounts. Parmar argued section 3.8(ii) addresses payments for the ownership interest only and the parties contemplated Parmar would also be entitled to his share of the accounts receivable and cash on hand upon withdrawal. Because the parties disagreed as to whether the Agreements were clear or ambiguous as to Parmar's ancillary compensation at the time of separation, Parmar argued that issue did in fact "arise out of or relate to" the implied terms of the MG Agreement. Therefore, it was subject to arbitration.

[Contrary to this argument, Paragraphs 3.8(i), (ii), and (iii) are very specific as to what Dr. Parmar would get on separation depending on duration of his association. To give precedence to alleged omitted "Implied terms" over explicit written terms is outside the realm of reason (underlying governing principle of law). This is a disregard of the express terms of the agreement.]

In support of his position, Minhas relied in part on Grover v. Universal Underwriters Ins. Co., 80 N.J. 221, 403 A.2d 448 (1979). Grover involved a dispute over UM coverage and the definition of "uninsured highway vehicle." In that case, an insured motorcyclist was run off the road by a vehicle that was travelling in the wrong direction, causing the insured to lose control and throwing him from his motorcycle. Id. The policy required the award be based on a factual finding corroborated by competent evidence other than the testimony of the insured to trigger coverage where the vehicle causing the accident did not make physical contact with the insured.

Id. at 225-226. The arbitrator found in favor of coverage even though the only evidence presented at the arbitration hearing was the insured's own description of how the accident occurred. The Grover court first determined that the parties agreed to consider the coverage issue and thus it was "arbitrable." Id. The court nevertheless vacated the award because the arbitrator "imperfectly executed his power" and "was not free to disregard the contractual requirements of corroboration and competence." Id. at 231.

Importantly, Grover was decided pursuant to the New Jersey Arbitration Act, which varies from significantly from the South Carolina Uniform Arbitration Act in that an award may be vacated "where the arbitrators exceeded *or so imperfectly executed their powers*." N.J.S.A. 2A:24-8(d) (emphasis added). In New Jersey, "imperfect execution" amounts to an arbitrator's mistake of law or fact, which deviates from the clear law in South Carolina. Under South Carolina law, it is well established that where an arbitrator resolves the very issue presented to him, he does not exceed their powers, even assuming factual and legal errors. Pittman Mortg. Co. v. Edwards, 327 S.C. 72, 488 S.E.2d 335, 1997 S.C. LEXIS 131 (S.C. 1997). Moreover, the South Carolina Uniform Arbitration Act goes so far as to explicitly provide that "the fact that the relief was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm the award." S.C. Code Ann. § 15-48-30(a). Therefore, Grover is distinguishable and not applicable to the issue of arbitrability before this Court.

While Minhas disagrees with the arbitrator's interpretation and application of the Agreements, the issue as it relates to S.C. Code Ann. § 15-48-130(a)(3) is limited to whether the matters before the arbitrator were subject to arbitration. I find the arbitrability of the Disputes arises out of the governing Agreements. The parties agreed to arbitrate "any controversy or

claim arising out of or relating to" the Agreements. *See* MG Agreement Section 8.11 and MEC Agreement Section 12.6. The parties' dispute as to the interpretation of the buyout terms of the Agreements clearly arises out of and relates to the Agreements themselves.

The arbitrable issues were specifically raised by Parmar in the Demand for Arbitration filed with the AHLA. In the Demand, Parmar asserted a cause of action for breach of contract and breach of fiduciary duties. Parmar alleged that the payments under section 3.8(ii) represented payments for ownership interest only and that upon that sale and separation of the owners, Parmar would be entitled to his distributional share of any surplus cash as well as to be compensated for his outstanding accounts receivable as a part of his regular compensation as an employee and production interests incidental to his performance as a physician in the entities. Parmar specifically plead that failure to pay such amounts gave rise to breach of contract and breach of fiduciary duties.

To further crystalize the issues to be arbitrated, the Declaratory Judgment Complaint[3] and contemporaneous Motion to Compel Arbitration filed by Parmar seeking arbitration of the Disputes clearly relates to Parmar's entitlement to the bank accounts, accounts receivable and production variances. Indeed, Parmar alleged "the parties disagreed as to the amount to be paid for Parmar's ownership interests and how much, if any, Parmar would be entitled to receive prior to the purchase date for outstanding accounts receivable for 2011 and 2014, cash on hand in the

[3] Describing the Disputes in his Complaint, Parmar alleged "there exists a justiciable controversy between the parties regarding the construction, interpretation and enforcement of the written Agreements at issue and written agreements and representations made between counsel on behalf of their clients and judicial determination is necessary to determine whether the parties must arbitrate" and requested this Court "construe, analyze, and determine the enforceability of [the] Agreements' arbitration provisions and their rights and obligations under South Carolina law and to compel the matters which are in dispute into binding arbitration." (Complaint ¶¶26-28).

bank accounts for both entities, his retirement account amounts, a Nissan Murano automobile and other matters ('the Disputes')." (Compl. ¶12).

By Order dated July 22, 2015, this Court referred to arbitration all claims that relate to and arise out of the parties' Shareholder's Agreement and Operating Agreement. In her Order, Judge Benjamin found the arbitration clauses in the MG and MEC Agreements "are both valid and enforceable on the parties, and therefore, *requires that the parties arbitrate all remaining issues in dispute between them after the May 31, 2014 purchase* by Defendant Minhas of Plaintiff Parmar's interests in Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC." (Emphasis added). Significantly, Judge Benjamin ordered "the parties immediately arbitrate *all remaining issues in dispute currently pending before the American Health Lawyers Association in case number 2648*".[4] (Emphasis added). Those issues in dispute that were currently pending before the AHLA undeniably encompassed the issues of entitlement to the accounts receivable and cash on hand.

I find the Disputes, including the disputes related to the accounts receivable and operating accounts, were subject to arbitration pursuant to the terms of the Agreements. [Judge Benjamin has already made this determination and Dr. Minhas challenged that order and intends to continue that challenge. This finding in this order is surplusage since one circuit court judge is bound by a prior ruling by another circuit court judge. Insofar as this is a separate holding regarding arbitrability, Dr. Minhas continues his objection.] I find this Court referred the Disputes and the issues of entitlement to the accounts receivables and operating accounts to arbitration by Order dated July 22, 2015. I find the arbitrator did not exceed his authority by granting the relief issued in the Award, including ½ of the operating accounts and ½ of the

[4] AHLA case number 2648 referenced in the Order Compelling Arbitration corresponds with the case number assigned to Parmar's Demand.

accounts receivable. I further find the arbitrator did not make a determination or issue any relief that was outside the scope of the matters that were compelled to arbitration by this Court. As stated previously, where an arbitrator resolves the very issue presented to him, he has not exceeded his powers, even assuming factual and legal errors. Pittman Mortg. Co. v. Edwards, 327 S.C. 72, 488 S.E.2d 335, 1997 S.C. LEXIS 131 (S.C. 1997). For these reasons, Minhas's Motion to Vacate on the basis that the arbitrator exceed his authority pursuant to S.C. Code Ann. § 15-48-130(a)(3) is DENIED.

ii. Timeliness of Award

Minhas argued the Award must be vacated because it was issued untimely. The AHLA Rules governing the Arbitration Proceedings require a final award be issued within 8 months of the appointment of the Arbitrator (AHLA Rule 4.3) and within 30 days of the arbitration hearing (AHLA Rule 7.1) absent an agreement by the parties for an extension of time. However, a party must object to the timeliness of the award prior to the delivery of the award or the objection is waived:

> An award shall be made within the time fixed therefor[e] by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. ***A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.***

S.C. Code Ann. §15-48-90(b) (emphasis added). [This analysis comingles S.C. Code with AHLA rules. "*An award shall be made within the time fixed therefore by the agreement.*" The remaining part of the S. C. Code is not relevant because MG and MEC agreements stipulate arbitration by AHLA rules NOT by S.C. Uniform Arbitration Act. Under the AHLA rules, there is no requirement for parties to object but there is requirement for the arbitrator to request extension under AHLA rules. Judge Benjamin's order to compel arbitration by AHLA rule deferred jurisdiction to AHLA designee arbitrator Kelly and resumed jurisdiction after the arbitration was concluded.]

The arbitrator was appointed on August 20, 2015, and the arbitration hearing was held on December 8-9, 2015. The Arbitration Award was issued on May 17, 2016. Minhas argued the arbitrator was divested of jurisdiction because he did not issue the Award on or before January 21, 2016 (30 days after the arbitration hearing) or April 20, 2016 (8 months after his appointment). However, Minhas did not object to the untimeliness of the Award until June 27, 2016, after it was issued.

I find the arbitrator did not exceed his powers within the meaning of S.C. Code Ann. § 15-48-130(a)(3) when he failed to issue a timely award. Procedural untimeliness of an award does not relate to the arbitrability of the issues before the arbitrator. The arbitrator had the authority to enter the Award pursuant to the controlling arbitration clause and this Court's Order compelling arbitration. To vacate the award due to a ministerial or administrative error would unfairly prejudice Parmar, who incurred substantial time and expense to participate in the proceedings with no control over the arbitrator's timing of the Award.

[Parmar filed for confirmation of the award on August 12 and it was confirmed by Judge Benjamin without realizing the pending application by Minhas to vacate the award. This took nearly two months and additional expense to file a motion pursuant to Rules 59/60 and have a hearing before Judge Benjamin, who vacated that order which improperly confirmed the award and scheduled the hearing with Judge Toal on November 29th.]

Furthermore, I find Minhas waived any right to contest the timeliness of Award and cannot now assert it as a basis to vacate it. S.C. Code Ann. §15-48-90(b); See e.g. Success Vill. Apts., Inc. v. Amalgamated Local 376, Int'l Union UAW, 380 F. Supp. 2d 95, 2005 U.S. Dist. LEXIS 15896, 177 L.R.R.M. 3148 (D. Conn. 2005) (holding that despite a set of state regulations requiring issuance of arbitration awards on a specific timetable, there was no basis to set aside an arbitration award where "plaintiff has made no showing that it objected to the delay prior to the issuance of the award."); See also Samuel Estreicher & Steven C. Bennett, *Untimely*

Arbitration Awards, 235 N. J. L. J. 59 (2006) ("[T]he weight of modern authority is that untimeliness of an award is typically not fatal to enforceability of an award"). While Minhas acknowledged he was "disappointed" with the delay, I find Minhas did not notify the arbitrator of his objection prior to the delivery of the May 17, 2015 Award. It was only after the Award and when Minhas realized he did not prevail on the merits of the arbitration that Minhas first argued the Arbitrator was divested of jurisdiction.[5] For these reasons, Minahs's Motion to Vacate on the basis that the Award was issued untimely is DENIED.

B. Manifest Disregard of the Law

While Minhas cited S.C. Code Ann. § 15-48-130(a)(3) as the basis for his arguments to vacate the Award, Minhas suggested the arbitrator misapplied, misunderstood or misread the terms of the MG Agreement and the MEC Agreement regarding the transfer of shares and compensation. Minhas also argued that the arbitrator awarded relief in "manifest disregard" of the express terms of the contract.[6] As noted previously, misapplication and manifest disregard of the terms of the Agreements does not relate to the arbitrator's authority to issue the Award.

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[5] The Award was issued on May 17, 2016. Minhas filed a Motion to Correct the Award on June 1, 2016, in which he failed to assert the issue regarding the timeliness of the Award. Minhas's Motion to Correct was denied by Order dated June 21, 2016. Six days after Minhas's Motion to Correct was denied and more than one month after the Award was delivered, Minhas filed an Objection to the May 17, 2016 Order on June 27, 2016, raising the timeliness issue for the first time.

[6] At the November 29, 2016 hearing on Minhas's Motion to Vacate the Award, counsel for Minhas expressly represented to this Court that Minhas does not seek to vacate the Award on the basis of the common law ground of "manifest disregard of the law." Likewise, Minhas did not cite the common law ground as a basis for his Motion in his Application to Vacate the Award, Amended Application to Vacate the Award or his post-hearing brief. Rather, Minhas clarified for this Court that his arguments referencing manifest disregard of the law or manifest disregard of the express terms of the Agreements related solely to whether the arbitrator exceeded his power pursuant to S.C. Code Ann. §15-48-130(a)(3). Therefore, I find Minhas waived any argument as to whether the Award may be vacated pursuant to the common law ground of "manifest disregard of the law." Nevertheless, for the purpose of completeness and for the

[Arbitrator Kelly knew, or should have known, the AHLA rules of procedure which are "well defined, explicit and clearly applicable" yet he elected to ignore them and then refused to apply them even after pointing out those rules to him. The conduct of the arbitrator while conducting arbitration is one of the points of Dr. Minhas's objection to his award and the request for vacating it.

However, parties are not without recourse if an arbitrator manifestly disregards the law. "The court may vacate the award only upon the establishment of one of the grounds set forth in section 15-48-130, or the rarely applied non-statutory ground of 'manifest disregard or perverse misconstruction of the law.'" Swentor v. Swentor, 336 S.C. 472, 520 S.E.2d 330 (Ct. App. 1999 (quoting Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 108, 333 S.E.2d 781 (1985)).

The standard to vacate an award on the basis of manifest disregard is not a *de novo* review of the underlying arbitration proceedings, rather it requires an intentional defiance of a clear and undeniable contract provision or applicable law. Misapplication or misinterpretation of a provision is not sufficient to overturn an award. "[The South Carolina Supreme Court] has held that for a court to vacate an arbitration award based upon an arbitrator's 'manifest disregard for the law,' the 'governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable.' Indeed, 'an arbitrator's manifest disregard of the law,' as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." C-Sculptures v. Brown, 403 S.C. 53, 742 S.E.2d 359 (2013) (quoting Gissel v. Hart, 382 S.C. 235, 241-42, 676 S.E.2d 320 (2009)). "The focus is on the conduct of the arbitrator and presupposes something beyond mere error in construing or applying the law...[f]actual and legal errors by arbitrators do not constitute an abuse of powers, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers." (Gissel, 382 S.C.

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reasons stated herein, I find there are insufficient facts and evidence before the Court to justify a finding that the arbitrator manifestly disregarded the law or the terms of the Agreements.

at 232, 323-24). "Even a clearly erroneous interpretation of the contract cannot be disturbed." Lauro v. Vinapuu, 351 S.C. 507, 519, 570 S.E.2d 551 (Ct. App. 2002) (quoting Trident Technical College v. Lucas & Stubbs, Ltd., 286, S.C. 98, 108, 333 S.E.2d 781 (1985)). The primary issue before the arbitrator was whether Parmar was entitled to a portion of the bank accounts and accounts receivable and the MG production variance under the terms of the MEC and MG Agreements. The parties vigorously debated these issues before the arbitrator at a two-day hearing on the merits and in numerous briefs submitted to the arbitrator. Multiple witnesses testified that while the agreements addressed the sale of the ownership (shares and membership interest), the agreements were silent and ambiguous as to compensation and particularly the issue of accounts receivables and cash on hand. Moreover, there was ample testimony that in connection with a buyout of this nature one would expect to implement some measure of compensation to account for A/R and cash on hand. [As for whether the parties expected "to implement some measure of compensation," this general conventional methodology is not germane to the unique and express agreement parties signed because of facts and circumstances at the time of signing the agreements which included "exit clauses" with unambiguous clarity.]

The arbitrator issued his award based upon the testimony offered by both parties and the evidence before him. In fact, On June 1, 2016, Minhas filed a Motion to Correct the May 17, 2016 Award on the identical grounds for which Minhas now seeks to vacate the Arbitration Award. A hearing was held on Minhas's Motion to Correct on June 3, 2016, and Minhas's Motion was ultimately denied by Order dated June 21, 2016.

I find the parties' detailed presentation of these complex issues demonstrates the arbitrator did not disregard well-defined, explicit, and clearly applicable law in rendering his decision. Whether the arbitrator manifestly disregarded the law is not an invitation to review the merits of the underlying arbitration. Without parsing the arbitrator's mental pathway, there is no basis to conclude that the arbitrator committed a substantial error. [Dr. Minhas contends the

arbitrator did commit substantial error by ignoring the express terms of the parties' agreement and by issuing an award that fails to carry out the intent of that agreement. There is no need to divine the arbitrator's mental pathway since the pathway should have been guided by the terms of the agreement, but was obviously not.]

I find there is no evidence before the Court that the arbitrator knew the applicable law and chose to disregard it. Whether the arbitrator correctly or incorrectly applied the law to the facts and evidence before him is not before this Court. Nevertheless, even assuming the arbitrator erroneously applied the law and misinterpreted the Agreements, that alone does not overcome the burden of proof necessary to justify vacating the Award. See Gissel v. Hart, 382 S.C. 235, 676 S.E.2d 320 (2009). I find the arbitrator did not manifestly disregard the law or manifestly disregard the terms of the Agreements when he issued the Award.

C. Corruption, Fraud or Other Undue Means

Finally, Minhas contends the award must be vacated pursuant to S.C. Code Ann. § 15-38-130(a)(1) because "the Arbitrator's decision was procured by undue and unreasoned means."[7] I find there is insufficient evidence of corruption, fraud or undue means to overcome the exceptional burden of proof required to vacate the Award.

[Dr. Parmar knew how compensation and distributions were equally given to both Minhas and Parmar over about 3 years period after paying overhead expenses, yet for his own claim, after the dispute, he used gross revenue number to ask for productivity variance. Dr. Parmar also knew that productivity variance amount is already included (subsumed) in the bank accounts and A/Rs yet he claimed that amount over and above 1/2 of bank accounts and A/Rs for MG and MEC. For MG, compensation section clearly defined the formula how Minhas and Parmar would be paid as employees

[7] To the extent Minhas is challenging the award as an unreasoned award, this Court notes Minhas requested that the award **not** be a reasoned award prior to the arbitration hearing. [As noted above, Dr. Minhas did not request an unreasoned award; it was after Dr. Parmar agreed to unreasoned and based on Arbitrator's limited explanation. This was after Arbitration hearing not prior to.] Nonetheless, the fact that an award is unreasoned is not applicable to the Court's analysis regarding fraud, corruption and undue means.

and were paid during the about three years period, yet he elected to claim unreasonable amount. Dr. Parmar, despite knowing that his being a shareholder and not an employee of MEC, compensation was purely based on shares basis yet, even now, he is misstating he was an employee of MEC after the dispute. Despite knowing that there are several other physicians who utilize MEC and contribute to income, Dr. Parmar continues to argue as if it is only him and Minhas are responsible for the income justifying his claim to half of the bank accounts and A/Rs for MEC.]

An award shall be vacated if it is "procured by corruption, fraud or other undue means." S.C. Code Ann. § 15-38-130(a)(1). "[T]he phrase 'corruption, fraud, or undue means' has been construed by the court to proscribe affirmative misconduct by the parties, such as perjury or subornation of perjury.'" Trident Technical College, 286 S.C. at 104, 333 S.E.2d at 787. A party's manifest disregard of the facts and the law is insufficient to constitute "undue means" absent a finding of bad faith, fraud or corruption. Id.; See also General Constr. Co. v. Hering Realty, 201 F. Supp. 487, 491 (D.S.C. 1962) (a party seeking to upset an arbitration award carries heavy burden to make it abundantly clear that award was obtained through undue means).

Minhas argued the Award must be vacated pursuant to S.C. Code Ann. § 15-38-130(a)(1) because "[Parmar's] trial counsel misrepresented [the] provisions of Midlands Gastroenterology, P.C. Agreement ("the MG Agreement"), assembled and comingled Midlands Gastroenterology, P.C. and Midlands Gastroenterology Center, LLC bank accounts and accounts receivable, and referenced various cases including a prior MG, LLC dispute during the December 8-9, 2015, arbitration hearing as a basis for an inappropriate argument that Dr. Minhas is a litigious person who is unable to get along with his partners." (Amended App. to Vacate, p. 4). I find the allegations are unsupported by the record before the Court. I further find the allegations do not constitute corruption, fraud or undue means within the meaning of § 15-38-130(a)(1).

As to the first and second allegations, it is clear that Minhas disagreed with Parmar's characterization of the compensation and buy out terms of the MG Agreement as presented at the arbitration hearing, the interpretation of which was the very issue in dispute to be decided by the

arbitrator. Moreover, it appears that Minhas is challenging Parmar's method of grouping its damages presentation as support of Parmar pursuing its claims through "undue means." The MG Agreement was admitted into evidence in its entirety at the arbitration hearing, discussed and referred to *ad nauseam* in direct and cross examination of many witnesses, and, ultimately, independently reviewed by the arbitrator. Therefore, the arbitrator did not blindly accept Parmar's characterization of its terms.

Nevertheless, Parmar's advocacy of his position does not amount to a "misrepresentation" simply because it did not align with Minhas's interpretation of the MG Agreement. Indeed, the parties' contradicting positions are the very reason this action exists. Both parties argued and briefed their respective positions at length before and after the arbitration hearing. The arbitrator read the MG Agreement, heard testimony of the parties and fact and expert witnesses over the course of a two-day hearing, and considered the evidence presented by both sides as well as the oral and written arguments submitted by both parties. It was only after a thorough presentation of the issues by both parties that the arbitrator issued the Award. In addition, Minhas failed to identify for the Court the provisions of the MG agreement Parmar allegedly "misrepresented" to the arbitrator. Even assuming Parmar "misrepresented" a provision of the MG agreement that was material to the arbitration, there is no evidence before the Court that the arbitrator relied on the alleged misrepresentation simply because he ruled in favor of Parmar.

As to Minhas's third allegation, I find the cross examination of Dr. Minhas by Parmar's counsel relating to Dr. Minhas's background, familiarity with litigation and his history of litigation with former business partners does not constitute perjury, fraud, bad faith or corruption necessary for a finding of undue means. I further find there is no evidence in the record that the

questions on cross-examination improperly influenced the arbitrator in this case. An arbitrator's determination in favor of an adverse party alone is not evidence of improper influence.

Solicitation of a party's litigation history on cross-examination is not only proper but to be expected. The scope of the testimony solicited was limited to acknowledgment that such litigation existed, which is a matter of public record, and did not seek to require divulging any confidential information. Such evidence was appropriately before for the arbitrator pursuant to Rule 401, SCRE and AHLA Rule 4.12, which affords arbitrators wide latitude and deference to consider the evidence offered.[8] The arbitrator acted within his discretion when he allowed that line of questioning.

Based on the foregoing, I find there is insufficient evidence of corruption, fraud or other undue means before the Court to warrant vacating the Arbitration Award pursuant to S.C. Code Ann. § 15-38-130(a)(1). Minhas's Motion to Vacate the Award on the ground of corruption, fraud, or undue means pursuant to S.C. Code Ann. § 15-38-130(a)(1) is DENIED.

II. MOTION TO CORRECT OR MODIFY THE AWARD

In the alternative to his Motion to Vacate, Minhas moved this Court to correct or modify the Award on the basis that: Section 8.1(A) of the MEC Agreement prohibits distribution of funds to its shareholders without reserving four (4) months of operating expenses in the operating account, Section 3.8(ii) of the MG Agreement does not entitle Parmar to ½ of the operating accounts or accounts receivable, payment of 50% of the operating accounts to Parmar is duplicative of the 4% interest already paid to him at the closing, the arbitrator inappropriately combined the accounts receivable and operating accounts of MG and MEC because the two

[8] AHLA Rule 4.12 provides in relevant part: "The arbitrator shall be the sole judge of the duplicative nature, relevance and materiality of the evidence offered. Conformity to legal rules of evidence shall not be necessary."

entities have different compensation formulas, the Award does not consider accounts payable, the shareholder compensation variance awarded did not account for 50% overhead, and the arbitrator should have deducted the ½ of accounting fees from the amounts awarded to Parmar.

The South Carolina Uniform Arbitration Act § 15-38-140(a)(1) permits modification of an award where there is an "evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award." While not explicitly defined within the statute or by the courts, "evident miscalculation of figures" is commonly defined as "mathematical errors committed by arbitrators which would be patently clear" in jurisdictions with identical statutes. The use of an incorrect formula to determine the award is not an "evident miscalculation of figures." See e.g. Carolina Virginia Fashion Exhibitors, Inc. v. Gunter, 41 N.C. App. 407, 413, 255 S.E.2d 414 (1979); Dadak v. Commerce Ins. Co., 53 Mass App. Ct. 302, 758 N.E.2d 1083 (2001). Arbitrators need not specify their reasoning or the basis for the award as long as the factual inferences and legal conclusions supporting the award are barely colorable. Mills v. William Clarke Jeep Eagle, 321 S.C. 150, 153, 467 S.E.2d 268 (Ct. App. 1996) (citing Renaissance Enters., Inc. v. Ocean Resorts, Inc., 310 S.C. 395, 426 S.E.2d 821 (Ct. App. 1992). If the grounds for the award can be inferred from the facts, the award should be confirmed.

All of the grounds Minhas cites in support of his Motion to Modify or Correct the Award directly relate to the merits of the controversy before the arbitrator or the formula the arbitrator chose to apply when issuing the Award. Importantly, Paragraph 37 of Parmar's Pre-Hearing Brief outlines in detail exactly the relief sought in the arbitration proceedings, which is mirrored identically in the Arbitration Award, except that the arbitrator denied Parmar's request for MEC AR 2011 buy-in reimbursement, profit sharing, and prejudgment interest. While it is clear the

arbitrator did not calculate the Award in accordance with Minhas's own view of the merits of the controversy, this does not constitute a "miscalculation" as contemplated by the South Carolina Uniform Arbitration Act. Even an erroneous decision on the merits does not constitute an evident miscalculation of figures to warrant a modification of the Award.

It is clear from the record that the Award was a result of the conscious decision of Arbitrator Kelly and was not inadvertent error. On June 1, 2016, Minhas filed a Motion to Correct the Award for the identical reasons set forth in Minhas' Motion to Vacate. Parmar replied to Minhas's Motion by emails dated June 1 and June 2, 2016. On June 3, 2106, a hearing was held by telephone on Minhas's Motion to Correct. On June 10, 2016, Minhas submitted a memo in reply to Parmar's response. In his Reply, Minhas conceded that "[a] grant in whole or part of Respondents' motion to correct [evidences] that some or the entire award was due to inadvertent mistake. *A denial of the motion demonstrates the arbitrator's calculations and ultimate disposition was the product of intentional decision making and free of computational error*." (emphasis added).

[The arbitrator did not use any formula to calculate granted portion of the award. He simply transcribed those numbers from the pre hearing brief submitted by Parmar. The proposed order contains added "pre judgment interest" categorically denied by the arbitrator's May 17, 2016 order #7. Although, order # 7 is called "final" but its content (as well as the subsequent proceedings to add costs requested by Dr. Parmar) does not qualify it to be "final" according to the AHLA rules. Caption is not consistent with the content. Since the numbers in the award are not based on facts in the operating agreements, award should be vacated.]

Finally, "[a]fter careful consideration of the parties' briefs, emails, arguments at the June 3, 2016 hearing, and careful review of Order No. 7.," the arbitrator denied Respondents' Motion to Correct. (Order Denying Motion to Correct, June 21, 2016). All of this evidences purposeful, clear and decisive action on the part of the arbitrator to enter the Award as written. Arbitrator

Kelly was aware of and explicitly rejected the very same arguments Minhas now presents to this Court for a third time. At a bare minimum, there is a colorable inference that the arbitrator considered the facts surrounding the "buy-in" and Minhas' claiming ownership of A/R and cash on hand at that time, the course of dealing in terms of compensation and distribution of A/R and cash on hand during the years of joint ownership as well as the evidence concerning calculations requested by Minhas at the time of "buy-out" and determined that it was the parties intent that Parmar would receive 50% of the A/R and cash in the operating accounts along with the variance in MG production at the time of separation.

[The AHLA Rules of Procedures were governing when the arbitrator made, or did not make, those calculations. Once again, the South Carolina Arbitration Act was not germane during AHLA arbitration phase. By stating "At a bare minimum..." Dr. Parmar is offering speculative reasoning which the arbitrator possibly could have considered. This conflicts with the parties' "intent," which is spelled out in black and white and resides in the signed MG and MEC agreements.
By stating there is a "colorable inference..." Dr. Parmar proffers reasoning for the arbitrator without "parsing arbitrator's mental pathway" that arbitrator decided the award to make "Buy out" reflective of "Buy In." The following are the reasons which Parmar knew well, for the Buy Out to be different from Buy In, before he signed agreements on June 10, 2011 but deliberately elected to forget after May 30, 2014:

a) Parmar did not contribute equal matching amount to bank accounts and A/Rs on Jul 1, 2011 ("Buy In). Minhas left his own personal money $297,000.00 in MG and MEC. Dr. Parmar could not have done, and did not do that for Dr. Minhas on May 30, 2014 (Buy out).

b) Parmar without paying $300,000.00 on July 1, 2011 received 50% of MEC shares, started receiving distributions from MEC and those retained distributions were given to Dr. Minhas as payment for shares over 30 month period. This transaction did not complete until December 2013. MEC did not pay Dr. Minhas $300,000.00 on Jul 1, 2011 (Buy In). Dr. Parmar, rather than selling his shares to MEC as he agreed initially, since he purchased these shares from MEC, elected to change his mind and forced Dr. Minhas to buy personally (Buy out). At Buy out Parmar was not in a position to offer similar deal what he received from Minhas at joining (Buy In). He elected to apply clear error in drafting MG agreement where Balbir S. Minhas, instead of MEC, was written, to his advantage and did not choose to mirror "Buy Out" with "Buy In". He did not find the MG agreement "silent and ambiguous" at that time.

c) Parmar was given 4% interest income on MG and MEC purchase prices, despite he borrowed $300,000.00 from MEC (Buy In) and Parmar paid that amount over 30 month period with pre-tax dollars "Buy In." Minhas got no interest income. Minhas, in fact, paid 4% interest (About $45,000.00) in addition to $350,000.00 as principal amount, all in lump sum payment, on May 30, 2014 (Buy Out). "Lump sum" payment was not a requirement under 8.3(ii) of the Buy-Sell provision yet Parmar demanded that as a condition for the closing.

d) Parmar had no patients of his own to see on July 1, 2011. Dr. Minhas gave half of his patients to Parmar (Buy In). Parmar could not have offered (and did not) reciprocal number of patients to Dr. Minhas on May 30, 2014 (Buy Out).

e) Parmar declared at the "Buy In" that he was not buying bank accounts and A/Rs before he purchased shares of MEC and stocks of MG on June, 2011. No such declaration was made by him when he sold his shares to Dr. Minhas on May 30, 2014 "Buy Out". He bought MEC shares from MEC "Buy In" but forced the sale of his MEC shares to Dr. Minhas personally "Buy Out".

From the aforementioned, since Parmar received disproportionately more benefit on the "Buy In" while Minhas got more risk, it was explicit understanding and "intent" of the parties, as reflected in the Buy Sell provision Paragraph 8.3 that Minhas and Parmar would build reserves for MG and MEC and MG and MEC would retain bank accounts and A/Rs as company assets to continue their businesses on the "Buy Out."

Had Parmar put in matching $ 297,000.00 to bank accounts and A/Rs for MG and MEC, paid $300,000.00 for MEC shares to Dr. Minhas on Jul 1, 2011 and had he seen his own patients during about 3 years, then and only then, "Buy Out" could have been expected to match "Buy In." In that case, 8.3 (i) and (ii) would not have existed in the MG agreement.]

Whether the arbitrator misinterpreted the evidence is irrelevant to whether there is an evident miscalculation of figures. Minhas based his Application to Vacate the Award in part on the argument that "§3.8(ii) of the Midlands Gastroenterology agreement does not entitle [Parmar] 50% of operating accounts and/or accounts receivables." (Amended App. to Vacate, p. 11). That agreement was deemed ambiguous as to compensation with regard to accounts receivables and operating accounts, and the arbitrator necessarily found in favor of Parmar on the merits of that issue when he awarded him half of those accounts.

The standard required to modify an arbitration award is inadvertent error or mistake by the arbitrator. Section 15-38-140 is not an avenue for litigants to persuade courts to review the evidence and then reach a different result because it might be interpreted differently. Such an interpretation would completely frustrate the underlying purposes of the arbitration process. Based on the foregoing, I find the Award does not contain any inadvertent mistakes, errors, miscalculations or computational errors. I further find the arbitrator consciously declined to use

Minhas's accounting method to calculate the accounts receivable and operating accounts. Minhas's Motion to Modify the Award pursuant to S.C. Code Ann. §15-38-40 is Denied.

CONCLUSION

Having denied the Motion to Vacate the Award, the Award is confirmed. Therefore, it is ordered that the Arbitration Award be, and it hereby is, confirmed, and pre-judgment interest is assessed in favor of Respondent. It is further ordered that the Clerk of Court of Richland County be authorized and directed to enter judgment against Balbir S. Minhas, Midlands Gastroenterology, PC and Midlands Endoscopy Center, LLC, in the amount of $339,568.48, plus pre-judgment interest[9] at a rate of 8.75% per annum from the date of the Arbitrator's Award dated May 17, 2016 to January 18, 2017 in the amount of $22,385.94 for a total judgment of $361,954.42.

AND IT IS SO ORDERED.

February 16, 2017

The Honorable Jean H. Toal
Circuit Court Judge
Richland County

[9] In a similar case to the present dispute, *Fatigues, Inc. v. Varat Enters*, 813 F. Supp. 1336 (N.D. Ill. 1992) considered the issue of the award of pre-judgment interest from the date of the arbitrator's award. It is a U.S. District Court, Illinois District, case but applies South Carolina law and S.C. Code Ann. [§] 34-31-20(A) in concluding that pre-judgment interest was appropriate. Parmar sought interest in his motion and maintains it is appropriate.