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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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AUG 21 2018

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

SC Court of Appeals

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 II

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1 STATE OF SOUTH CAROLINA } COURT OF COMMON PLEAS NONJURY
2 COUNTY OF RICHLAND }

3
4 RAJINDER PARMAR, } TRANSCRIPT
5 PLAINTIFF, } OF
6 VS. } RECORD
7 BALBIR S. MINHAS, MIDLANDS }
8 GASTROENTEROLOGY, PC, AND } 2014-CP-40-6017
9 MIDLANDS ENDOSCOPY CENTER, LLC, }
10 DEFENDANTS. }

11 January 5th, 2015
12 Columbia, South Carolina

13 B E F O R E:

14 THE HONORABLE DeANDREA G. BENJAMIN, Judge.

15 A P P E A R A N C E S:

16 ERIC STEVEN BLAND
17 ESQ.
18 Attorney for the Plaintiff

19 CHRISTIAN STEGMAIER and JOEL W. COLLINS, JR.
20 ESQ.

21 Attorneys for the Defendants

22 CAROL THEUME
23 Circuit Court Reporter

24
25 Transcribed by Pamela E. Green, Circuit Court Reporter

I N D E X O F W I T N E S S E S

(There were no exhibits marked or testimony taken
during this hearing.)

PROCEEDINGS

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THE COURT: All right. So, what we have is Case
2014-CP-40-607.

Mr. Bland, you represent --?

MR. BLAND: Doctor Parmar, who's here.

THE COURT: Doctor Parmar.

All right. And Mr. Collins?

MR. STEGMAIER: Good morning.

THE COURT: Oh, good morning.

MR. STEGMAIER: I'm Christian Stegmaier. My partner,
Joel Collins, is here with me.

THE COURT: Okay.

MR. STEGMAIER: We're with the law firm of Collins &
Lacy. We have the privilege of representing the defendants
in this case, Your Honor.

THE COURT: All right. Have you-all worked out any of
the motions?

There's a motion to compel arbitration filed by the
plaintiff, and then defendant has a motion to dismiss and a
motion for an injunction.

MR. STEGMAIER: Yes, ma'am.

MR. BLAND: Your Honor, I think we should hear the
motion to compel arbitration cause it's the same core facts.
I filed the motion first and I think, based on how you'll

1 rule on the arbitration, it could moot the injunction.
2 Basically their injunction motion is the same. Don't grant
3 an arbitration request. My motion to compel arbitration is
4 to grant an arbitration request.

5 So, it really -- we're -- they're the same core facts
6 for all three motions. So, if you grant arbitration, it's
7 pretty much gonna end our other two motions.

8 THE COURT: All right. Any position?

9 MR. STEGMAIER: We don't disagree. Mr. Bland's motion
10 is sequentially first and they are all interrelated. The
11 dispute is focused on whether arbitration is required in
12 this case.

13 THE COURT: All right. Yes, sir, Mr. Bland.

14 MR. BLAND: I just want to make sure, Your Honor, you
15 have Doctor Parmar's affidavit and then we just got two more
16 from the corporate attorneys this morning. So, I can---

17 THE COURT: I have his.

18 MR. BLAND: ---just hand them up to you.

19 THE COURT: Let's see. You can, you can hand them up.

20 MR. BLAND: All right.

21 THE COURT: Thank you.

22 MR. BLAND: Those are the two and we have Doctor
23 Parmar's affidavit.

24 THE COURT: All right.

25 MR. BLAND: Your Honor, my partner, Ryan Richter, and I

1 have the privilege of representing Doctor Raj Parmar. He is
2 a gastroenterologist up until May 30th, 2014, when he was
3 a 50 percent owner. There's two entities that you're gonna
4 hear about. One is Midlands Gastroenterology. The second
5 entity is called Midlands Endoscopy Center. He was also a
6 50 percent owner in Midlands Endoscopy Center.

7 The defendants represent the Midlands Endoscopy Center,
8 Midlands Gastroenterology, and the other 50 percent owner
9 who is named Doctor Balbir Minhas.

10 My client purchased into -- and we'll call them MG for
11 Midlands Gastroenterology and MEC if Your Honor would, would
12 agree with that.

13 On June 30th, 2011, he purchased his 50 percent
14 interest in those companies. And when he purchased in those
15 two entities to become a 50 percent owner, there was an
16 arbitration clause in the MEC operating agreement, and there
17 was an arbitration clause in the MG shareholders' agreement
18 that he purchased.

19 And the arbitration clause provided that, for any
20 disputes between the parties concerning their relationships,
21 any and all disputes, it's a very broad clause, that the
22 dispute would be heard by the American Health Lawyers
23 Association.

24 Inside the shareholders' agreement and the operating
25 agreement, Doctor Minhas, who sold him his 50 percent

1 interest, maintained the right to repurchase Doctor Parmar's
2 interest out within three years. So, by June 30th, 2014,
3 he could invoke his right to purchase my client's ownership
4 interest out of those two entities and all he would pay is
5 the, the exact amount that Doctor Parmar paid plus interest.

6 Doctor Parmar paid \$50,000 for Midlands
7 Gastroenterology and 300,000 for Midlands Endoscopy Center.
8 And if he invoked that right and closed before June 30th,
9 2014, he would be able to pay that amount plus an agreed
10 upon interest rate. If it went beyond June 30th, 2014, it
11 would be a fair market value valuation to purchase amount.

12 So, I'd say, at the end of 2013, Doctor Parmar and
13 Doctor Minhas started having disputes with each other, and
14 Doctor Minhas, in February of, of this past year, decided he
15 was gonna purchase out Doctor Parmar from his ownership
16 interest. And the attorneys that represent the entities are
17 not these attorneys. They use to be Nelson Mullins, Cory
18 Manning and Ed White. I gave you their affidavits.

19 And Mr. White said that Doctor Minhas is gonna invoke
20 his right to purchase him out of his ownership interest.
21 Then we had a -- little disputes but we had a shareholders'
22 meeting and a, and a members' meeting on April 7th, 2014.
23 And it was decided okay, you're right. He, he has a right
24 to purchase out Doctor Parmar, and that closing was gonna
25 take place on June 3rd, June 15th of 2014.

1 In that, in the interim, the accountants, Burkett
2 Burkett & Burkett, would decide or determine how much
3 accounts receivable would exist as of the date of the
4 closing for work that Doctor Parmar had done and Doctor
5 Minhas had done but they had not collected on. And then
6 they would determine what the final bank account balance was
7 to be distributed to the parties. And then there was
8 some -- to determine how much his retirement account would
9 be and that he could purchase a car that was in the company
10 name individually. And that Donnie Burkett was gonna finish
11 that work probably after tax season, April 15th, by May
12 1st. A transcript was printed from those proceedings and,
13 next month and a half, no, no issues arose.

14 On May 28th, Ed White provided the purchase documents
15 to us for Doctor Minhas to purchase out Doctor Parmar's
16 interest. And, in that stack of documents, was the
17 settlement agreement where Doctor Minhas wanted Doctor
18 Parmar to release him of all liability for everything having
19 to do with his ownership. Meaning that once I purchase you
20 of your interest, you don't get any accounts receivable.
21 You don't get any of the bank account that you've
22 contributed to up till the date of closing. You don't have
23 any rights to your retirement account and you do not get to
24 purchase the car.

25 Well, on May 28th, when I got those documents, as you

1 can imagine, I wrote him back and said look, all we're
2 agreeing is the purchase of his ownership interest but not
3 what he's entitled to as a partner for accounts receivable,
4 for his bank account balance that he's entitled to
5 50 percent, and other agreements. And I said we're not
6 gonna close. They wanted to close on May 30th. And I
7 said, unless we're just limiting it to the purchase of his
8 ownership interest for the 350,000 plus interest, and that
9 the other issues of accounts receivable, the issues of bank
10 account, the car, and the retirement account remain open,
11 subject to mediation and arbitration, we're not gonna close.

12 On May 30th, Ed White, as the corporate attorney, and
13 if you read his affidavit, he sent me an email with revised
14 closing documents and there was no release. There was no
15 settlement agreement. It was merely for the -- a two page
16 agreement that said we will purchase -- Doctor Minhas
17 purchases this agreement for the \$350,000 in both entities
18 plus interest, and he says, in the email, all other issues
19 are still open between the parties. The companies are
20 willing to mediate the issues concerning any additional
21 compensation due to Doctor Parmar after Donnie Burkett
22 completes his accounting and the issue of the amount of
23 distributions payable to Doctor Parmar through May 30th.

24 Cory Manning, in our firm, will take the lead on the
25 mediation, and, if necessary, the arbitration of these

1 issues and with me assisting as necessary. And that email
2 is, is attached to Doctor Parmar's affidavit.

3 As the result of getting that email, that same day,
4 Doctor Parmar sold his ownership interest in MG and MEC, and
5 the issues of the accounts receivable, the issues of the
6 bank account, and the issues of the car and the retirement
7 account remained open. Cory Manning, who is the litigator
8 of that firm, Ed White is a corporate attorney, Cory Manning
9 took over the file and he sent emails, and they're attached
10 to Doctor Parmar's affidavit. And they're also referencing
11 Cory Manning's affidavit that I've, that I've stood up this
12 morning.

13 And Cory Manning scheduled a mediation in connection
14 with the agreement that was reached at the closing, and that
15 mediation was scheduled on August 8th with Tom Wilkes.
16 And we proceeded to wait for Donnie Burkett to finish his
17 final accounting to determine the accounts receivable and
18 the bank account balance and the other closing issues.

19 But low and behold, on July 15th, Joel Collins
20 appears. Mr. Collins, who now is representing -- saying he
21 represents Balbir Minhas, says I'm not sure I want to
22 mediate. I am not sure that we're ready to sit down. We
23 may want to arbitrate pursuant to the arbitration clause in
24 the, in the agreement with the AHLA. I said Joel, whatever
25 you want to do, that's fine.

1 The August 8th mediation day got canceled because
2 Mr. Collins said he had to be brought up to speed. When I
3 met -- Mr. Collins then asked me to meet with him. I met
4 with him. I went over the facts and he said, you know what?
5 Let's reschedule the mediation for September 8th with Tom
6 Wilkes. Just have him push it back a month. In reliance on
7 that, I went and I did.

8 When we were ready to mediate, I get a letter from Joel
9 Collins who says we're not gonna mediate and I said okay.
10 So, I went and I filed a demand for arbitration pursuant to
11 the operating agreement and the shareholder agreement with
12 the AHLA on September 30th, 2014, in connection with the
13 governing operating agreement and shareholder agreement.
14 Doctor Parmar paid \$800.00 for the requisite filing fee.

15 Upon the filing of the arbitration, Joel Collins says,
16 in a letter to me, hence the arbitration association, we're
17 not gonna arbitrate. We don't think we have to arbitrate
18 because, when Doctor Parmar purchased the interest from -- I
19 mean sold his interest to Doctor Minhas on May 30th, there
20 was an entireties clause that said that all disputes now
21 have been resolved and that that's it between the parties.

22 I then get Ed White who says, with his email, no, no,
23 no. No, the issues remaining, accounts receivable, the
24 issues on bank accounts, remain open. Mr. Collins then says
25 to me I'm not gonna participate in the arbitration.

1 So, we then file, in this Court, a complaint for
2 declaratory judgment on September 30th with a motion to
3 compel arbitration, which is before Your Honor, stating that
4 okay, look, the parties have a dispute. The governing
5 agreement's between them. The, the operating agreement and
6 the shareholder agreement have an arbitration clause. We
7 ask Your Honor to compel it in arbitration.

8 The arbitration now is moving forward with the AHLA but
9 Mr. Collins doesn't want to participate. But the
10 arbitration association says well, look, we have no
11 jurisdiction whether you participate or not. There was a
12 proper filing. They select the arbitrator. Mr. Collins
13 does the unthinkable and writes a letter to the arbitration
14 association and says I'm gonna sue you, the arbitration
15 association, I'm gonna sue the case manager, and I'm gonna
16 sue the, the regional manager of the arbitration association
17 for Unfair Trade Practices for -- if you go forward with
18 this arbitration. So, he's completely skunked himself and
19 his client out of the arbitration association.

20 He then files a motion for a preliminary injunction
21 with Your Honor requesting that the arbitration -- you issue
22 an order preventing the arbitration actions from going
23 forward. So, I, I say, to him, as a counsel of the Bar, I
24 have attorneys from Nelson Mullins who have represented that
25 what they said in their emails was indeed fact as they were

1 the attorneys for MG and MEC, that the issues that were
2 irrespective of the purchase of the ownership, the accounts
3 receivable, bank account, retirement account, which are in
4 the many hundreds of thousands of dollars as you can imagine
5 in a medical practice that grosses a couple millions dollars
6 a year, would be arbitrated. Mr. Collins actually made me
7 go get affidavits from these gentlemen that you have before
8 Your Honor that said yes, they set those up in their emails.
9 Yes, they've made them as counsel for MG and MEC and they
10 did not intend to mislead me or my client or any other
11 recipient regarding the issues contained therein.

12 Your Honor, MG and MEC are bound by the judicial
13 admissions by their attorneys. The attorneys are Nelson
14 Mullins, who was the counsel for these entities. There's a
15 duty of candor to opposing counsel that, if you're gonna say
16 something in an email that you know is a lie or you're
17 intending to induce something -- opposing counsel to do
18 something, we would never have closed that transaction on
19 May 30th if those other issues of accounts receivable,
20 bank account because my client has practiced for three years
21 and built up a serious receivable that it takes some
22 insurance companies 120 days to pay. So, for the work that
23 he did in the beginning of the year up through May, that
24 hadn't -- that revenue hasn't come in because it takes 120
25 days for some of these third party payers to pay.

1 He never would of closed and those counsel know it
2 because they redirected the agreement and excluded a release
3 and a settlement agreement. And now Mr. Collins has
4 fomented litigation, has caused inordinate expense of
5 actions to be filed in both the Circuit Court and in
6 arbitration when we agree to go to arbitration based on the
7 governing operating agreements.

8 In our motion to compel arbitration, there is a legion
9 of case laws that have been unbending since the 80s that
10 says that the parties have a freely negotiated arbitration
11 clauses, especially between professionals, that do
12 understand when they have a duty to read a document in our
13 state, that they're bound by an arbitration clause. These
14 are two 50 percent owners. And that we went to the AHLA
15 after Mr. Collins, on July 15th, said that he thinks that
16 this matter should be arbitrated.

17 But once we filed it, and once he wrote the letter
18 threatening to sue them, he knows that his client's in deep,
19 possibly in deep trouble if he has to go arbitrate in front
20 of an entity, an arbitrator, and a case manager that he
21 threatened to sue for Unfair Trade Practices if they go
22 forward for the arbitration.

23 Your Honor, this is as clear as an arbitration clause
24 as in any document I've ever seen in an operating agreement
25 or shareholder agreement. This matter needs to be just

1 compelled back into arbitration. There's an ongoing matter.
2 That's all we ask for in our declaratory judgment.

3 We aren't suing. We're not waiving our right to
4 arbitrate. We haven't done any discovery. We're just
5 asking for this court to look at the governing agreements
6 and say y'all, when you bought into this thing, you agreed
7 that you would arbitrate all your disputes. And that's all
8 we ask, Your Honor.

9 THE COURT: All right. Thank you.

10 Yes, Mr. Stegmaier.

11 MR. STEGMAIER: Good morning, ma'am.

12 THE COURT: Good morning.

13 MR. STEGMAIER: Briefly, before we get started with the
14 crux of the argument, we, we want to note, for purposes of
15 the record, obviously argument by counsel is not admissible
16 and should not otherwise be considered as evidence in this
17 case.

18 As well, we would object to anything, any statements
19 made by Mr. Bland during the course of his argument that
20 would be hearsay that as it relates to, among other things,
21 conversations with Mr. Burkett, the accountant, as well
22 anything relating to conversations between Mr. Bland and
23 Mr. Collins are certainly outside the scope of the court's
24 consideration.

25 As well, there's mention made here of using the term of

1 art of judicial admissions. There have been no judicial
2 admission -- admissions in this case.

3 Stated succinctly, as Mr. Bland noted for the Court,
4 this is a dispute between two doctors. These doctors are
5 former partners. They are partners in two practices,
6 Midlands Gastroenterology, which is a PC, and then Midlands
7 Endoscopy, LLC.

8 The party's business relationship, as noted by
9 Mr. Bland, ended on May 31, 2014, and this was ended by, by
10 way of formal written agreement. As Mr. Bland noted, in
11 addition to his motion to compel arbitration, we
12 subsequently filed a motion to dismiss the action as well as
13 a subsequent motion for injunctive relief or, in the
14 alternative, a stay pursuant to statute.

15 This dispute, the, the basis for our motion for
16 dismissal as well as our motion for injunctive relief, is
17 this:

18 Is that the party's dispute pertains to the parameters
19 of the sales agreement.

20 There's obviously very large dispense here about what
21 is operative in, in this case as far as what the course --
22 what the Court should look at concerning the matter of
23 whether arbitration should be compelled.

24 Mr. Bland makes references to, 2011, to sale
25 agreement -- purchase agreements by Doctor Parmar, which

1 they state contain an arbitration agreement. But what we
2 are focused on, Your Honor, is this is -- the documents that
3 were operative that concern or relate to the active sale of
4 Doctor Parmar's interests in both the professional
5 corporation, Midlands Gastroenterology, as well as Midlands
6 Endoscopy, which is the LLC.

7 To reference to the Court, looking at our motion to
8 dismiss, Page 4, as it pertains to the matter -- Midlands
9 Gastroenterology, there are two operative phrases in here
10 that the Court should take notice of. Specifically, on
11 Page -- on Paragraph 10 of, of the stock sale agreement for
12 Midlands Gastroenterology, this agreement shall be
13 interpreted, construed, and enforced in accordance with the
14 laws of South Carolina. Any dispute arising between any of
15 the parties hereto regarding the subject matter of this
16 agreement shall be subject to the exclusive jurisdiction of
17 the Federal and State Courts within the State of South
18 Carolina.

19 Now, Mr. Bland states I don't know how it could be any
20 more clear than arbitration is required or mandated in this
21 case. But, if we look at the language of the contract that
22 governs the sale of this interest, our position is we don't
23 know how it could be anymore clear that the exclusive
24 jurisdiction of the dispute between the corporations and
25 Doctor Minhas and Doctor, Doctor Parmar are governed by the

1 laws of the State and should be litigated within the Courts
2 in this State.

3 As well, on Paragraph 4 of the stock sale agreement,
4 this agreement is the entire agreement among the parties
5 hereto with respect to the transaction contemplated hereby
6 and supercedes all other prior or contemporaneous agreement
7 or understandings with, whether written or oral, among the
8 parties or any of them with respect to the subject matter
9 hereof.

10 This is first year of law school, Your Honor, as it
11 relates to the law of contract. This agreement could not be
12 anymore clear about what was signed by the both -- by both
13 parties and Doctor Parmar was represented. Doctor Parmar is
14 a sophisticated individual. They've read and understood
15 what was provided to them and they cited evincing neutrality
16 agreement, obviously, one of the elements and one of the
17 necessities that must be, that must be demonstrated with
18 regard to a, a legally binding agreement in South Carolina.

19 As well, concerning the, the Midlands Endoscopy Center,
20 there was a separate agreement that was signed between the
21 parties and that's Exhibit 1 to the motion to dismiss by the
22 defendant in this case. Is -- in Paragraph 8 in that
23 agreement says this agreement shall be interpreted,
24 construed, and enforced in accordance with the laws of South
25 Carolina. Any dispute arising between any of the parties

1 hereto regarding the subject matter of this agreement shall
2 be subject to the exclusive jurisdiction of Federal and
3 State Courts within, within the state of South Carolina.

4 Again, Doctor Parmar, a sophisticated individual,
5 signed, who was represented, signed his name evincing his
6 understanding of the agreement to that.

7 Your Honor, what we are not here today to do -- to
8 argue are -- is, is anything related to the merits. There's
9 obviously a fundamental disagreement between the parties as
10 it pertains to Doctor Parmar's entitlement to accounts
11 receivable and capital accounts and this motor vehicle that
12 was purchased by the corporation.

13 All we seek here in this case is a ruling by this Court
14 stating that, that this, that this dispute should be
15 adjudicated pursuant to the law of South Carolina by the
16 Courts of this State. This -- the whole reason why we are
17 here today is that a declaratory judgment action was filed,
18 which was timely answered by this -- by the defendants in
19 this action, and we have filed a counterclaim for issues
20 that are separate and distinct from the, from the, from the
21 initial dispute. But it's a tenable counterclaim that our
22 client has an interest in adjudicating and having decided by
23 a jury of the Courts of this State.

24 And so, there are issues, in addition to the matter of
25 the accounts receivable and account, accounts and the motor

1 vehicle that must be resolved. And our position is that it
2 should be done in this State.

3 An so, stated succinctly, Your Honor, again, our
4 position is that what is operative in this case are the sale
5 agreements that were executed by Doctor Parmar and Doctor
6 Minhas on May 30th. Both of them are signed as to
7 arbitration and both of them expressly state that any
8 disputes pertaining to the divestment of Doctor Parmar's
9 interest in these companies will be adjudicated by the
10 Courts of this State.

11 Thank you, ma'am.

12 THE COURT: Okay.

13 MR. BLAND: Your Honor, may I reply?

14 THE COURT: Yes, sir.

15 MR. BLAND: Your Honor, I totally agree with defendant
16 that the sale documents concern Doctor Parmar's purchase of
17 his ownership interest and what will be paid for that. And
18 we are not disputing that he got paid the right amount of
19 money. If we were disputing that, the transaction documents
20 say we would be in Federal Court.

21 What we're dealing with is a dispute as to his
22 compensation as an owner prior to the purchase, and
23 defendant's argument only makes sense if this email is
24 false. And this is the email from Ed White, which he gave
25 his affidavit this morning, that says all other issues,

1 other than ownership, will be arbitrated and that is exactly
2 in direct reliance on that and that is an attorney
3 admission.

4 I, I used the word judicial admission. I apologize to
5 my opposing counsel. It is an attorney admission and he
6 clearly said it and he gave an affidavit as an officer of
7 this Court this morning. He gave it on Saturday. I gave it
8 to Your Honor this morning.

9 It -- it's, it's as clear as day. I mean we have an
10 unforcible arbitration clause, and nobody's getting into the
11 merits of the dispute. But that, that dispute needs to be
12 heard in the American Health Lawyers Association where the
13 parties agreed to do it in their operating agreement and in
14 their shareholders' agreements.

15 The only way their argument makes sense is if Ed White
16 would of given an affidavit or been here in Court and said I
17 didn't mean what I said in that affidavit. I didn't intend
18 for Mr. Bland or Doctor Parmar to rely on that and that the
19 transaction document released everything and there's no
20 further disputes between the parties. But he wrote an email
21 and said we are going to arbitrate, and, when Mr. Collins
22 came on board, he said we're gonna arbitrate.

23 Now, they don't want to do it. You know why?

24 Cause it's pretty costly to arbitrate in the American
25 Health Lawyers Association. Arbitrators charge almost a

1 thousand dollars an hour. The filing fees for their
2 counterclaims are gonna be in thousands of dollars. And so,
3 they want to be in court where they pay \$175.00.

4 But Your Honor, push it into arbitration. That's what
5 the parties agreed to. That's what the case law says.

6 THE COURT: All right.

7 MR. BLAND: Thank you very much.

8 MR. STEGMAIER: Thirty seconds, Your Honor?

9 THE COURT: Yes, sir.

10 MR. STEGMAIER: The default rule in this country, one
11 of the reasons why they fought the Revolution, the war for
12 Independence in this country, was the right to a trial by
13 jury.

14 There's -- if, if anything -- at most, there's an
15 ambiguity here. And if there is an ambiguity, the default
16 goes to the Seventh Amendment rather than some contract
17 relating to or discussing arbitration.

18 But, again, Your Honor, the central theme is that what
19 governs this dispute, and remember the language is any
20 dispute, what governs this dispute is the sale agreements
21 between the parties and the sale agreement is silent as to
22 arbitration and the sale agreement is explicit as it relates
23 to disputes being resolved by the courts of this state.

24 Thank you, ma'am.

25 THE COURT: All right. Thank you. If you --?

1 MR. BLAND: A moment of redirect, Your Honor?
2 Proposed orders?
3 THE COURT: I'm going to -- I need to take a look at
4 everything and then I'll get back with you and my, and my
5 law clerk will get back, back with you.
6 MR. BLAND: That will be great.
7 MR. STEGMAIER: Yes, ma'am. Thank you.
8 THE COURT: Thank you.
9 MR. BLAND: Thank you so much, Your Honor.

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 5th day of January, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 2nd, 2017



PAMELA E. GREEN, Court Reporter

State of South Carolina)
County of ; Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2014-CP-40-06017

Rajinder Parmar,
Plaintiff,

vs.

Balbir S. Minhas; Midlands)
Gastroenterology, PC; Midlands)
Endoscopy Center, LLC,)
Defendants.)

Transcript of Record

November 29, 2016
Columbia, South Carolina

B E F O R E:

The Honorable Jean Hoefer Toal, Judge

A P P E A R A N C E S:

E. Wade Mullins, III, Esquire
Caitlin C. Heyward, Esquire
Attorneys for the Plaintiff

John S. Nichols, Esquire
James E. Smith, Jr., Esquire
Christian Stegmaier, Esquire
Attorneys for the Defendants

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
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No exhibits introduced.

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1 THE COURT: All right, this is motion for relief from
2 order or in the alternative a motion. This is -- well,
3 it's styled as *Parmar vs. Minhas* but the underlying suit is
4 Minhas against Parmar as I understand it. It's all the
5 same numbers, correct?

6 MR. NICHOLS: Yes, ma'am.

7 MR. MULLINS: I think it's actually the reverse to
8 that, though, the underlying action.

9 THE COURT: The underlying action, as I would look at
10 it, is Minhas against Parmar. Is that right or wrong?

11 MR. STEGMAIER: Well, with it -- I'm sorry.

12 MR. MULLINS: Well, the -- you're referring to the
13 arbitration proceeding.

14 THE COURT: Yes.

15 MR. MULLINS: Which was filed by Dr. Parmar. Dr.
16 Parmar filed for arbitration.

17 THE COURT: Right, but the person who's asking for
18 relief is -- the actual plaintiff, if you want to put it in
19 those terms, is Minhas, as I understand it, correct?

20 MR. MULLINS: Dr. Minhas has filed a motion to vacate
21 or modify the arbitration award; Dr. Parmar has filed a
22 motion to confirm the arbitration.

23 THE COURT: All right.

24 MR. NICHOLS: Judge, I think the caption got flipped.

25 THE COURT: I got you. Well, the moving party, then,

1 is Parmar or Minhas? Minhas was the defendant in this
2 original action, right?

3 MR. NICHOLS: Yes, ma'am, and unfortunately the
4 caption got flipped whenever the application was filed with
5 the circuit court. It actually should ---

6 THE COURT: But the party that was trying to get half
7 of the accounts receivable and other emoluments was Parmar?

8 MR. NICHOLS: Dr. Parmar, yes, ma'am.

9 THE COURT: And the defendant in that action was
10 Minhas.

11 MR. NICHOLS: Yes, ma'am.

12 THE COURT: And then they went through an arbitration,
13 and now Mr. Minhas is seeking -- or Dr. Minhas is seeking
14 relief from the arbitration award.

15 MR. NICHOLS: That's correct. There was a -- and this
16 -- I'm John Nichols appearing here with James Smith and
17 Christian Stegmaier on behalf of Dr. Minhas and the
18 remaining -- the applicant/defendants in this matter. But
19 I just wanted to clarify, Judge Toal, that I believe that
20 the caption got flipped whenever the application to review
21 the arbitrator's award was filed. It probably should be
22 flipped back. I don't know if that can be done at this
23 point, but in order to maintain consistency.

24 THE COURT: Yes. Certainly the CP number refers to a
25 cause of action that was filed here originally by ---

1 MR. NICHOLS: Dr. Parmar.

2 THE COURT: --- Parmar, and that's the way it shows up
3 on my docket at the present time, but some things that have
4 been filed here have been filed with a flip.

5 MR. NICHOLS: Yes, ma'am.

6 THE COURT: All right. So, the moving party is your
7 client, Mr. Nichols, who seeks relief from the arbitration
8 award, right?

9 MR. NICHOLS: That's correct, Judge Toal.

10 THE COURT: All right. You may proceed.

11 MR. NICHOLS: And if the court will permit, Mr. Smith
12 and I have now entered into the case. We would like, if
13 the court permits, to divide the arguments. I would like
14 to present argument on behalf of Dr. Minhas as to why we
15 believe that the court has the authority to review this
16 arbitration award, to vacate it or alternatively to modify.
17 Then Mr. Smith will discuss what we believe are procedural
18 defects in the case. And then Mr. Stegmaier, who was at
19 the trial of this matter, is much more familiar with the
20 doing than either Mr. Smith or I, will be prepared to
21 answer any questions about the merits if you get there, if
22 that's permissible.

23 THE COURT: That's fine.

24 All right, counsel.

25 MR. MULLINS: Your Honor, I mean, I, I would think

1 that would be somewhat unusual, but -- and I don't -- I've
2 got Ms. Heyward here with me. Maybe I'll have her argue a
3 piece of it, but I -- but they're, but they're going to
4 have three, essentially three bites of the apple is what
5 I'm hearing.

6 THE COURT: I don't look at it that way, and if one of
7 them gets repetitive of the other, I'm going to certainly
8 ask them to move on, but you won't be disadvantaged. You
9 and Ms. Heyward will have a complete chance to present your
10 complete case. And when I was in y'all's position, I
11 preferred to have it all aired out on their side. Then I
12 could go through the whole thing and not have this awkward
13 back-and-forth. So, you won't be disadvantaged in any way.

14 MR. MULLINS: Thank you, Your Honor.

15 MR. NICHOLS: Thank you, Judge.

16 THE COURT: All right, Mr. Nichols, you may proceed.

17 MR. NICHOLS: And we certainly aren't seeking any more
18 than one bite at the apple as we are before the court.

19 Judge, I think it's obvious that the first thing that
20 you have to decide is do you have the authority to address
21 this. We argue in a memorandum that you do have that
22 authority under both Section 15-48-130 and 15-48-140.
23 What, what those provisions state are that where the
24 arbitrator, either the award was procured by -- and I'm
25 going to skip the first two because we're not under

1 corruption or fraud -- undue means or where the arbitrator
2 exceeded the power.

3 Now, South Carolina has recognized one common-law
4 ground which is a manifest disregard of the law, which was
5 the case I actually argued in front of the *C-Sculptures vs.*
6 *Brown* case. We're not arguing that there was a manifest
7 disregard of the law, but I would proffer to you that
8 courts around the country have stated that where an
9 arbitrator engages in what the Nevada court in one case has
10 described as a manifest disregard of the agreement, that
11 the court can view that as an arbitrator acting with either
12 undue means or outside of their authority.

13 The idea is that what the arbitrator did here was
14 fashion a remedy that rewrote the parties' agreement, and
15 we believe that under those circumstances, we fall within
16 the purview of 15-48-130(a)(i) and 15-48-130(a)(iii) for
17 purposes of vacating the arbitrator's award. Or we fall
18 under 15-48-140(iii) -- excuse me, (a)(iii) for purposes of
19 modifying the award because the award is imperfect.

20 We believe that what the arbitrator did here was look
21 at the agreement. The agreement had three paragraphs,
22 which I'm sure you're familiar with. Paragraph 1 said if
23 you work up to a year, this is what you get. Paragraph 2
24 said if you work one to three years, this is what you get:
25 you get your money back plus 4%. Paragraph 3 then says

1 this is what you get if you work past three years. It's
2 our position that the arbitrator ignored the plain language
3 of those terms in fashioning a remedy which will end the
4 remedies available under 3 into folding it into 2.

5 We believe that that falls within what some courts
6 around the country -- and I can give you some cites, Judge.
7 We did not cite these in the memo. I would be happy to
8 prepare and provide the court with a supplemental memo, but
9 these are -- for example, in a case called *Clark County*
10 *Education Associates vs. Clark County School*, and I can
11 hand up a copy if you'd like, Judge.

12 THE COURT: You may.

13 MR. NICHOLS: And I've got a copy for Mr. Mullins.
14 Let's see. I'm going to try to handle this a little
15 carefully, Judge; I've been a little under the weather, and
16 I certainly don't want to spread that.

17 (A PAUSE.)

18 THE COURT: Thank you, sir.

19 MR. NICHOLS: Thank you, and what the court said in
20 *Clark*, they viewed it as two common-law grounds, and I will
21 submit to you that the Arbitration Rule 10, Nevada, are
22 similar to statutes governing arbitration -- our Uniform
23 Arbitration Act. But they recognize two, what they call
24 common-law grounds which a court may review, private
25 binding arbitration award, and so one of those being

1 manifest disregard of the law, but the other is the manner
2 -- whether the award is arbitrary, capricious, and
3 unsupported by the agreement. And what they said was that
4 that, that standard ensures that the arbitrator does not
5 disregard the terms of the arbitration agreement. And we
6 believe that South Carolina statute should, should be read
7 to incorporate a similar means for reaching the arbitration
8 agreement.

9 THE COURT: Have you got any South Carolina case where
10 the State Supreme Court has reviewed an arbitration
11 agreement in that way?

12 MR. NICHOLS: No, ma'am, I do not. I don't have one
13 where the court's rejected that. I do have -- there's
14 plenty of case law, as you're well aware, *Gizelle vs. Hart*
15 and some others, where courts do favor arbitration, but
16 that policy shouldn't underlie or should not undermine a,
17 a, common-law defense where an arbitrator goes outside of
18 the four corners of the agreement or rewrites or blue
19 pencils the agreement in order to fashion a remedy that's
20 not contemplated by the parties.

21 THE COURT: Well, I'll just tell you that my own
22 experience is that every time we get -- and we don't get
23 them super often -- but every time we get an arbitration
24 case up to the highest court in South Carolina, one of the
25 big arguments is the arbitrator has blue penciled, the

1 arbitrator has changed the nature of the agreement, and I
2 don't know of a case where we bought that argument.

3 MR. NICHOLS: I'm not aware of one where you've
4 expressly rejected exactly what I'm arguing here, which was
5 how it was presented under the Nevada court. I'm just not,
6 not ---

7 THE COURT: Well, you're arguing that somehow because
8 there's a common-law argument, that trumps the provisions
9 of the arbitration act with respect to the arbitrator's
10 authority. But I don't know of any case where we've held
11 that. In fact, there are several cases where we have not
12 allowed the additional request to review on the basis of
13 other kinds of legal theories that the arbitrator refused
14 to consider or did not consider on the basis that if it's
15 an arbitrable controversy, what the arbitrator does
16 controls unless the specific terms of the statute are not
17 complied with. And those have to do with fraud and those
18 kinds of things. And what you are arguing is to take a
19 look at the law that was used and the reasoning that was
20 used in the construction of this agreement. And I need
21 some help from y'all as to how in the world I could do
22 that.

23 MR. NICHOLS: And, and, Judge, if -- what I'm trying
24 to do is open the door, which I realize is a very difficult
25 door to open. I understand that. I understand the court's

1 role in reviewing an arbitration award, but what I'm trying
2 to do is sort of set the table, and then I think Mr. Smith
3 will answer that.

4 THE COURT: Well, he's talking about procedural
5 irregularities.

6 MR. NICHOLS: Right.

7 THE COURT: I've read y'all's papers enough to know
8 what he's going to get into, but I'm back at the front end.

9 MR. NICHOLS: Right.

10 THE COURT: You're asking me to take a look at this
11 agreement on the basis of the manifest disregard by the
12 arbitrator of the law as you see it and the disregard of
13 the terms of the agreement, also known as blue penciling or
14 rewriting the agreement. And that's what I need some help
15 with because those are two very traditional arguments for
16 overturning an arbitrator award that have been argued many
17 times. I don't know that there's language from the case
18 that, as you try to term it, specifically rejects that.
19 But the whole tenor of what the South Carolina Supreme
20 Court has dealt with ever since *Turner Painting* and that
21 line of cases from the U.S. Supreme Court, *Conception*, all
22 the rest, there's been a steady move by the U.S. Supreme
23 Court towards taking out of the hands of state courts the
24 ability to secondguess or overlook what the arbitrator did
25 unless it's influenced by fraud or some other kind of

1 tremendous defect.

2 He's going to argue the defects, but I'm not there
3 yet. I'm back at square one, which is how does a state
4 court, everything else being regular, have the ability to
5 look at what the arbitrator did and decide it's manifestly
6 in disregard of the law and the agreement the parties made,
7 and particularly when both parties agree that the award be
8 made without reasoning. And it was only after it didn't go
9 your client's way that suddenly we've got all these
10 problems with the form of the order. The form of the order
11 was something the parties agreed to.

12 MR. NICHOLS: Well, it doesn't ---

13 THE COURT: It doesn't help me much about reasoning
14 one way or the another because it's all simply a
15 declaration of award.

16 MR. NICHOLS: I, I, I spent some time looking around
17 the country at the way other courts have looked at this
18 issue, which we're not saying manifest disregard of the
19 law. We're essentially saying basically a disregard or
20 exceeding the bounds of what, what was within the four
21 corners in the agreement.

22 THE COURT: Well, the *Clark County*, for example,
23 that's a typical teacher employment dismissal case with the
24 overlay that the contract happens to be a negotiated union
25 contract, but basically that's an area of law we're real

1 familiar with here because we have a Teacher Employment
2 Dismissal Act that has within it certain procedural
3 requirements that must be met and certain time deadlines
4 that must be met by way of having a disciplinary hearing
5 before a teacher can be terminated. And then the teacher
6 has the ability to move up the chain of review, including
7 ultimately the court review.

8 *Clark County* is a pretty simple thing. They didn't
9 follow the state statutes and the union contract's
10 specification of how many days you were supposed to have to
11 deal with the disciplinary act and disciplinary hearing in
12 the first place. So, that's why that case got reversed, as
13 I looked at it.

14 MR. NICHOLS: Yeah, and ---

15 THE COURT: Am I right?

16 MR. NICHOLS: You are and, in fact, in fairness I
17 think actually *Clark County*, the actual agreement, the
18 union agreement actually said and the arbitrator may not do
19 the things that, you know -- for instance, an arbitrator
20 can't go outside the agreement and fashion some other
21 remedy.

22 THE COURT: Exactly.

23 MR. NICHOLS: But that, but that was within the four
24 corners of their agreement.

25 THE COURT: Of the agreement. Here, you know, what

1 you've simply got -- and I've divined this mostly by the
2 arguments that the parties made at the time of this
3 arbitration. You've got a big disagreement between the
4 parties as to what this agreement means between them and
5 whether the agreement accommodates some award of the
6 benefit that your client got by having access to the
7 accounts receivable and the other cash in the bank type
8 matters. And the arbitrator decided that the implication
9 of the agreement was that the parties should split that.
10 He performed a 50/50 split, as I understand.

11 MR. NICHOLS: Which was, which was, as you say, an
12 implication of the agreement, but that was actually an
13 expression of the agreement in paragraph 3 if he had
14 survived three years, where the party used a different
15 formula. And I think what the arbitrator was saying, well,
16 I think it's a better idea if, if in number 2 where they're
17 between one and three years, if we use that formula. But
18 the parties had debated that. I think we can infer that
19 the parties had debated that and decided that if Dr. Parmar
20 survived three years and passed three years, that would be
21 the implication of the agreement. But he had to get to
22 three years and he didn't, and they knew how to write that
23 because they wrote it in part 3. They expressly excluded
24 it in part 2 where they said that the remedy will be a
25 returning of your 4%.

1 And so my, my role here is to say -- and I've got
2 other cases around the country I'd be happy to hand up --
3 that courts view that when the arbitrator disregards the
4 expressions within the four corners of the complaint, they
5 look at it as either he's exceeded his authority, which is
6 a ground under the statute, Section 15-48-130(a)(iii). Or
7 it's been imperfectly executed, which is a statute ground
8 under 15-48-140(a)(iii) which allows you to modify in order
9 to -- and I understand that courts aren't supposed to sit
10 as super arbitrators, but courts can't sit back and watch
11 when what, what ---

12 And I'm going to say something outrageous. What if he
13 had said and, Dr. Minhas, you're ordered to give Dr. Parmar
14 an airplane. That's not anywhere in the agreement, and we
15 submit that the remedy that he provided is not stated in
16 that paragraph 2, (ii). And so when a -- had he done that
17 -- we can't -- we don't just sit back and say, well, that
18 was within his authority to fashion that remedy and the
19 courts can't go behind it. When he ignores the expressed
20 language in the four corners of the document, then I think
21 these other courts around the country have viewed those
22 provisions of the statute allowing a judicial review of an
23 arbitration award for a modification of an arbitration
24 award to serve as the vehicle.

25 Nevada has expressed it as a common-law exception or a

1 common-law additional ground, but other courts -- for
2 instance, I've got a case out of Idaho in which they
3 pigeonhole it under the he exceeded his power. It's the
4 very same thing. He, he ignores the terms of the
5 agreement.

6 Got a case out of New Jersey. New Jersey has been
7 very active in this area, and New Jersey's statute is very
8 similar to ours. I will candidly tell you it's a little
9 different, but for these expressed grounds for reviewing,
10 they're -- it's identical to ours. And New Jersey, I've
11 got, I've got one case I'm prepared to hand up, *Grover vs.*
12 *Universal Underwriters*, but there they talk -- they, they
13 put it under the undue means.

14 Now, our court has so far said undue means is similar
15 to fraud or some other bad action. That's because -- I
16 think you, you viewed those -- that language in the series,
17 corruption, fraud, or other undue means, so you view that
18 as some sort of bad action. But I will tell you that New
19 Jersey, which has the exact same language, has viewed this
20 as an undue means.

21 There is a case of the Fourth Circuit, *Patent vs.*
22 *Signature Insurance Agency*, and again I'm ready to hand up
23 a copy if you'd like of all these cases. You know that
24 case, it says: When the arbitrator ignores -- if you don't
25 mind me reading?

1 THE COURT: Not a bit.

2 MR. NICHOLS: When the arbitrator ---

3 THE COURT: And I don't mind your handing up any cases
4 either after you've concluded this part of the argument or
5 whatever.

6 MR. NICHOLS: In fairness, in fairness to Mr. Mullins,
7 I'm raising -- I'm arguing things that we don't have in our
8 memo. He has not heard this or seen this yet, and if I'm
9 sure if I were he, I would be making some hay about that.
10 But, but this is in the general nature of what we've argued
11 here. We may not have expressed it or articulated it the
12 best that we could in the memo, but this is what we've been
13 trying to say all along, Judge Toal, is that what the
14 arbitrator has done is gone outside the four corners of
15 this agreement and fashioned something that the parties
16 considered but didn't, didn't write into their agreement.
17 And what, what the Fourth Circuit said in the *Patent* case:

18 When the arbitrator ignores the unambiguous
19 language chosen by the parties, arbitrator simply
20 failed to do his job. Where the arbitrator
21 amended or altered the agreement, he acted
22 without authority. Court found the arbitrator's
23 ruling resulted in an award that simply was not
24 rationally inferable, inferable from the
25 contract.

1 And so that's what we submit, and I'll be happy to
2 hand all of these cases up. I've got a case out of the
3 Eighth Circuit, *Missouri River Services vs. Omaha Travelers*
4 *Nebraska*, and in that case they said: An arbitrator is not
5 free to disregard the unambiguous language and craft their
6 own remedy.

7 And, Judge, I'm trying not to get too close to you
8 because I'm ---

9 THE COURT: I'm around grandchildren all the time. If
10 I catch anything, it's not going to be adult germs. It's
11 going to be virulent kid germs.

12 MR. NICHOLS: This was a gift from my grandson. So,
13 and I'll hand up a copy of the Fourth Circuit case of
14 *Patent vs. Signature*. And I think I discussed the Idaho
15 case, *Norton vs. California Insurance Guarantee*
16 *Association*, and that's the case where they use the
17 arbitrator exceeded his powers under these circumstances.

18 And, and in fairness, some of these courts have
19 articulated the rule but not applied it in a particular
20 case. And I realize that, you know, that's, that's
21 something that could happen here, but we believe that when
22 you look at, you look at some of the documents that are
23 attached to the responses, the responsive memo that Dr.
24 Parmar filed, there is, there is, I think, a memo from Mr.
25 White to Mr. Bland in which he said that they talked about

1 accounts receivable and he drafted the agreement. They
2 didn't want that in there. I'm kind of paraphrasing.

3 I've read a lot of stuff in this case, and I realize
4 you have, too. But I'm going to end with another case
5 called *Yusuf vs. Toys "R" Us*, and essentially under the
6 *Yusuf* case -- this is under the Federal Arbitration Act.
7 This is a case out of the Second Circuit. I realize FAA is
8 somewhat different from the South Carolina act, but we
9 always look to the FAA for guidance. It says it may be
10 vacated under the FAA:

11 In the limited circumstances where the
12 arbitrator's award is in manifest disregard of
13 the terms of the agreement, the court will
14 overturn the award where the arbitrator merely
15 makes the right noises, noises of contract
16 interpretation while ignoring the clear meaning
17 of the contract terms.

18 My job here today is to persuade you that this is a,
19 this is a reason that the law ought to apply, even
20 construing the statute in order to allow the judiciary to
21 have some governance, some type of check on what an
22 arbitrator does in a case because if, if not, then, you
23 know, the arbitrator can pretty much -- and I, I realize
24 that I'm making an argument that you've heard many, many
25 times, but we're making it in a case that has some pretty

1 powerful facts.

2 And it's our position that 15-48-130 and 15-38-140
3 against the backdrop of these cases from other
4 jurisdictions -- I do not have a South Carolina case; I
5 don't one going the other way either -- that, that they
6 allow you under this statute to review what the arbitrator
7 did here. I'll answer any questions about that, Judge.

8 THE COURT: Well, let's turn now to Mr. Smith.

9 MR. SMITH: Thank you, Your Honor. May it please the
10 court? I will pick up where Mr. Nichols left off and, and
11 say that the court, I believe, does have the authority.

12 A contrary position would be, Your Honor, you know,
13 if, you know, the parties negotiated as they did in this
14 case to have an arbitration provision and, and give up
15 their recourse to the court to make in that -- prescribed,
16 as they did in here, exactly how they agreed to do that.
17 And it was required under their agreement that it be
18 according to the H -- AH -- AHLA rules, that being the
19 American Health Lawyers Association alternative dispute
20 rules, and that those rules apply and not the South
21 Carolina Uniform Arbitration Act, which they were very
22 clear to say in the event AHLA rules are no longer in
23 effect, only then would this arbitration be governed by the
24 Uniform Arbitration Act. Your Honor, you can get to the
25 relief that we are seeking based on 15-48-133, the

1 arbitrator exceeded their powers because their -- the
2 powers that the arbitrator had are governed very clearly by
3 AHLA. And almost in every occasion where the rule applied,
4 this arbitrator failed to comply with that. And without
5 having this recourse, once they decide that they're going
6 to, you know, no longer be able to pursue remedies in court
7 and turn to an arbitrator, they have to be held to account
8 within the agreement that is established. Otherwise, they
9 are not getting the benefit of what they agreed upon, and
10 all substantive due process rights that they established
11 are thereby denied.

12 And the courts around the country, as Mr. Nichols
13 indicated, you know, all follow the same principle and
14 those principles, Your Honor, are reflected in the actual
15 AHLA rules.

16 THE COURT: Well, let's get specific about what was
17 violated in ---

18 MR. SMITH: Yes, Your Honor.

19 THE COURT: --- contention with your client.

20 MR. SMITH: To begin at the very beginning, scope of
21 relief, 7.5: An arbitrator may award any relief authorized
22 by contract. There are several and Mr. -- I'm not going to
23 rehash the arguments provided by Mr. Nichols, but there
24 were a number of cases where they made up relief or, or
25 provided relief that was in contravention of complete and

1 unambiguous terms of the contract, particularly the
2 three-year requirement in order to be entitled to accounts
3 receivable or operating accounts. These are stuff that is
4 not allowed, specifically prohibited within the contract,
5 and the arbitrator ignored that in contravention of what
6 the scope of his authority is. He also ---

7 THE COURT: Let's get to the contract. I'm trying to
8 easily find a copy of the contract so we can look at that
9 because that's really what's being interpreted here.

10 MR. SMITH: It is. There, there are a couple of
11 provisions, and I point to paragraph 3 that was discussed.

12 THE COURT: Just a second.

13 (A PAUSE.)

14 THE COURT: It's somewhere towards the back. Exhibit
15 10 is the shareholders' agreement?

16 MR. STEGMAIER: Yes, ma'am. Exhibit 3 is the
17 Endoscopy Center operating agreement.

18 THE COURT: Wait a minute.

19 (A PAUSE.)

20 THE COURT: All right, Exhibit 3 is ---

21 MR. SMITH: Your Honor, it should be the shareholders'

22 ---

23 THE COURT: Is the operating agreement.

24 MR. STEGMAIER: Yes, ma'am.

25 THE COURT: And...

1 MR. SMITH: And Exhibit 10 is the shareholders'
2 agreement.

3 THE COURT: And Exhibit 10 is the shareholders'
4 agreement. Those are the two agreements we're talking in
5 terms of the arbitrator's award, right?

6 MR. SMITH: That's correct.

7 THE COURT: All right. I want you to zero in on all
8 the provisions of these two agreements that you think
9 control what these folks get at the various timelines that
10 we're talking about.

11 MR. SMITH: Absolutely, Your Honor. In Exhibit 10,
12 page 5, under Section 3.8, Subsection 2, and I may if...

13 THE COURT: I'm going to tell you this ain't the
14 finest copy in the world to put it mildly. It's kind of
15 illegible and unreadable, the one I have.

16 MR. SMITH: I can provide Your Honor with a better
17 copy, and I think we can dig it out.

18 (A PAUSE.)

19 MR. NICHOLS: Judge, while you're, while you're doing
20 that, I had talked about one of the Jersey cases, Grover,
21 and I had forgotten to hand that up.

22 THE COURT: All right. That's fine. Just hand it up.

23 No, I tell you what. When you get to the very page
24 you're talking about, your paralegals need to do better
25 than that, but the very page you're talking about, which is

1 page 5 of the agreement, is very illegible and
2 unfortunately -- y'all have got to do better than this.
3 Here's 4. Here's 5 and it's a little more legible, but it
4 seems to me the one you're wanting to have a judge construe
5 needs to be printed a bit -- and see these highlights?
6 It's hard to read the darn thing. Those two pages are the
7 most significant pages in here, Respondent's 59 and 60, and
8 I've got to have a clear copy of it.

9 (A PAUSE.)

10 MR. SMITH: Your Honor, and doing our best to, to not
11 take anything but one bite of the apple, I was going to
12 just address the rules. We do have -- Mr. Stegmaier is
13 going to address the specific provisions for them in that
14 contract. So, we can take that up now as you wish or I can
15 continue on the rule.

16 THE COURT: Well, you know, you're saying that there
17 is a tremendous procedural defect and it revolves around
18 the contention that the arbitrator went outside of any
19 provisions ---

20 MR. SMITH: Correct.

21 THE COURT: --- in the contract. So, the first thing
22 someone needs to do is talk to me about the predicate in
23 either the shareholders' agreement or the other agreement
24 that sets that up. What are the provisions we're talking
25 about? In Exhibit 10 they are scope of relief you say is

1 defined by 3.8, right?

2 MR. SMITH: Correct. That is of that particular
3 provision in the award.

4 THE COURT: All right, it's not the order. It's the
5 agreement between parties.

6 MR. SMITH: That is correct, and, and what was ordered
7 in the award is in direct contravention of that unambiguous
8 ---

9 THE COURT: Well, let's take a look at them. It says:
10 As the founding shareholder of the company, the
11 following provisions shall apply to Minhas for as
12 long as he remains a shareholder of the company.
13 From the effective date and for one year
14 thereafter, in the event of a dispute that cannot
15 be resolved by the shareholders after good-faith
16 effort, Minhas shall be entitled to elect in
17 writing to purchase all the shares owned by
18 Parmar for the sum of \$50,000, which shall be
19 paid in a lump sum within ninety days.

20 Et cetera. All right, that's one year, wasn't it? In
21 fact, this was thirty days before three years, as I
22 understand it.

23 MR. SMITH: That's correct.

24 THE COURT: Am I right about that? When they fell out
25 with each other, it was thirty days before the three years,

1 right?

2 MR. SMITH: I'm going to yield to Mr. Stegmaier.

3 MR. STEGMAIER: It actually had been a, had been a
4 long-running negotiation slash ---

5 THE COURT: Well, I don't care about the long-running
6 negotiation. When did they part ways?

7 MR. STEGMAIER: As far as the signed agreement, yes,
8 ma'am. I mean, your understanding about the timeframes are
9 correct.

10 THE COURT: Right. So, then you go:

11 For the period between one year from the
12 effective date and ending three years from the
13 effective date, in the event of a dispute that
14 cannot be resolved by the shareholders after
15 good-faith effort, Minhas shall be entitled to
16 elect in writing to purchase all the shares for
17 the sum of \$50,000 plus interest computed at 4%.

18 MR. STEGMAIER: Correct.

19 THE COURT: Then the third thing is:

20 From the period beginning three years from the
21 effective date, in the event of a dispute, Minhas
22 shall be entitled to elect in writing to purchase
23 all the shares owned by Parmar for the market
24 value of the shares as determined by an
25 independent third-party appraiser mutually agreed

1 upon by the shareholders. Payments shall be made
2 in twenty-four equal monthly installments.

3 And so forth.

4 MR. STEGMAIER: So.

5 THE COURT: The terms of the sale contained in this
6 paragraph shall control notwithstanding the terms
7 of any operating agreement or other agreement
8 applicable, and in the event of any conflict with
9 the terms of this agreement, the parties intend
10 for this agreement to control and shall be deemed
11 to override any other agreement.

12 So, that's what the agreement was, right?

13 MR. STEGMAIER: Yes, ma'am. Correct.

14 THE COURT: All right. Then you folks got into all
15 kinds of negotiations, as I understand it, when you decided
16 to part ways, which was not that thirty days before the
17 three-year magic date but sometime previous to that.

18 MR. STEGMAIER: Weeks, months, yes, ma'am.

19 THE COURT: All right.

20 MR. STEGMAIER: Series of negotiations, yes, ma'am,
21 and ultimately, ultimately culminates in the closing or the
22 sale of the shares and the sale of the interest with the
23 two entities.

24 THE COURT: All right, and what do the closing
25 materials say?

1 MR. STEGMAIER: That the -- that part of, part of the
2 issue was Dr. Minhas himself personally had to buy back the
3 interest in Midlands Endoscopy and as well the interest in
4 Midlands Gastroenterology would be purchased back. That
5 would be \$50,000 plus 4% interest. With regard to
6 Endoscopy, that would be \$300,000 plus 4% interest. So,
7 that, that was, that was ultimately the terms of the deal
8 and that would be pursuant to Section 3.8, Subsection 2.

9 Why we're here today is by virtue of the award that
10 was ultimately rendered by the arbitrator wherein the
11 respondent in this -- well, in this case Dr. Parmar got one
12 half of the operating accounts for both entities as one
13 half -- as well as one half of the trailing accounts
14 receivable for both entities, as well as the buttress.
15 That point, the variance, as we've explicated in the
16 briefing, the variance for Midlands Gastroenterology, which
17 was a separate component relating to this additional
18 compensation, was calculated incorrectly, and of course
19 we've outlined specifically how that was handled.

20 THE COURT: And your contention is that award was made
21 on the basis of using the paragraph 3 calculation rather
22 than the paragraph 2 calculation?

23 MR. STEGMAIER: Yes, ma'am.

24 THE COURT: All right.

25 MR. STEGMAIER: Yes, ma'am. That's completely right.

1 THE COURT: So, if it turns out that the paragraph 3
2 calculation was correctly used, you're out of luck.

3 MR. STEGMAIER: Well, that's a tough question. I
4 mean, I understand that the answer would perhaps be yes,
5 but my question would be how would we ever get to the
6 Subsection 3 if the sale was ---

7 THE COURT: I'm sure counsel is going to explain that
8 to me in detail when it gets to be his turn.

9 MR. STEGMAIER: Yes, ma'am, but -- I mean, so it's
10 clear, I think it should be clear in the briefing as well
11 as the argument we're presenting today that we believe
12 Subsection 2 applies.

13 THE COURT: All right, I understand that, and for some
14 reason you all elected not to know about by deciding that
15 you would have simply a statement of the award rather than
16 the reasons. You don't know now why the arbitrator made
17 that decision, do you?

18 MR. STEGMAIER: Well, let me, let me say that, you
19 know, by virtue of the fact when you get the reason versus
20 the non-reasoned decision, non-reasoned decision doesn't
21 mean unreasonable. And, and Mr. Nichols has already
22 outlined the basis for our belief that we're entitled to
23 either a modification or vacation. You just can't -- he
24 can't -- it can't be Tuesday and he say it's Thursday.
25 That's unreasonable. And so our position is based on the

1 case law that has been recited by Mr. Nichols as well as we
2 think the statutory provisions allow for it as well that
3 this court can act as the check, can act as a reviewing
4 body to determine if, in fact, it was unreasonable. And if
5 it is manifestly outside the bounds of the terms of
6 agreement, this court has the purview to correct that,
7 either through modification or complete vacation of the
8 award.

9 THE COURT: Now, are we back to Mr. Smith on ---

10 MR. SMITH: If we may, Your Honor?

11 THE COURT: --- procedural defects?

12 MR. SMITH: Just continuing on, continuing on
13 procedural defects, and again these are the basis of your
14 authority flows through 15-48-130 and the arbitrator
15 exceeding the powers. This arbitrator's powers were
16 governed by AHLA rules, and we can point to several. 7.2:
17 The award must be based on evidence presented in the
18 hearing.

19 I know it's not significant in terms of the amount at
20 issue, but the Nissan vehicle that was awarded -- but this
21 tells of sort of the whole situation. The petitioner in
22 the case never even asked for the vehicle but the
23 arbitrator awarded it. There was no evidence that was
24 presented to award that relief, yet the arbitrator granted
25 it.

1 Also, Your Honor, the deadlines, and these aren't, you
2 know, shall or, or rather may. 7.1 is very clear:

3 An arbitrator must issue an award within thirty
4 days after the hearing is closed unless the
5 arbitrator and all parties agree to extend the
6 deadline.

7 This is what power he has to operate to grant relief.

8 THE COURT: Explain exactly how that took place.

9 MR. SMITH: Yes, Your Honor.

10 THE COURT: The deadline issue.

11 MR. SMITH: The deadlines were established by the rule
12 under AHILA and it is keyed off the close of the hearing.
13 That occurred on December 9, 2015. That would mean under
14 Rule 7.1 that the order -- the award was due January 8,
15 2016. Without an extension and no extension was sought and
16 no extension was agreed to, the arbitrator did not issue an
17 award until May 17, 2016.

18 THE COURT: And in that ensuing time, what did Dr.
19 Minhas do by way of bringing to the attention of the
20 arbitrator that he was outside the timeline?

21 MR. SMITH: Okay, a couple of things, Your Honor.
22 I'll, I would -- I'll offer that I don't think he had any
23 duty to do that. I think the duty was already established
24 by the arbitrator to comply with the rules. But the
25 arbitrator made it clear at one point on March 7th of 2016

1 that he said the -- that by email that the order was coming
2 in a week. He still then failed to act until May 17th.

3 Then on June when the arbitrator issued not one but a
4 second -- order number 8, which we believe is completely
5 without authority in contravention of the rules, Mr. -- Dr.
6 Minhas filed an objection to the original -- the, the order
7 number 7 and the order number 8 as exceeding his scope as
8 outside his term of appointment and is -- and non -- not in
9 compliant with the rules governing arbitration. And so --
10 and we think this is jurisdictional, Your Honor, and it can
11 be raised at any time.

12 I think, you know, this arbitrator only has the power
13 that is given to the arbitrator by virtue of the rule, and
14 our statutes allow us to review as to whether or not he's
15 exceeded those powers. And because of his total failure
16 almost every part of this process to follow the rules
17 showed a manifest disregard of the agreement that has been
18 established by the parties and a failure to be in
19 compliance with the authority that was granted to him.

20 You can look next, too, Your Honor, you know, I
21 mentioned order number 8. The only -- once a final order
22 is issued under, under the rules, AHL -- AHILA rules, there
23 can be no change or correction to that except, you know,
24 clerical errors, typographical errors of that nature.
25 Well, you have a second award without any authority which

1 is outside the scope of what is permitted under 7.9 to make
2 any correction. That adds a whole nother component of
3 relief, an award of costs which wasn't included in the --
4 and considered in the final award. So, we, we maintain
5 that that's ---

6 THE COURT: And how was that cost award, how did it
7 come about? Who made the motion to award costs?

8 MR. SMITH: I -- it was just done, as I recall, and,
9 and Mr. Stegmaier can correct me, but in a correspondence
10 from the then, then -- Mr. Bland saying hey, you know, you
11 forgot to give us what we wanted, too, in the way of cost.
12 We think that was, that was incorrect, and that was also a
13 contravention of some of the facts, which I'm sure Mr.
14 Stegmaier will address that, but -- and then it was awarded
15 the next day the 7th -- the 18th.

16 THE COURT: All right, both parties, as I understand
17 it, post the initial award made various motions to the
18 arbitrator to correct the award; you all made award motions
19 and the other side made motions in that regard. Am I
20 right?

21 MR. SMITH: That is correct.

22 THE COURT: Well, should -- but now you're saying that
23 what he should have done is just ignore all those motions
24 because he doesn't have any authority.

25 MR. SMITH: He, he doesn't. I mean, I can't find in

1 the rules where he ---

2 THE COURT: Then why did you make a motion to correct
3 the award ---

4 MR. SMITH: Well, I didn't ---

5 THE COURT: --- if he doesn't have any authority to do
6 that anyway?

7 MR. SMITH: Doing what we thought we should do to
8 protect our position on those issues.

9 THE COURT: Well, that could certainly be regarded as
10 a waiver of the arguments you're making now.

11 MR. SMITH: I would, I would not say that because --
12 particularly because this is jurisdictional, there would be
13 no waiver of that, and I do believe this is jurisdictional,
14 Your Honor.

15 THE COURT: And tell me what your rationale is for
16 jurisdictional, the -- could the parties have consented to
17 expand the time? That's quite often done and the rules
18 provide for it, do they not?

19 MR. SMITH: They do, Your Honor.

20 THE COURT: So these timeframes -- jurisdictional
21 timeframes cannot be changed by the parties. The things
22 like the notice of intention to appeal at the Supreme Court
23 of South Carolina or the Court of Appeals, you've got a
24 certain period of time and that's the one thing we can't
25 give you any relief on as an appellate court, which is the

1 jurisdictional time during which you have to file the
2 appeal. All the other things are expandable, and sometimes
3 even when you miss the deadlines completely, they are
4 expandable. So, how does this thing become jurisdictional?

5 MR. SMITH: Well, in a couple of ways, Your Honor.
6 First of all, it is expandable but only by agreement of
7 both parties. It's not something that the arbitrator
8 can ---

9 THE COURT: Well, then it's not jurisdictional. It's
10 simply the violation of a provision in the arbitration
11 rules, right?

12 MR. SMITH: It is, but I think it gets us the relief
13 that would be equivalent of a lack of jurisdiction because
14 the prescribed authority of this arbitrator is limited to
15 what that arbitrator can do within the confines of the
16 rules. And when he's acting outside the rules and, and if
17 the court were to not consider this, there is no remedy
18 then. This arbitrator could act in total derogation of
19 what these parties agreed and the application of these
20 rules, and there would be no relief for that. And I don't
21 believe that's the policy intended by -- providing for
22 arbitration that in the end if they don't get what they
23 negotiated, they can come back to the court and say this.

24 THE COURT: Okay. So, the timelines were one
25 procedural defect that you say warrants a reversal. What

1 are the other *indicia* that you say procedurally warrant
2 reversal?

3 MR. SMITH: Procedurally and just, just to quickly
4 recap, well, the last one would be under 4.3 to default
5 timeframe established to have the matter resolved. The
6 wording of that does say should schedule and it should be
7 within an eight-month period unless it's agreed to
8 otherwise. Of course there is no agreement or no change to
9 that. No extension was granted and the -- this matter went
10 well beyond the eight months, which is the timeframe
11 established by default under the rules.

12 But if, if the court, reading all of these things
13 together procedurally, the deadline in which the award must
14 have been granted -- which it wasn't within that -- the
15 failure to make it a final award and to make corrections
16 that are outside the scope of 7.9, which there is no
17 authority, and then to take beyond the established default
18 timeframe, timeframe would be the procedural basis of which
19 he exceeded his powers under 48-130. And then
20 subsequently, Your Honor, the relief that was granted was
21 outside the scope of relief under 7.5 and without a basis
22 for any evidence under 7.2. And those, those two rules
23 really reflect the policy that was raised in the decisions
24 cited by Mr. Nichols, and that's how we think this court
25 has the ability to grant us the relief we are, we are

1 seeking.

2 THE COURT: Let me ask this overall question, and it
3 can be answered by Mr. Nichols or you, Mr. Smith, or Mr.
4 Stegmaier, whichever. The opposing counsel's essential
5 argument about the scope of relief that can be granted, as
6 I understand it -- we'll get a fuller explanation, of
7 course, when Dr. Parmar's counsel argues -- the essential
8 contention is this agreement is silent as to what happens
9 with these accounts receivable, with cash, with things like
10 the Nissan and so forth. It is, therefore, ambiguous with
11 respect to these obvious components of the value of the
12 company. And, therefore, it was within the purview of the
13 arbitrator to consider those things, given the opinion we
14 offered about how businesses are valued. That's
15 essentially their argument. And then their secondary
16 argument to that is there is plenty of law to be affected.
17 If the arbitrator simply makes an error of law, that is not
18 grounds for overturning the arbitrator's award. A mere
19 error of law or error even of fact is not something that
20 gives circuit court the authority to overturn the
21 arbitration award. It's got to go beyond that and into
22 what your opposing counsel calls a substantial error.

23 So, tell me where we are. Is it simply a construction
24 of an ambiguous agreement to include things that ordinarily
25 are including a valuation, or is it something else?

1 MR. SMITH: I think this was an answer that takes more
2 than one point because it depends upon the relief that was
3 granted. If you look at the vehicle, there was no
4 requested relief for that. There was no -- it was never --
5 it was not within his authority to grant that relief
6 because it was never requested. The terms as it applies to
7 the, the, the receivables and accounts, we believe the
8 language is -- specifically, unambiguously contradicts the
9 award that was granted.

10 THE COURT: And that is because, you say, that what
11 applies to this agreement is paragraph (ii).

12 MR. SMITH: That's correct.

13 THE COURT: And (ii).

14 MR. SMITH: And Section 3-15 with the shareholders'
15 agreement.

16 THE COURT: 3.8(ii).

17 MR. SMITH: That's the first one, and also 3.15 on
18 page 8 of the shareholders' agreement.

19 THE COURT: Right. Those, those provisions are what
20 controls what should be awarded, and what should be awarded
21 is a fixed sum that was set forth in paragraph 3.8(ii).

22 MR. SMITH: That's correct and, Your Honor, where,
23 where a provision is ambiguous, he can certainly make
24 interpretations. Our point is these are unambiguous
25 provisions of which he made contrary rules.

1 THE COURT: All right.

2 MR. SMITH: Thank you.

3 THE COURT: All right. All right. Now.

4 MR. NICHOLS: May I add, please?

5 THE COURT: Mr. Nichols. All right.

6 MR. NICHOLS: And I'm not trying to double dip, and
7 you will shut me down if I am. I do want to add to what
8 Mr. Smith said, not to repeat it. (III) does not say fair
9 market value.

10 THE COURT: I understand that.

11 MR. NICHOLS: Okay, and our contention is that fair
12 market value would include a valuation not only of accounts
13 receivable but also accounts payable and other overhead
14 items which, which someone would -- you know, you value
15 businesses different ways, as a going concern or components
16 of whatever.

17 THE COURT: This was a shareholders' agreement. It
18 had a ---

19 MR. NICHOLS: Yes, ma'am.

20 THE COURT: ---- fixed price for the purchase of the
21 shareholder interest, and the only way you can get into the
22 broader issue of standard valuation of the fair market
23 value of the business would have been for this to be a
24 three-year deal under (iii) and it wasn't. It was a one to
25 three-year deal under (ii).

1 MR. NICHOLS: And so the agreement isn't silent.

2 THE COURT: The agreement is specific.

3 MR. NICHOLS: Is very specific.

4 THE COURT: And it sets a price for the shares as the
5 price that's specified in that particular provision. That
6 really is the essence of your argument.

7 MR. NICHOLS: Yes, ma'am. Yes, ma'am.

8 THE COURT: All right.

9 All right, counsel.

10 MR. MULLINS: Thank you, Your Honor. Wade Mullins.

11 THE COURT: You and Ms. Heyward can proceed any way
12 you would like.

13 MR. MULLINS: Well, thank you, and I will, I will try
14 to keep this in a, in a linear fashion, but we were kind of
15 bouncing around. I'm happy to go in whatever direction you
16 want me to go to address concerns that you may have, but
17 from our perspective, Your Honor ---

18 THE COURT: I want you to give me a good overview of
19 what your position is about the legitimacy of what happened
20 in this arbitration because that's really what we were
21 talking about.

22 MR. MULLINS: And that's correct, Your Honor, and I
23 will tell you that -- and, and, and as we noted in our
24 brief, and you probably have picked up from the record I
25 was not counsel during the underlying arbitration.

1 THE COURT: Mr. Stegmaier is the only one standing
2 from the arbitration itself.

3 MR. MULLINS: Right, right.

4 THE COURT: As I understand it.

5 MR. MULLINS: But I guess I do, before I forget,
6 because I do want to, I do want to correct I believe what I
7 heard was two erroneous statements that were made.

8 One is, the arbitrator did not award the Nissan. The
9 arbitrator denied that, okay? So, I, I'm not sure where
10 they're going with that.

11 THE COURT: Well, let's get away from the Nissan.

12 MR. MULLINS: Right.

13 THE COURT: That's a minor ---

14 MR. MULLINS: And secondly, the arbitrator did not
15 award costs. He denied all those post, post-hearing
16 motions. So, I just, I want to make sure the record's, the
17 record's clear on it.

18 But, Your Honor, from our perspective and from my
19 perspective and my review of what occurred prior to my
20 taking over this case, this really is a typical arbitration
21 proceeding. There was a dispute. There was one party that
22 didn't want to go to attrition. They filed a motion or a
23 motion to compel arbitration was required to be filed. The
24 matter was referred to arbitration. Arbitration occurred.
25 There was a, a time period from the close of the hearing

1 until the award. We, we can't change the dates. They are
2 what they are. There was no complaint, no objection raised
3 until Dr. Minhas received an award he didn't like.

4 THE COURT: Why -- does the agreement provide anything
5 with respect to when a -- or do the rules provide anything
6 with respect to when an objection must be made with respect
7 to a violation of the time parameters by the arbitrator?

8 MR. MULLINS: The AH -- AHLA rules do not, do not
9 speak to that, but -- and I believe we've got the backup in
10 our brief. The objection was raised by Dr. Minhas. Well,
11 let me back up. Award was issued in May.

12 THE COURT: And that was clearly beyond the terms of
13 the ---

14 MR. MULLINS: That was beyond the thirty days from,
15 from the date of the hearing. There was no mention of, of
16 an objection to timeliness prior to that. I don't think
17 there's any, any dispute as to that.

18 THE COURT: And, you know, it makes sense that there
19 wouldn't be an objection, and it makes sense probably that
20 for once the arbitration rule was trying to be fair to
21 everybody because anybody, you or the other side, is going
22 to be hesitant to raise an objection to the arbitrator not
23 following the timelines and what you're trying -- just like
24 judges. You're going to try gently to say gosh, been a
25 long time. Hey, when are we going to get something, and

1 apparently that was done at some point in March. And the
2 arbitrator said, oh, I'm going to get it right out.

3 MR. MULLINS: Right.

4 THE COURT: But the arbitrator didn't do anything.
5 Unless the rules say you object or you lose it, why would
6 they not be allowed to raise that at the end as they did?

7 MR. MULLINS: Well, I think the flip, the flip side
8 of, of your theory applies as well. Parties shouldn't be
9 allowed just to sit back and wait and if they don't get the
10 award ---

11 THE COURT: Well, if the rule allows them to sit back
12 and wait because it doesn't say you must make the objection
13 -- I mean, when would you make the objection? One day
14 after it was due? Two days? Five days? Ten days? A
15 month? Would you lose it if you didn't make it the day
16 after?

17 MR. MULLINS: I think that, I think that you lose it
18 -- the case law, the case law in other jurisdictions say
19 you got to make that objection prior to award. There is
20 case law. There's numerous cases in other jurisdictions,
21 and then we got the statute that they have mentioned under
22 the arbitration act. They're, they're wrapping their arms
23 around the arbitration act when they want it and then they,
24 they don't address it when, when it -- when there are
25 provisions that they don't like. But the, the 15-48-90(b)

1 clearly states that:

2 A party waives the objection that an award was
3 not made within the time required unless he
4 notifies the arbitrator of his objection prior to
5 the delivery of the award.

6 It's there in black and white. So, I don't, I don't
7 know how you get around that. I mean, in the State of
8 South Carolina we've got a statutory provision that speaks
9 to exactly what we're talking about here, Your Honor. And
10 we did cite and, and we mentioned an unpublished opinion
11 that addresses that. We, we didn't cite to it, but that's
12 the only thing that we can find that addresses this
13 provision, and it didn't necessarily direct it right on
14 point, but the same conclusion was reached and that was you
15 didn't raise the objection prior to the award. So, I think
16 other jurisdictions and, and I believe this state is of the
17 mindset that parties should not be allowed to sit on their
18 hands and wait to see what the award is if they go beyond
19 the timeline allowed by the rules or the agreement between
20 the parties because that would essentially invite
21 disappointed parties to object to timeliness whenever that
22 occurs.

23 So, we -- the other aspect of it is, Your Honor, I
24 guess this again goes to the, to the sequence of events,
25 but they filed their motion to correct the award shortly

1 after, after the award is made and is an exhaustive motion.
2 It's, it's, you know, no question akin to a motion to
3 reconsider where they're attempting to relitigate all of
4 the issues. It's under the guise that there were some
5 errors, calculation errors, but it is an exhaustive brief.
6 No mention of timeliness in that motion, and it's not
7 until, I think, June 27th, more than a month afterwards
8 that they -- it occurs to them that they ought to raise
9 this issue of timeliness, which they do. They file an
10 objection based on timeliness and they assert the arguments
11 that you've heard today.

12 They also, Your Honor, they also submit a request to
13 the AHLA, the administrator and the AHLA. It's, it's, I
14 think, helpful. Lawyers would argue that it's, it's, you
15 know, it's superior to the AAA, but it is at the same
16 level. It is a very highly organized, highly developed,
17 highly established, very well run operation, and it's got a
18 process. So, a request was made to review and a request
19 was made to remove the arbitrator. Included as the grounds
20 was the timeliness issue. They accepted that request.
21 They submitted it to a committee to review, and that
22 request was denied. Likewise, the arbitrator heard the
23 argument on the timeliness and it was denied as well.

24 This issue has been heard and decided by the body who
25 governs the rules that they're citing to, and they have

1 determined that the award should stand. So, you've got the
2 AHLA that believes the award should stand; you've got the
3 statute that I believe speaks directly to it. So, we don't
4 -- we believe that the timeliness issue is, is not
5 something that, that really has any chance of -- or has any
6 legs. And I'll, I'll be happy to address that further if
7 you'd like or we can move on.

8 THE COURT: I think I understand your argument.

9 MR. MULLINS: Thank you, and, and, Your Honor, your, I
10 think your summary of the arguments asserted by us and the
11 arguments asserted by opposing parties are correct. What
12 we had was a, a -- what I believe is a standard business
13 dispute which was raised prior to the closing. It's well
14 documented. The lawyers went back and forth, the issue of
15 accounts receivable and cash in the bank, and they made a
16 determination to proceed with the closing which was limited
17 to the transfer of the shares, okay? That was what the
18 closing was, May 30, 2014.

19 At the express agreement between the lawyers that were
20 involved in all this, they pushed down the road the issue
21 of the remaining disputes: the cash in the bank, accounts
22 receivable, the variance, the car. That will be the last
23 time I mention the car. They even agreed to mediate and an
24 arbitrator. There was -- there's discussion back and
25 forth. I think some of those emails are included in the,

1 in the submissions that we made to you. Then ultimately a
2 demand for arbitration is filed by Dr. Parmar, my client,
3 because there's some -- what we contend is some reneging on
4 the agreement to mediate and arbitrate, so we filed a
5 demand for arbitration. They refused to accept service.

6 We have to file a DJ action and a motion to compel
7 arbitration. Judge Benjamin hears it. They assert the
8 same arguments at the motion to compel, Your Honor. They
9 say look. The agreement is clear. He got his money for
10 the sale of the shares; he's not entitled to anything else.
11 Well, Judge Benjamin issued an order compelling the, the --
12 all of the remaining disputes and all of these issues were
13 raised during the motion to compel, and she referred the
14 matter to arbitration. There is no question, there is no
15 question that the issues before the arbitrator were what
16 additional compensation Dr. Parmar was entitled to as a
17 result of this breakup.

18 THE COURT: Well, what additional compensation Dr.
19 Parmar was entitled to, if any? They didn't agree on the
20 front end that he was entitled to anything. They just
21 agreed to a mode of resolution, as I understand.

22 MR. MULLINS: That is -- Your Honor, I would agree
23 that there was no express agreement, but our contention was
24 at the hearing there's plenty of evidence that would imply
25 that the parties understood there was going to be

1 additional payment, additional payments made because the
2 accountant was instructed to make the calculations for the
3 accounts receivable, to determine what the cash on hand was
4 on May 30, 2014. So, we think there was evidence that
5 supported our position.

6 You are correct. There was no express agreement as to
7 exactly what was to be paid to Dr. Parmar, and that was
8 what the case was about, and you are correct. Our
9 contention is that the agreement is silent as to that; it
10 is silent as to the compensation, and it created an
11 ambiguity.

12 And there are plenty of cases that are out there, Your
13 Honor, that I know that you're well aware of, *Ward vs. West*
14 *Oil Company*:

15 Where a contract is silent as to a particular
16 matter and an ambiguity thereby arises, parole
17 evidence may be submitted to supply the
18 deficiency and establish true intent.

19 THE COURT: Well, let me stop you there. Their
20 argument is that -- you're the one that's arguing that the
21 agreement is ambiguous. They are arguing that the
22 agreement is not in any way ambiguous. They are arguing
23 that the provisions of 3.8 of the operating agreement
24 specify very particularly what happens if between one and
25 three years of the date of signing, the parties agree or

1 decide to get out of the agreement, and that is -- excuse
2 me, that's the shareholders' agreement. Shareholders'
3 agreement, Section 3.8, they say Section 2 controls, which
4 is:

5 From the period beginning one year from the
6 effective date and ending three years from the
7 effective date, in the event of a dispute that
8 can't be resolved, Minhas shall be entitled to
9 elect in writing to purchase all the shares owned
10 by Parmar for the sum of \$50,000.

11 Plus interest with the other provisions. That only if
12 you get to three years from the effective date or beyond do
13 you have fair market value, which would include the items
14 you're talking about. So, they say it's an unambiguous
15 provision. What do you say to that?

16 MR. MULLINS: Well, what I say to that is that, that
17 we kind of -- we're -- that there's an assumption made that
18 I don't believe is correct, and I would -- I, I certainly
19 acknowledge that, that the (iii) has a different mechanism
20 for payment, and that involves ---

21 THE COURT: But this ---

22 MR. MULLINS: --- fair market value.

23 THE COURT: But this matter, at the time they signed
24 the closing and the shares were bought, they were not three
25 months -- three years away. They were a month shy of that,

1 were they not?

2 MR. MULLINS: That is correct, and I -- we had never
3 contended that (iii) applies because it was not.

4 THE COURT: Well, then -- well, if 2 applies and it
5 specifies very specifically what the payment for the shares
6 is, what is the platform for the contention that Dr. Parmar
7 should get some other number that is tied to the valuation
8 on a fair market basis of the company?

9 MR. MULLINS: Because the, the -- what was paid out
10 under (ii) was the payment for the shares. It does not
11 address other compensation that Dr. Parmar is entitled to.

12 THE COURT: Well. All right.

13 MR. MULLINS: (III) addresses fair market value. Your
14 Honor, we all think ---

15 THE COURT: Yeah, but you don't ---

16 MR. MULLINS: None of us are accountants here.

17 THE COURT: You don't get the fair market value. You
18 get what's in (ii).

19 MR. MULLINS: Right.

20 THE COURT: You agree.

21 MR. MULLINS: But I'm trying to establish the
22 uncertainty, and the -- and all 3 ---

23 THE COURT: Well, there's no uncertainty about that.
24 You get what (ii) says. If there's another provision in
25 some other agreement or in some other place in this

1 agreement that allows compensation, then let's talk about
2 that, but this is an unambiguous provision that says flatly
3 what you're going to get for the shares, and that you say
4 that this fair market value for the shares can come in
5 under some other provision that relates to compensation.
6 Is that the argument?

7 MR. MULLINS: The argument is that -- yes, and there
8 was voluminous testimony ---

9 THE COURT: Well, there's a specific provision in the
10 agreement about that. It's 3.15 and it talks about
11 shareholder compensation, and it does not provide for
12 anything that has anything to do with accounts receivable
13 or cash in the bank or the variance or the car. It speaks
14 specifically of a ---

15 MR. MULLINS: That ---

16 THE COURT: --- percentage of production.

17 MR. MULLINS: And that, that is from an ongoing
18 standpoint what -- how the parties should be compensated
19 from an ongoing concern.

20 THE COURT: Well, this isn't a compensation battle.
21 This is a battle over the amount to be paid for the shares,
22 is it not?

23 MR. MULLINS: Your Honor, when Dr. Parmar bought into
24 these entities, he did not buy the accounts receivable and
25 the cash in the bank in 2011. And there was evidence in

1 the record and clear testimony, and I don't think it will
2 be disputed, that Dr. Minhas's position was when you buy
3 in, the accounts receivable at that time and the cash in
4 the bank is mine. And he took that money the first year.
5 So, the position was he didn't buy that when he came in.
6 Dr. Minhas got the benefit of all the accounts receivable
7 and all the cash in the bank at the time he bought in.
8 They zeroed it out. Now, it wasn't on the day of the
9 closing, but during the year ---

10 THE COURT: That's fine.

11 MR. MULLINS: --- that money was zeroed out.

12 THE COURT: That's something they did.

13 MR. MULLINS: And so ---

14 THE COURT: What does that have to do with what Parmar
15 gets if he decides to sell his shares back to Minhas?

16 MR. MULLINS: The, both the, the -- the lawyer that
17 was their witness at the arbitration hearing and the
18 accountant, both of them say -- and they term it
19 compensation, Your Honor. I'm just repeating what's in
20 the, what's in the record and this is the danger we get
21 into when we're reviewing the arbitration award here at
22 circuit court on a motion to vacate with an unreasonable
23 award. We don't know.

24 And I will tell you that the transcript which you do
25 not have the benefit of, and I will contend they have not

1 provided you with other than just the agreement, but they
2 refer to it as compensation. And what the witnesses said
3 was that, that, that 3.8(ii) deals solely with the transfer
4 of the shares. Compensation -- again, Your Honor, that's
5 their word -- is another matter and that normally involves
6 accounts receivable and it involves cash in the bank. Is
7 handled separately during breakup.

8 THE COURT: Well.

9 MR. MULLINS: Now, there was some dispute about how
10 you should -- whether the accounts receivable or whether
11 the cash in the banks should take into account -- or
12 accounts receivable should take into accounts payable and
13 all of that, but there's clear testimony from the two
14 critical witnesses at the hearing that that was something
15 that should be treated separately, and the agreement is
16 silent as to all ---

17 THE COURT: Well, what was the agreement about
18 compensation? It said in here shall:

19 The compensation for physician services provided
20 to the corporation shall be equal for all
21 shareholders as long as each shareholder's
22 production is within 10% of each other. If
23 shareholder's production is not within 10% but
24 within 20%.

25 And so forth and so on.

1 MR. MULLINS: Right.

2 THE COURT: There is a specific provision in here
3 about compensation. There is nothing in that provision
4 that talks about the cash in the bank or the accounts
5 receivable. It's a production-based scheme of
6 compensation, a very familiar way of assigning
7 compensation.

8 Some compensation takes into account some of the items
9 you're talking about. I can remember way back when I was
10 practicing. I drew all kinds of compensation arrangements
11 for doctors. We represented a lot of them, and there came
12 a point in time in the Nixon administration where there
13 were freezes put on, wage freezes, if you can imagine
14 Republican going for such a thing. There was a national
15 wage freeze, but you could get around it by having
16 incentive compensation based on production. And that is
17 when many doctor firms started down the road that you see
18 right here in this agreement of instead of providing set
19 salaries, they provided incentive compensation and
20 incentive bonuses based on production, and that was
21 something that you could do.

22 This thing is an incentive compensation arrangement or
23 a production compensation arrangement. So, how in the
24 world could anybody ever -- they can talk about what they
25 think ought or be or what people ought to get on the basis

1 of equity or fairness or anything else. But if the
2 agreements are what are being construed and the agreements
3 are what's being construed, and that's what the arbitration
4 provision applies to. It doesn't apply to some outside
5 understanding. It applies to this agreement. It says this
6 agreement is subject to arbitration.

7 So, I want to know where in this agreement is the
8 foundation for awarding as compensation the accounts
9 receivable, the cash in the bank, and those kinds of
10 things. Where is it?

11 MR. MULLINS: Your Honor, 3.15, which is entitled
12 Shareholder Compensation, I think it says Shareholder.
13 Shareholder Compensation.

14 THE COURT: It says Shareholder Compensation.

15 MR. MULLINS: Addresses an ongoing entity, an ongoing
16 entity, how the payments will be made.

17 THE COURT: Well.

18 MR. MULLINS: Our position, Your Honor ---

19 THE COURT: Well, compensation ---

20 MR. MULLINS: --- and you, and you ---

21 THE COURT: Compensation, compensation can't be on any
22 other basis that you -- than that you are a physician
23 providing services. There's not something else in this
24 agreement that says and by the way, there's some other
25 compensation you can get. Compensation has a specific

1 definition in this agreement, and it's called shareholder
2 compensation and it talks about shareholder compensation
3 for physician services. Where else in this agreement is
4 the compensation provision that allows an arbitrator
5 construing this agreement to award as compensation
6 something that is not contained in this agreement?

7 MR. MULLINS: Well, Your Honor, that's the, the, the
8 whole basis of the case and that is -- and this court might
9 very well disagree with this position, but that 3.15 is an
10 ongoing compensation provision. That the agreement is
11 silent, Your Honor. It is silent during a breakup as to
12 how the accounts receivable and how the cash in the bank is
13 compensation. And again I'm using that term because the
14 experts in the case used it that way.

15 THE COURT: Well, except it's not silent about what
16 happens in a breakup because it says in a breakup, if a
17 dispute cannot be resolved by the shareholders after good
18 faith efforts, and then it specifies what is to be paid.

19 MR. MULLINS: For the sale of the shares.

20 THE COURT: For the sale of the shares.

21 MR. MULLINS: Right.

22 THE COURT: It doesn't make any other provision for
23 anything else to be paid. So when you say silent, that
24 doesn't mean that the arbitrator can just arbitrarily say,
25 well, this thing's worth more than what the shareholders'

1 agreement says. So, I'm just going to award something.
2 He's not entitled to anything except as either a
3 shareholder or a compensated physician, is he?

4 MR. MULLINS: He's entitled to, our position was he's
5 entitled -- and this was the testimony and there was some
6 dispute as to how you calculate it. This was the testimony
7 from experts from the, from the practice and the center's
8 accountant and the lawyer was that compensation is
9 something separate. They called it compensation. It was
10 payment of accounts receivable and cash in the bank. Is
11 separate from the price of the shares. That was the
12 testimony.

13 THE COURT: That would be great if you just had two
14 parties breaking up and they didn't have any agreement
15 about this thing. Then you could kind of decide it on the
16 basis of the value of the company. But the accounts
17 receivable and the cash in the bank are the property of
18 Midlands Gastroenterology, as I understand it, are they
19 not?

20 MR. MULLINS: Well, they would be.

21 THE COURT: Well, they were. They definitely were. I
22 don't think there's any dispute about that. So, the
23 question is ---

24 MR. MULLINS: And, and ---

25 THE COURT: --- whether -- on what basis in this

1 agreement is that piece of property of Midlands
2 Gastroenterology allowed to be allocated to a departing
3 shareholder. I mean, there are penalties when you depart,
4 and particularly an early departure many times. You just
5 don't get the value of the whole company. You get whatever
6 the agreement specifies you get, and the agreement says
7 nothing about these monies, does it?

8 MR. MULLINS: No, and that was our position.

9 THE COURT: The agreement doesn't say you can take
10 your desk with you; the agreement doesn't say you can take
11 your car with you. The agreement doesn't say anything
12 about fixed assets of the company, including its accounts
13 receivable and its cash on hand. Those are assets of the
14 corporation, and I'm just trying to struggle with how they
15 are -- you carve those out as opposed to the equipment and
16 the machines and anything else and say, oh, and by the way.
17 We think that's kind of more like compensation and,
18 therefore, we're going to divide it up between us when the
19 agreement says nothing about that.

20 MR. MULLINS: Well, Your Honor, the record reflects

21 ---

22 THE COURT: I understand you offered all kind of
23 evidence about it.

24 MR. MULLINS: Right.

25 THE COURT: But what -- how pertinent is that to

1 anything in this agreement because the limits of the
2 arbitrator's authority are to arbitrate this agreement and
3 what it means, as I understand it. Would you agree with
4 that?

5 MR. MULLINS: I would agree with that.

6 THE COURT: His whole authority to be involved in this
7 thing at all emanates from this agreement. So, what I'm
8 trying to do -- if he were construing a provision that said
9 something about this issue, then I can well understand and
10 sympathize with your argument. And I've already indicated
11 that, you know, these folks on the other side have a very
12 high bar to jump over to get the court involved in an
13 arbitration. But I am really struggling to understand how
14 this arbitrator had anything in this agreement that allowed
15 him to allocate an asset of the corporation that wasn't
16 specified to be allocated in the agreement. That's what
17 I'm struggling with. And whether you've got ten experts to
18 say, well, it's really compensation -- if it's
19 compensation, it's not mentioned in here and if it's a
20 value of the shares, it's not mentioned in here. So, what
21 gives the arbitrator the authority to simply buy that
22 argument and award it? That's what I'm asking. Help me
23 out with that.

24 MR. MULLINS: Well, Your Honor, I, I, I risk repeating
25 myself and I think that, that, you know, the court needs to

1 take in, you know, take into account that it certainly is
2 possible that another interpretation could be made as to
3 whether the agreement is ambiguous or not.

4 THE COURT: If it's possible to have another
5 interpretation of the agreement, you are exactly right.
6 That's what I'm struggling with.

7 MR. MULLINS: Right.

8 THE COURT: But ---

9 MR. MULLINS: And, and we ---

10 THE COURT: --- this is an agreement.

11 MR. MULLINS: You and I are, are not accountants. You
12 and I did not draft this agreement, and the two people, the
13 accountant ---

14 THE COURT: The accountant, the accountant ---

15 MR. MULLINS: --- that handles all of that stuff and
16 the, and the other person that drafted the agreement have
17 both stated that that is something that was addressed
18 separately.

19 THE COURT: Well, they said, they said ---

20 MR. MULLINS: So, and so ---

21 THE COURT: And they ---

22 MR. MULLINS: --- our contention is that it is silent
23 as ---

24 THE COURT: Well.

25 MR. MULLINS: --- to that.

1 THE COURT: It's silent, meaning that it wasn't
2 addressed in the agreement, and if the law is that the
3 agreement is the only thing the arbitrator can address,
4 then this is outside the agreement.

5 MR. MULLINS: And the arbitrator must have determined
6 that the silence as to that particular issue rose to the
7 level that, that, that created an ambiguity because -- and,
8 and keep in mind, Your Honor, this, this, this arbitrator
9 is a very, very well experienced healthcare lawyer that has
10 drafted hundreds and hundreds of these agreements and
11 handled many, many of these breakups. And so we can only
12 presume because the arguments were made by my client
13 prehearing, all throughout the case, that the agreement was
14 ambiguous. And we can only presume, because it wasn't a
15 reasoned award, that the arbitrator agreed. That the
16 arbitrator must have agreed that because the agreement did
17 not address what would happen to the accounts receivable
18 and to the bank account, that the agreement was silent to
19 that and that it gave rise to an ambiguity, and he
20 considered a number of facts.

21 He considered the fact that Dr. Minhas got the
22 benefit. He, he got to clear it out on the front end of
23 this. He got the benefit.

24 THE COURT: In terms trying to be fair, because of
25 what Minhas says, you've got a great argument in that

1 regard. I agree with that completely. And Minhas
2 certainly sat around until he figured out he wasn't going
3 to win. Then he started fussing. You got a great argument
4 on that, particularly in light of the statutory provisions
5 that say if you don't fuss before the arbitration award,
6 you can't fuss.

7 But I am struggling with the fact that this agreement
8 says nothing about the division of these particular assets
9 of the company, and apparently the company has a lot more
10 assets. It has equipment; it has office furniture. It has
11 all kinds of other things that are assets of the
12 corporation, and yet they aren't awarded to the
13 shareholders in this particular shareholder buyout thing,
14 and that's what we're talking about.

15 We're not talking about a court-ordered dissolution.
16 If we were talking about a court-ordered dissolution or
17 receivership or any of those kinds of things, then it's
18 very fair what was done. I don't disagree with that one
19 bit.

20 What I'm struggling with is that this is an
21 arbitration of a shareholder buyout. If I don't find
22 anything in here that allows this particular asset of the
23 corporation to be distributed in a shareholder buyout, is
24 there something else that happened here that gives strength
25 to your argument? I'm trying to help you out here.

1 Is there any document, for example, in how these two
2 parties submitted this to arbitration where they said what
3 was to be arbitrated that would include this? I'm just
4 trying to look at something that parties would have done to
5 submit something to resolution by an arbitrator ---

6 MR. MULLINS: Well, Your Honor.

7 THE COURT: --- that is absolutely not covered by the
8 agreement.

9 MR. MULLINS: I do think we, we can submit more. I
10 can cite to it if you'll -- I do think the -- I mean,
11 clearly the dispute arose between the parties over the
12 accounts receivable and cash in the bank at the time of
13 the ---

14 THE COURT: Right, and that dispute can be resolved in
15 circuit court or in a lot of other places, but the
16 arbitration is dealing with one thing and one thing only:
17 this agreement which everybody now agrees is silent as to
18 this particular group of assets of the corporation. And if
19 it's silent and does not discuss them at all, that doesn't
20 mean the parties don't have some recourse if they have some
21 falling out about that. But it does mean that it's not
22 controlled by this particular arbitrable agreement.
23 That's, that's ---

24 MR. MULLINS: Well.

25 THE COURT: --- where I'm going to look.

1 MR. MULLINS: Your Honor, I would, I would contend to
2 you if you, if you fall back to how we got into
3 arbitration, that's through an order compelling
4 arbitration, and I would -- I think I've already mentioned
5 that these issues were raised.

6 THE COURT: Well, the order ---

7 MR. MULLINS: These were raised before Judge Benjamin.

8 THE COURT: Yeah. The order compelling arbitration
9 simply compels an arbitration. It doesn't indicate what
10 the dispute is, does it?

11 MR. MULLINS: It says the remaining disputes, and all
12 these were presented to Judge Benjamin, these issues.

13 THE COURT: I get all that.

14 MR. MULLINS: It says the ---

15 THE COURT: But she completely decided not to rule on
16 it, so there's nothing binding about what she did about the
17 issues we're talking about here today.

18 MR. MULLINS: The parties immediately: All remaining
19 issues in dispute currently pending before the AHLA in case
20 number 2648.

21 THE COURT: Yeah. That ---

22 MR. MULLINS: And then earlier it says ---

23 THE COURT: That ---

24 MR. MULLINS: Parties shall arbitrate all remaining
25 issues between them after the May 31, 2014,

1 purchase by Minhas.

2 So.

3 THE COURT: Is there something in the closing
4 documents that indicates that they intend by some kind of
5 implication to submit to arbitration even though it's not
6 covered by the arbitration agreement?

7 MR. MULLINS: There, there's an email from, from Ed
8 White who was serving as counsel for Dr. Minhas.

9 THE COURT: I'm aware of all the Ed White stuff.
10 That's ---

11 MR. MULLINS: Where he agreed that they would mediate
12 and then arbitrate.

13 THE COURT: Right, and he's not the -- he is at most
14 the attorney for the corporation. He is not the attorney
15 for either Minhas or Parmar, as I understand.

16 MR. MULLINS: No. He was the attorney for the,
17 the ---

18 THE COURT: He was the attorney ---

19 MR. MULLINS: --- two entities.

20 THE COURT: --- for the Midlands Endoscopy Center and
21 the Midlands Gastroenterology.

22 MR. MULLINS: We are discussing here today the
23 provisions ---

24 THE COURT: No. We're discussing ---

25 MR. MULLINS: --- relating to this agreement.

1 THE COURT: --- the dispute between these two
2 individuals as to how much of the company they get. Mr.
3 White -- and I wouldn't put him in the position saying he's
4 for one side or another in that. He's not representing
5 either. He may have some opinions about it, but that --
6 he's not the -- he doesn't bind either Parmar or Minhas in
7 terms of what his opinion about this agreement is.

8 MR. MULLINS: No, but I think he would bind the
9 companies. He was serving as counsel for the companies.

10 THE COURT: The companies ---

11 MR. MULLINS: He submitted an affidavit saying -- that
12 says I meant what I said in the email when I said that we
13 would mediate and arbitrate these remaining disputes post
14 closing.

15 THE COURT: Well, I understand what your position is
16 there. Is there something else in terms of any closing
17 documents and whatnot that in writing specifies that the
18 parties will agree to arbitrate the question of entitlement
19 to -- the amount of the entitlement to accounts receivable
20 and ---

21 MR. MULLINS: Right.

22 THE COURT: --- that kind of thing?

23 MR. MULLINS: Your Honor, with all due respect, I
24 really don't know much more I could present. There was a
25 dispute that was raised.

1 THE COURT: Well, there was ---

2 MR. MULLINS: There was back and forth be ---

3 THE COURT: --- one party that says I owe nothing, and
4 the other party says you owe me something else. There's no
5 agreement on the front end that the dispute should be
6 resolved by setting an amount but not the entitlement.

7 MR. MULLINS: Now, you, you asked what ---

8 THE COURT: One party is disagreeing completely with
9 the entitlement, as I understand, and always has.

10 MR. MULLINS: Correct, but you asked what, what, what
11 else was there that would indicate to you that there was an
12 agreement to arbitrate these issues. And, Your Honor, I'm
13 saying that, you know, I don't know how much more I can
14 offer you other than what we've got, which is that these
15 issues were clearly raised prior to the closing. There was
16 emails back and forth *ad nauseam* between the two, between
17 the lawyers, and then ultimately an agreement was reached.
18 Let's proceed with the closing on the shares and we will
19 mediate or arbitrate these issues, the accounts receivable
20 and the, and the operating agreement, at a later time. And
21 my client relied on that representation by the attorney for
22 the two entities and proceeded with the closing.

23 And subsequent to that, Dr. Minhas instructed his
24 accountant to go prepare calculations for accounts
25 receivable and the, and the bank accounts. Subsequent to

1 that, there was discussion with counsel for the entities
2 about setting up a mediation. Subsequent to that, new
3 counsel took over and indicated they would not mediate, and
4 then new counsel stepped in and said that they would not
5 arbitrate. Our contention was that the parties had reached
6 that agreement to arbitrate these issues.

7 All of this was presented to Judge Benjamin because
8 there was a fight over where this dispute was going to be
9 resolved. The issues of the accounts receivable, the
10 issues of the bank account, the representations made,
11 whether the, whether the agreements where -- whether the,
12 the sale agreement amounted to a, a waiver or release of
13 any other claims. Judge Benjamin determined that these
14 remaining disputes, including the accounts receivable and
15 the, and the bank account, were to be referred to binding
16 arbitration, Your Honor.

17 And so it went to binding arbitration, and our
18 position was that the agreement was silent, and I
19 understand your point. I do. I understand your point but
20 our agreement -- I mean, our position is the agreement was
21 silent. We've got testimony from experts in the field
22 saying that ordinarily in, in -- when you're interpreting
23 the operative agreements in a breakup, you would find
24 addressing accounts receivable and bank accounts under
25 compensation is what they call it. Maybe, maybe they call

1 it something else. These two witnesses called it
2 compensation, okay? We had the evidence about how it was
3 handled on the front end with the accounts receivable. You
4 had the evidence about what the accountant did to calculate
5 accounts receivable, all moving towards a resolution.

6 Maybe there had been a dispute about the amount, but
7 the ability to recover some aspect of the cash and the
8 accounts receivable, all the evidence seems to suggest that
9 that's where it should go because the agreement was silent.
10 So, you've got an arbitrator that has determined that this
11 contract is silent as to what he determined and the
12 provision that he expected to find in the agreement, and it
13 gave rise to an ambiguity.

14 THE COURT: Okay. When the matter was tried in front
15 of the arbitrator, did Dr. Minhas's lawyers take the
16 position that the matter was not arbitrable ---

17 MR. MULLINS: No.

18 THE COURT: --- because the agreement didn't cover it?

19 MR. MULLINS: No. Never once was that raised, Your
20 Honor, and that's a good point.

21 THE COURT: So, so ---

22 MR. MULLINS: Never once was that raised.

23 THE COURT: So, the battle was joined as to how much.
24 And there was never an argument by Minhas at the time of
25 the arbitration, hey, arbitrator, you don't have the

1 authority to go outside this agreement?

2 MR. MULLINS: Well, they raised, they, they did raise
3 -- I mean, their position was the agreement speaks for
4 itself, but they never said that, that the matters that are
5 being raised by, by the petitioner are beyond the scope of
6 the arbitration. They never raised that.

7 The argument was -- it was a legal argument, Your
8 Honor. Their position was the agreement speaks for itself.
9 Our position was it doesn't.

10 THE COURT: And so your ---

11 MR. MULLINS: The arbitrator heard that.

12 THE COURT: Your, your contention ---

13 MR. MULLINS: And the arbitrator ---

14 THE COURT: --- is that by their activity in the
15 closing, they agreed to submit to arbitration the
16 resolution of that legal issue?

17 MR. MULLINS: Correct.

18 THE COURT: Quite apart from the agreement itself.
19 They agreed that this would be the method of resolving the
20 issue?

21 MR. MULLINS: That's correct.

22 THE COURT: As a condition of the closing.

23 MR. MULLINS: And Judge Benjamin ordered that.

24 THE COURT: All right. Anything else?

25 MR. MULLINS: Well, Your Honor, let's see.

1 THE COURT: And take your time. This is a complicated
2 matter.

3 MR. MULLINS: We've, we've gotten into the -- what I
4 agree is the critical issue and that is, you know, the,
5 the, the agreement and whether there is an ambiguity and
6 whether the arbitrator ---

7 THE COURT: Has got the authority to deal with it.

8 MR. MULLINS: --- had the authority to deal with that
9 and, Your Honor, we've gotten away a little bit from it.
10 I'm not -- you're very well versed in what the law is and,
11 and the high bar that they have. But, you know, our, our
12 -- we can quibble over whether there was an ambiguity or
13 not.

14 THE COURT: That's just a legal quibble and that's --
15 if there's an ambiguity, that's a legal quibble and even if
16 he gets it wrong, the arbitrator is entitled to have his
17 opinion affirmed. I ---

18 MR. MULLINS: Right.

19 THE COURT: I think that's the law in the ---

20 MR. MULLINS: And the Tri -- Trident Tech and the
21 Laurow [phonetic] case both say that even a clearly
22 erroneous interpretation of a contract ---

23 THE COURT: Y'all have done a beautiful good job of
24 briefing that.

25 MR. MULLINS: --- cannot be disturbed.

1 THE COURT: No question but what that's the law.

2 MR. MULLINS: So, I, I, I probably made my client
3 nervous here today getting in and talking about these
4 issues, but, Your Honor, our contention is all of this, all
5 of these issues that you raised don't rise to that level.
6 What you had is an arbitrator, well experienced arbitrator
7 that made the determination that the contract was ambiguous
8 and the evidence was overwhelming allowing, allowing the,
9 the award.

10 THE COURT: This thing all revolves around the scope
11 of the authority of this arbitrator to determine this
12 amount, and if it can be determined by using contractual
13 ambiguity and that -- and linking it to something in the
14 contract that's ambiguous, then we've got one set of facts.
15 If it is something that the arbitrator is doing that is
16 clearly outside of, one, the contract documents themselves
17 and, two, any other agreements that might have been made by
18 the parties to submit to his authority about this matter,
19 then you've got a problem with the arbitration. Is that
20 essentially correct?

21 MR. MULLINS: Well, I, I would agree with that, Your
22 Honor, and, and we may not -- you know, my, my position is
23 if that were the case -- because those, those arguments
24 were raised when we were fighting over whether this was
25 going to arbitration, and this -- and, and Judge Benjamin

1 sent the case to arbitration. So, I think it's reasonable
2 to conclude that that issue has really already been decided
3 in the order to compel arbitration. Certainly would not be
4 a stretch to make that conclusion.

5 Your Honor, and I, you know, I certainly am willing to
6 get into the arguments about the, the miscalculations and
7 the -- or the alleged miscalculations and applying the
8 wrong formula.

9 THE COURT: Yeah. Why don't you discuss that briefly.

10 MR. MULLINS: Okay. Well, and, and I think we've --
11 the cases that we've cited.

12 THE COURT: What are the calculations based on?
13 They're obviously not based on anything that's in these
14 agreements. They are based on some testimony about how
15 these values are arrived at. Am I right?

16 MR. MULLINS: Yes, Your Honor. Our prehearing brief,
17 which is Exhibit C.

18 THE COURT: Yes. I got it.

19 MR. MULLINS: Go to page 8.

20 THE COURT: All right.

21 MR. MULLINS: All right, paragraph 37 lays out the
22 claim for damages and it lays out, it provides the sources
23 for all of the -- for, for the numbers. (A) is the
24 operating accounts, and there was some argument that there
25 was a co-mingling of accounts. There wasn't a co-mingling.

1 The award ultimately just said 179,104, but it was based
2 on, you know, the two separate, distinct accounts. He just
3 provided the total in award number 7. So, (A) ---

4 THE COURT: So, you're saying that it was the product
5 of the Gastroenterology numbers and the Endoscopy Center
6 numbers and that's where the 179, for example, on the
7 operating accounts came from, right?

8 MR. MULLINS: That's correct.

9 THE COURT: And on the trailing accounts, again these
10 were based on evidence produced by y'all as to those
11 numbers.

12 MR. MULLINS: Well.

13 THE COURT: And the same thing is true of the buy-in
14 reimbursement. Is all that...

15 MR. MULLINS: Right. Well, Your Honor, on the
16 operating accounts, and I, I mean, I -- if -- you know,
17 I've got -- if this was taken off the financial statements
18 of, of -- that were provided by the Endoscopy Center and,
19 and Gastroenterology, the one-half trailing accounts
20 receivable, and if you, as you, I'm sure you know, with,
21 with, with physicians you've got a, a significant lag as to
22 when the money rolls in the door after the services are
23 provided.

24 THE COURT: Right.

25 MR. MULLINS: So -- and that was again additional

1 evidence that was, that was presented at the hearing that,
2 that the accountant was instructed to go figure that. And
3 the numbers that we provided here are the actual numbers
4 for the, for the trailing AR that was calculated later,
5 after four months, after the breakup. So, the monies had
6 come in and had been projected and those were provided by
7 Donny Burkett, the accountant for MG and MEC. So, those
8 numbers are taken directly from the, the, the, the center
9 and the, and the practice's number. And then (C) was not
10 awarded. (D) was not awarded. (E) and (F) was awarded.

11 THE COURT: And where did those things -- I've never
12 understood that. I've read these papers, but I don't
13 understand this variance amount. I understand some things
14 about compensation, but now you're into a whole thing that
15 wasn't covered by any of these agreements. Mentions,
16 talked about this is pure testimony by people on a kind of
17 after-the-fact basis. Was is this?

18 MR. MULLINS: Well, it actually is addressed in, in
19 3.15. That is -- that's what addressed in 3.15.

20 THE COURT: The production figures. So, now we're
21 into lost compensation.

22 MR. MULLINS: Well, here's the, the -- and again this
23 was '13 and '14, the, the ongoing compensation. The, the
24 deal was, the agreement was that they would split 50/50 as
25 long as their production was in -- within a 10% range.

1 THE COURT: Right.

2 MR. MULLINS: Okay? If it got beyond 10%, then they
3 would take the pie. Half the pie would be divided equally
4 and the other half of the pie would be based on your
5 percentage of production.

6 THE COURT: On percentage of production, right.

7 MR. MULLINS: All right, and in the years '13 and '14
8 -- and that should be '12 and '13, I think, '12 and '13.

9 THE COURT: Yeah, I kind of thought that, too.

10 MR. MULLINS: '13, '14. Okay, so that's half year
11 '13, okay. That is, that is, that is correct. That the
12 variance was beyond 10%, okay? So, the pot was divided in
13 half and I think in '13 there was a 11%, 11.8, 12%
14 variance, and in '14 there was a 15% variance.

15 THE COURT: Now, these stats ---

16 MR. MULLINS: So that those numbers are recalculated.

17 THE COURT: Okay.

18 MR. MULLINS: Yes.

19 THE COURT: All right. How about the profit sharing
20 plan?

21 MR. MULLINS: That was denied; everything else was
22 denied.

23 THE COURT: Okay, I think you've covered, then, the
24 calculation dispute. What else?

25 MR. MULLINS: Right, and -- well, just to make sure

1 the, the, you know, the argument that that they raise about
2 re, recalculating the amounts, I just want to make sure
3 that the court's aware our position is that the -- those
4 arguments contained a lot of information that was not
5 evidence in the hearing about how the calculations ought
6 to have been made and clearly go beyond what the law
7 provides for in terms of correcting patent mathematical
8 errors, and I think we've briefed that. I think, Your
9 Honor, you're ---

10 THE COURT: Right ---

11 MR. MULLINS: --- probably well aware of that.

12 THE COURT: And y'all's contention is no mathematical
13 errors. These are disputes about ---

14 MR. MULLINS: Interpreting how things ought to be
15 applied.

16 THE COURT: --- interpreting and he had all the
17 evidence, and he had exhibits and evidence that formed the
18 foundation of this.

19 MR. MULLINS: Right.

20 THE COURT: And, therefore, they're just mad with the
21 call.

22 MR. MULLINS: Right. Another, another point, Your
23 Honor, this just, I guess, goes to the arbitrator and, you
24 know, the problem we've got with an unreasoned award is I
25 think Ms. Heyward teased out of the case that it requires

1 us to parse the mental pathways of the arbitrator, which is
2 true, which is true. We don't have the ability to go, to
3 go analyze like *C-Sculptures* or like any other cases where
4 there's a well reasoned award as to what the thought
5 process -- and that, that needs to be taken into account
6 here.

7 But, Your Honor, the brief that they, that they have
8 submitted to you, this motion to vacate and to correct or
9 modify the award was the exact brief, except for the time
10 limits, was the exact word-for-word brief, including the
11 arguments about why accounts receivable is not appropriate,
12 why a bank account is not appropriate. Was submitted to
13 the arbitrator under the motion to correct that they've
14 filed post award. And interestingly, and this, this -- we
15 cited it in our brief. We obviously responded and said
16 that goes way beyond, you know. You can't -- that's not
17 permitted.

18 THE COURT: Right.

19 MR. MULLINS: The only thing in a motion to correct is
20 to correct, you know, clear errors.

21 THE COURT: Yes.

22 MR. MULLINS: Or mathematical errors, and their reply
23 to that, they say that:

24 A grant in whole or part of respondent's motion
25 to correct evidence is that some or the entire

1 award was due to inadvertent mistake. A denial
2 of the motion demonstrates the arbitration --
3 arbitrator's calculation and ultimate disposition
4 was the product of intentional decision making
5 and free of computational errors.

6 So -- and, in fact, the motion to correct was denied,
7 and he clearly indicated his award, that he has duly
8 considered all the matters, all the briefs, everything that
9 was provided to him and has denied -- denies that motion
10 and says that: The award number 7 has and always been my
11 final award and I stick by it.

12 So, the issues were brought to the attention of a well
13 experienced arbitrator, and whether we want to question if,
14 if, you know, the significance of the ambiguity or whether
15 the silent -- the, the fact that the, the -- how to deal
16 with what the experts call the compensation piece of the
17 separation is not dealt with in the agreement. The
18 arbitrator chose to consider that to be ambiguous and chose
19 to answer the extrinsic evidence and issued the award that
20 it did. And that does not rise to the level of fraud. You
21 have two, two statutory bases are fraud, corruption, undue
22 means. And despite what Mr. Nichols has presented, you
23 know, undue means is really -- and we've got ---

24 THE COURT: I understand your argument. It's part of
25 corruption and so forth.

1 MR. MULLINS: Right. It's got to be an affirmative
2 act ---

3 THE COURT: Right.

4 MR. MULLINS: --- on the part of the party.

5 THE COURT: I understand.

6 MR. MULLINS: Okay, and then exceeds the authority,
7 and again the authority goes to arbitrability.

8 THE COURT: Well, that's the focal point of this whole
9 thing is ---

10 MR. MULLINS: Right.

11 THE COURT: --- whether or not this is the
12 construction of an ambiguity or an award of something that
13 is not covered in any way by these agreements ---

14 MR. MULLINS: Right, Your Honor, and I ---

15 THE COURT: --- by implication or by expression.

16 MR. MULLINS: And I, I will close with this unless you
17 have any additional questions, but in a situation where a
18 dispute arises, a transaction occurs where the shares are
19 tendered and contemporaneously that there's an agreement to
20 mediate and arbitrate these issues, all of that ultimately
21 goes before a judge. And the judge in her order says you
22 are to arbitrate all remaining disputes arising out of or
23 arising out of the May 30, 2014 ---

24 THE COURT: All she was doing, all she was doing was
25 saying I'm not going to try this case. An arbitrator is

1 going to try it. I understand. I don't make too much
2 more of it than that. I don't think there's a two-judge
3 rule at play here. I think she simply said this matter is
4 a dispute that's going to arbitration, and that's what
5 she ---

6 MR. MULLINS: The remaining disputes ---

7 THE COURT: --- was saying.

8 MR. MULLINS: --- are going to go to arbitration.

9 THE COURT: However you want to phrase it.

10 MR. MULLINS: And all those, all these disputes were
11 presented to her.

12 THE COURT: I do not think that precludes them from
13 arguing the authority under the statutory provision you and
14 I've just discussed with this court.

15 MR. MULLINS: Well, I, I don't -- maybe they're not --
16 it's not precluded, but I think the court needs to consider
17 that order, Your Honor. I think the court needs to
18 consider that order.

19 THE COURT: All right. Now ---

20 MR. MULLINS: And I think the court needs to consider
21 the fact that the legal issue on the ambiguity was what was
22 arbitrated and not the arbitrability of, of these issues.
23 That was never raised by the party.

24 THE COURT: I get all that.

25 MR. MULLINS: Okay.

1 THE COURT: You live by the statutes and you die by
2 the statutes. The statutes require this thing to be
3 arbitrated. The statutes also have a requirement of under
4 what circumstances the arbitration can be upset, and that's
5 what we're here about today.

6 MR. MULLINS: Yes, Your Honor.

7 THE COURT: Now, before I turn back to Mr. Nichols and
8 Mr. Smith and Mr. Stegmaier for any further comments, we're
9 going to take a break.

10 (OFF THE RECORD.)

11 THE COURT: All right, we turn now, Mr. Nichols, to
12 some final words from you and your colleagues.

13 MR. NICHOLS: Yes, Your Honor, I'm going to turn it
14 over to Mr. Smith.

15 THE COURT: All right.

16 MR. NICHOLS: Thank you.

17 MR. SMITH: Thank you, Your Honor. May it please the
18 court? Just a few brief comments in reply.

19 The -- Dr. Minhas has always opposed the arbitration
20 of these issues that are outside what we believe are an
21 unambiguous document, and there have been discussions that
22 were in the spirit of negotiations which I don't think were
23 really a part of this. But in an effort to simply to
24 resolve it and wouldn't be part of any judicial proceeding,
25 but every position that has been taken, Dr. Minhas opposed

1 the arbitration in this matter, and that's been clear, I
2 think, throughout the litigation of it.

3 The reality is this, and I think the court has hit on
4 it. There's just really ultimately one question: is, is
5 the document ambiguous or not. Mr. Mullins cited a number
6 of cases about even a, you know, gross error on behalf of a
7 -- an arbitrator in interpreting an ambiguity, it wouldn't
8 be disturbed. Well, the fact is is there's not an
9 ambiguity. The document is not silent; there is no silence
10 about compensation. The court's identified it very clearly
11 and that's, that's where we're entitled to the relief we're
12 seeking because this arbitrator, you know, certainly has
13 failed to follow the rules and all the myriad of other
14 mistakes that were made I think indicate the nature of the
15 proceeding.

16 But the reality is compensation is defined in 3.17 in
17 unambiguous terms. The terms of the sale of the transfer,
18 those are also clearly defined and provide for how that is
19 established, and there is no ambiguity needing to be
20 resolved. It doesn't exist and because of that, that
21 implicates the fact that this arbitrator acted outside of
22 their authority to interpret the document, to arbitrate
23 this document. He went beyond arbitrating this document,
24 and we never agreed to arbitrate outside the document.

25 THE COURT: Well, that's the nub of the question, and

1 here's what I want you all to respond to. If that's all we
2 had was this agreement, then you make a very strong
3 argument. But what is the implication of the agreement
4 both parties made -- both parties made because they wanted
5 to go on and settle some money one to another -- to take
6 these other disagreements that apparently they had and
7 arbitrate them, and then the conduct of Dr. Minhas in
8 directing the CPA to the firm to make calculations? You
9 know, if what is argued is that there was a lot of dispute
10 between the two of them about what they should be paid,
11 that probably didn't have anything to do with the agreement
12 as such but had a lot to do with what they thought they
13 were entitled to between the two of them when one party
14 decided to withdraw from this firm. So, they had those
15 disagreements for several months. The lawyers got involved
16 in it. White opined what he thought the agreement meant,
17 and finally they decided, well, we're going to close in
18 part and we're going to leave to arbitration, to a
19 particular kind of dispute resolution everything else we
20 disagree about. That is the nub of what they are arguing.

21 This isn't an ambiguity situation, although you might
22 want to term it that. Both sides agree that this contract
23 does not speak to the division of these assets. It doesn't
24 speak to them regarding them as compensation, and it
25 doesn't speak to regarding them as what is to be paid for

1 the shares. It just doesn't speak to that. And if that's
2 all we had, y'all would be in a strong position, but you
3 all chose to agree to kick the can down the road and
4 arbitrate the remaining disputes. And all that remained in
5 dispute were things that you now say are not arbitrable.
6 So, what is it?

7 MR. SMITH: Well, my familiarization with the case is,
8 I think, substantial but it's been since the award
9 occurred. But I can say and represent that there, there
10 may have been offers to try to settle disputes, but there
11 was never an agreement in writing that can -- that I have
12 seen or showed that they agreed to arbitrate these other
13 issues. Matter of fact, we opposed the arbitration of
14 those issues before Judge Benjamin. And just as the court,
15 I think, made the correct -- her decision to send those to
16 arbitration does not preclude us raising that issue now.
17 And so I, I don't think there was ever any agreement to, to
18 do that. Yeah, if I may ---

19 MR. STEGMAIER: I don't mean to make ---

20 MR. SMITH --- my knowledge ends there, I guess.

21 MR. STEGMAIER: I don't mean to make it so disjointed,
22 but I -- if -- to answer your question directly, a couple
23 things. There's a lawyer that was involved in this matter
24 that's not here today, Mr. Bland. I would submit to you on
25 behalf of Dr. Minhas, Midland Gastroenterology, and

1 Midlands Endoscopy Center that Mr. Bland solely was
2 responsible for this as far as this dispute about accounts
3 receivable, about cash in the bank. I would use the
4 word ---

5 MR. MULLINS: Your Honor, I'm going to have to object
6 to that characterization of, of referencing the ---

7 THE COURT: Wait a minute.

8 MR. MULLINS: --- counsel for ---

9 THE COURT: Wait a minute. No. No. We're not going
10 to have two people speak at one time. Hold it. We've got
11 an objection, and I'm going to listen to the objection and
12 rule on it.

13 MR. STEGMAIER: Yes, ma'am.

14 MR. MULLINS: I, I, I don't think it's proper or
15 appropriate for counsel here to represent to this court
16 that my prior counsel was solely responsible for the
17 dispute that occurred prior to closing. Now, we can sit
18 here and I got a box full of evidence that could show that
19 Dr. Minhas earlier during -- when things had not broken up
20 said Dr. Parmar, when you leave you're entitled to half the
21 operating account and half the accounts receivable. We can
22 get into all that. We don't need to get into all that.
23 Those were legitimate issues, and to say that counsel
24 somehow was solely responsible, if I understand what you
25 were saying, for the dispute prior to closing, I just don't

1 think it's appropriate. I don't think it's relevant to
2 this.

3 THE COURT: Well, here's what I think is the very last
4 thing you said. It's appropriate to raise anything. We
5 don't have a jury here, but I don't think it's relevant to
6 the legal positions that the two folks take. I don't care
7 whether Mr. Bland was the first one to dream up this idea
8 or not, Mr. Stegmaier.

9 MR. STEGMAIER: Yes, ma'am.

10 THE COURT: That's the clash of dispute. The dispute
11 remaining among the parties is whether or not there is more
12 to be paid than what was paid at closing.

13 MR. STEGMAIER: I guess I'll leave it at this, and
14 then I'll move on to complete the thought. It certainly
15 wasn't Dr. Minhas's and Dr. -- and, and Midlands
16 Gastroenterology and Midlands Gastroendoscopy Center, it
17 wasn't their contemplation contemporaneous with the sale
18 of, of the shares and the interest of both of those
19 entities to divide the accounts receivable, divide the cash
20 in the bank.

21 THE COURT: I get that.

22 MR. STEGMAIER: So, I'll move on.

23 THE COURT: I'm asking -- no. I'm asking ---

24 MR. STEGMAIER: I'm sorry.

25 THE COURT: --- a little different question.

1 MR. STEGMAIER: Okay.

2 THE COURT: I'm not asking whether or not Dr. Minhas
3 agreed that there was some money owed.

4 MR. STEGMAIER: Right.

5 THE COURT: I am asking whether Dr. Minhas and Dr.
6 Parmar agreed before they closed the transaction that there
7 was a dispute about whether there was something more owed
8 pursuant to these agreements and that an arbitrator would
9 resolve that, whether or not that dispute arose out their
10 course of dealings with each other or out of the
11 arbitration agreement itself.

12 MR. STEGMAIER: Yes, ma'am.

13 THE COURT: Now, which was it?

14 MR. STEGMAIER: I would say this on the first -- on
15 the front end. There can be disputes but they don't
16 necessarily have to be arbitrable, arbitrable, disputes
17 subject to arbitration.

18 THE COURT: Yes, but what is contended by opposing
19 counsel is that, number one, the parties agreed ---

20 MS. HEYWARD: On this issue.

21 THE COURT: --- that they had remaining disputes ---

22 MR. STEGMAIER: Right.

23 THE COURT: --- between them when they closed this and
24 that they were going to resolve those disputes at a later
25 time.

1 MR. STEGMAIER: Yes, ma'am.

2 THE COURT: And what he further contends is and that
3 they agreed that the way they would resolve these disputes
4 at a further time was by arbitration.

5 MR. STEGMAIER: We don't agree. We don't agree.
6 There were ---

7 THE COURT: Well, what do you do with the -- I don't
8 have everything.

9 MR. STEGMAIER: Yes, ma'am.

10 THE COURT: But I've got all these communications back
11 and forth between the lawyer who was stuck in the middle,
12 Mr. White.

13 MR. STEGMAIER: Yes, ma'am.

14 THE COURT: He was the lawyer for the company and he
15 was being -- like the push me, pull me. He was trying to
16 do the best he could to figure out a way that these parties
17 could resolve this thing. And he sent communications to
18 everybody saying the parties have agreed they're going to
19 resolve this thing by arbitration in the future.

20 MR. STEGMAIER: The only thing that sat out as a
21 dispute, our position would be as it relates to this,
22 additional compensation, additional compensation which is
23 referenced in paragraph 3.15 of the agreement, and that's
24 what required the calculations by Mr. Burkett. That -- and
25 they ended up, the entities ended up, when it's all said

1 and done, paid somewhere in the neighborhood 40 to \$50,000
2 to get those calculation, but it was clear and I'm
3 wondering ---

4 THE COURT: Well. So, then let me stop you there.

5 MR. STEGMAIER: Yes, ma'am.

6 THE COURT: If that's the case, then at least part of
7 the arbitration award is within the confines of the
8 agreement, and that is the part where the variance is
9 calculated because the variance is a part of the contract
10 of what happens when you're more than 20% apart or less
11 than 10% apart, this kind of thing.

12 MR. STEGMAIER: Yes, ma'am.

13 THE COURT: That part of the arbitration award is
14 clearly a construction of the compensation provisions of
15 the contract, right?

16 MR. STEGMAIER: As we -- yes, ma'am, we agreed. We
17 believe it was miscalculated.

18 THE COURT: That's something I -- would be beyond
19 anything I could possibly deal with. A mere miscalculation
20 is not something that the statute gives me the authority to
21 deal with, Mr. Stegmaier, unless you can show me something
22 that allows me to simply correct their calculations.

23 MR. STEGMAIER: Well, you have incumbent in any of
24 those miscalculations the matter of overhead.

25 THE COURT: Well, but that's all a part of what he

1 made a judgment about. If you go before an arbitrator, he
2 can be wrong about the facts, he can be wrong about the
3 law, and there's not one darn thing a circuit court judge
4 can do about that. The only thing a circuit judge can to
5 do, deal with is whether it is completely beyond his
6 authority ---

7 MR. STEGMAIER: Yes, ma'am.

8 THE COURT: --- to have, and so as I understand, we
9 are narrowing the issues here a little bit because it was
10 clearly within his authority under the agreement to decide
11 the compensation, right?

12 MR. STEGMAIER: Well, I would suggest to you this.
13 Under Section 15-46-140, specifically Subsection 3, the
14 award is imperfect in a matter of form.

15 THE COURT: Well, imperfect is a matter of form. It's
16 not a miscalculation. That is the form of the thing and
17 the form of the thing was agreed upon: figures only, no
18 reason. A non-reasoned decision. That doesn't -- the form
19 of the verdict is not the amount of the calculations.

20 MR. STEGMAIER: Well, I guess to wrap up, though, and,
21 and, and deviating from our attention as it relates to
22 additional compensation and variance calculations,
23 specifically as it relates to accounts receivable and cash
24 in the bank, and I don't know if the court is going to
25 entertain maybe post hearing just a brief post-hearing

1 briefing based on some of the arguments raised today, but I
2 would suggest that it -- there would be inefficacy due
3 that. There are emails from Mr. White clearly stating that
4 accounts receivable and cash in the bank would not be part
5 of any sort of additional dispute as, as you would want to
6 characterize it.

7 So, again our position is this. That accounts
8 receivable and cash in the bank were not going to be
9 subject to any further dispute, and certainly not going to
10 be subject to any sort of arbitration.

11 THE COURT: Well, let me ask you this.

12 MR. STEGMAIER: Yes, ma'am.

13 THE COURT: Let's go through what was awarded and see
14 if we can at least agree upon what we're still in dispute
15 about.

16 MR. STEGMAIER: Yes, ma'am.

17 THE COURT: The variance amounts the arbitrator
18 clearly had the right to calculate. So, that 53,000 and
19 29,000, or 3.1 calculations, I can't disturb those. Would
20 you agree?

21 MR. STEGMAIER: No, but you and I have a different
22 interpretation of the statute as being imperfect.

23 THE COURT: Well, that's your imperfect -- beyond all
24 that, that clearly is a calculation contemplated by that
25 contract, right?

1 MR. STEGMAIER: 3.15 does articulate a method of
2 calculating, yes, ma'am.

3 THE COURT: All right. Then you go back up to
4 operating accounts, trailing accounts receivable, and
5 Endoscopy buy-in reimbursements, those are not things
6 covered by the contract is your contention. Am my right?

7 MR. STEGMAIER: Operating accounts, the trailing
8 accounts, yes, ma'am.

9 THE COURT: And the accounts receivables, buy-in
10 reimbursement?

11 MR. STEGMAIER: Correct. Yes, ma'am.

12 THE COURT: None of those things are covered by the
13 contract, it is your contention?

14 MR. STEGMAIER: Correct. Yes, ma'am.

15 THE COURT: And then with regard to the weekend money,
16 the profit-sharing, the statutory interest, and the Nissan,
17 those weren't awarded anyway, were they?

18 MR. STEGMAIER: They were denied. Now, I know you
19 don't want to talk about the car, but ---

20 THE COURT: Well, why are we talking about it if it
21 wasn't awarded?

22 MR. STEGMAIER: Well, here's the thing about that with
23 regard to the car is the car was always a possession of
24 Midlands Gastroenterology. Dr. Parmar never had the right
25 to take it when he departed the company. He kept it in his

1 possession for two years or up to towards two years during
2 the, during the ---

3 THE COURT: Well, you should've sued him about that,
4 you know, but the arbitrator said I'm not awarding it. So,
5 how was that in my ballpark right now? That's one of these
6 unfairness things just like they argue, well, it's unfair
7 not to deal with these accounts receivable because your
8 client took all the front-end accounts receivable and
9 operating cash when they got started.

10 MR. STEGMAIER: That's not true.

11 THE COURT: Well, you know ---

12 MR. STEGMAIER: I, I mean ---

13 THE COURT: --- we can argue about that, but I'm
14 saying those are all fairness arguments.

15 MR. STEGMAIER: I -- and, and, and let me, let me say
16 that as far as I understand your point, and I'll put the
17 car, I'll put the car at the back and we'll stop talking
18 about the car. I understand, and if we have to take it up
19 in magistrate's court, that's what we'll do, but with
20 regard to ---

21 THE COURT: Might have a few statutes of limitations
22 problem, but ---

23 MR. STEGMAIER: Well.

24 THE COURT: --- is it really worth that?

25 MR. STEGMAIER: I don't know. I'm not the arbiter of

1 that. So -- but let me, let me, let me share with you this
2 that I think does need, need -- there does need to be a
3 point made as far as the accounts receivable for the
4 entities at the beginning of the relationship.

5 The representation has been made, not only at the
6 arbitration proceeding but here today as well, that Dr.
7 Minhas zeroed out that money. Dr. Minhas did not zero out
8 that money. Dr. Minhas kept that money in the entities
9 rather than taking the loan in order to continue to be
10 operating, and I think that's an important point to make.

11 THE COURT: Well, the amount of the award and what Dr.
12 Minhas did beforehand ---

13 MR. STEGMAIER: Yes, ma'am.

14 THE COURT: --- and all this fairness stuff ---

15 MR. STEGMAIER: Yes, ma'am.

16 THE COURT: --- is, in my opinion, not something that
17 I need to get into.

18 And, counsel, with all due respect, you don't need
19 to ---

20 MR. MULLINS: Your Honor, I, I just ---

21 THE COURT: --- you don't need ---

22 MR. MULLINS: You know, I've seen with my own two eyes
23 where Mr. Burkett was asked whether that money was taken
24 out, and he said yes.

25 THE COURT: I understand that, and I think that we are

1 in a disagreement about what the evidence showed on a point
2 that I would never rule on.

3 MR. MULLINS: Yes, ma'am.

4 THE COURT: Because my ruling is simply limited to, as
5 I now look at it, the award of three items: the operating
6 accounts as of May of 2014, the accounts receivable as of
7 May 2014, and the accounts receivable to a 2011 buy-in
8 reimbursement. That is all I've got to look at in terms of
9 deciding whether the arbitrator had the authority to make
10 those awards with any construction of any provision. And
11 Dr. Parmar argues yes, he did have it because it was part
12 of an ambiguous contract about compensation.

13 You argue that the compensation was not ambiguous at
14 all. It was very clear and under the compensation
15 provision, this is just not something you can get any more
16 than you get can the Nissan, any more than you can get the
17 desks and the chairs or the equipment of the corporation.
18 This is part of the corporation's assets, and your argument
19 is the only way it gets distributed in the arbitrable
20 agreement is if the arbitrable agreement has some reference
21 to it or something within that compensation provision that
22 could give rise to saying that it includes these items.

23 That's the way I see it. Now, if anybody has got any
24 final, little comment on how I see it, speak now or forever
25 hold your peace. I'm going to let you speak, and then I'm

1 going to let your opposing counsel finish up.

2 MR. SMITH: Thank you, Your Honor.

3 THE COURT: MR. SMITH:

4 MR. SMITH: And just very briefly, just a couple of
5 final points to conclude the record here for Dr. Minhas.

6 I think it's important when Mr. Mullins addressed how
7 the Statute 15-48-90 with respect to the award, what
8 governs that, it is actually going to be the agreement
9 because Subsection B over there makes it very clear: That
10 an award shall be made within the time fixed therefore by
11 the agreement. ;

12 THE COURT: By the way, back to that time thing.

13 MR. SMITH: All right.

14 THE COURT: What do you do with the statutory
15 provision that says you speak up before the award is made
16 or you lose it?

17 MR. SMITH: Because I think in this case, as is the
18 case with the agreement, the agreement displaces the
19 statute. It -- what governs is are the rules and the rules
20 don't provide for that, and so we were free to raise that
21 at a later date.

22 THE COURT: Yes, but the statute, the South Carolina
23 statute on arbitrated controversies, there is a statutory
24 provision within the South Carolina Arbitration Act that
25 squarely says the timeliness thing is under whatever

1 arbitration agreement you've got. Cannot be raised post
2 the making of the award. It doesn't say it can't be
3 raised. It says you cannot raise them unless you do so
4 before the award is made, as I understand it. You're
5 telling me you read it differently?

6 MR. SMITH: Yes, Your Honor. Well, this -- so, what,
7 what the award, what it says is:

8 The party waives objection that an award was not
9 made within the time required unless he notifies
10 the arbitrator of his objection prior to the
11 delivery of the award to them.

12 THE COURT: That's right. That's right.

13 MR. SMITH: That's the reference you're talking about.

14 THE COURT: That's right.

15 MR. SMITH: Right. I think our objections were raised
16 timely in the June motion that was filed because not all of
17 this was finalized and not all these issues were resolved
18 until that, until that point. So, we, we maintain that it
19 was timely.

20 THE COURT: Because of the post award motions for
21 reconsideration, it wasn't final until it was final.

22 MR. SMITH: Until it was final.

23 THE COURT: All right.

24 MR. SMITH: And the arbitrator allowed all that to be
25 considered and, in fact, did consider it. So, we think it

1 was considered and appropriately raised, and, and the fact
2 of a waiver was not, it was not the position of the
3 arbitrator.

4 THE COURT: Okay.

5 MR. SMITH: Thank you, Your Honor.

6 THE COURT: All right, counsel.

7 MR. MULLINS: Thank you, Your Honor. Now, just -- the
8 statute doesn't say final award. It just says award, and
9 the evidence in the record reflects that the determination
10 in May was the final award after consideration of it.

11 THE COURT: If I decide that final means -- that award
12 means the end of the road, what do you have to say about
13 the ability of someone to raise it after the first order is
14 made on reconsideration?

15 MR. MULLINS: Well, I think the decision -- if the, if
16 the legislature wanted to include final, they could have.
17 They did not. I think the issue is do you know whether you
18 win or lose or not and if you think you -- if you find out
19 that you've lost, then you raise, raise the issue. And
20 that, the *Sosbi* case -- again it's unpublished -- but they
21 were provided a draft award. It wasn't even the issuance
22 of an award, and they said that was too late. You knew,
23 knew about it. So, I don't, I don't -- and in any event,
24 our contention is the May 17th order was a final order.

25 THE COURT: Understood. Anything else?

1 MR. MULLINS: Just a couple of quick points, and I, I,
2 I do want to -- and I, I appreciate the discussion we've
3 had, and I do, I do agree that it is an interesting issue,
4 this, you know, the nature of what was arbitrated and
5 whether that was permissible but -- and I'm not going to go
6 back and read all the cases that talk about the high burden
7 and all of that. But when we're talking about exceeding
8 the powers, you know, *Batten vs. Howell* says:

9 The question of whether arbitrators have exceeded
10 their powers relates to the arbitrability of the
11 issue they have attempted to resolve.

12 And that's kind of what we've been talking about.

13 Arbitrators exceed their powers only if the issue
14 resolved with them was not within the scope of
15 the agreement arbitrated. Conversely, if an
16 issue resolved by arbitrators is within the scope
17 of the arbitration agreement, the language does
18 not require the court to review the merits of the
19 decision.

20 So -- and, and let me in that context draw your
21 attention, Your Honor. Again this is Exhibit C, our
22 prehearing brief, and you may have -- I know that you've
23 cited to it, but I just want to make sure you have the
24 exact email. And unfortunately I didn't number these
25 pages, but if you go to the end of the prehearing brief --

1 you've got some exhibits. Exhibit A is a two-page --
2 one-page email and then Exhibit B is an email.

3 THE COURT: All right.

4 MR. MULLINS: And if you go to page 6 of that email.

5 THE COURT: All right.

6 MR. MULLINS: And in the middle of the page there's an
7 email from Mr. Bland. Ed and Lowndes, Lowndes Pope late in
8 the process was retained as individual counsel, I believe,
9 for Dr. Minhas. And Mr. Bland says: If there is an
10 acceptance of the shareholder -- dah, dah, dah -- can we
11 have an agreement to table the issues of AR distribution,
12 bank account, retirement?

13 All these, these are the issues that, that were
14 arbitrated, okay? So, he's saying, hey, we're ready. We
15 need to -- let's -- give me your, your representation that
16 we're going to table these issues.

17 The response, turn back to page 5, is from Mr. White
18 and he indicates that they believe that they've made all
19 the payments under 3.8, but he says in the second
20 paragraph:

21 All other issues are still open between the
22 parties. The companies are willing to mediate
23 the issues concerning any additional compensation
24 due to Dr. Parmar after Donny Burkett completes
25 his accounting and the issue of the amount of

1 distributions payable to Dr. Parmar through May
2 30, 2014.

3 THE COURT: Now, where, where are you reading from?

4 MR. MULLINS: The bottom of page 5, there's an email
5 from Ed White. It begins Eric. I flipped back a page from
6 the page that we were on.

7 THE COURT: Okay. All right.

8 MR. MULLINS: The email at the bottom of the page.

9 THE COURT: Yeah.

10 MR. MULLINS: Yeah, it begins Eric, and the second
11 paragraph. In the first paragraph, they're saying we
12 believe we've tendered everything for the shares as
13 required, and again this was in response to Mr. Bland's
14 email saying can we table all these AR issues. And Mr.
15 White says all the other issues are still open between the
16 parties. They're:

17 Willing to mediate the issues concerning any
18 additional compensation due Dr. Parmar after Mr.
19 Burkett completes his accounting and the issue of
20 the distributions payable to Dr. Parmar through
21 May 30, 2014. Corey Manning in our firm will
22 take the lead on the mediation and if necessary
23 the arbitration of these issues, with me
24 assisting as necessary.

25 So, clearly our position is they were representing to

1 us, and this was relied on by us when we executed the
2 closing documents, that these issues were going to be
3 arbitrated. And this court, I hope, is going to understand
4 the limits and understand that what the arbitrator
5 considered was the exact disputes that they said were going
6 to be arbitrated, and that is despite the fact that 3.8
7 spoke to the payment of shares, were they entitled to the
8 accounts receivable and the bank accounts. And that is
9 exactly what happened and the arbitrator we contend --
10 because our position was was that the agreement was silent
11 as to that and, therefore, ambiguous and there was
12 testimony to support that.

13 And we think that when you are considering overturning
14 an arbitration award -- and, by the way, my client -- you
15 know, the arbitration is supposed to be cheap and quick.
16 We didn't get that in this case. My client has spent a lot
17 of money bringing this here today and I don't think -- I
18 think you've got enough. I don't think you need any more
19 briefing from us, although I would like to see the cases
20 that have been handed up if there's -- and I, you know ---

21 THE COURT: I've got them all right here.

22 MR. MULLINS: I've got them, but I just haven't been
23 able to -- there was no case cited in their brief
24 whatsoever.

25 THE COURT: I've got you completely, agree with you

1 completely, and I haven't had a chance to do anything more
2 than scan them. There are a few of them I knew about
3 beforehand like *Clark County Education* that's been cited in
4 some other cases I've worked on, but I will have to study
5 them myself. So, I'm in the same boat you are, counsel.

6 MR. MULLINS: Okay. Well, thank you but, Judge, just
7 to, just to conclude that, that, you know, when you're
8 talking about exceeding the powers, you've got to go beyond
9 where we went today. The arbitrability I think is
10 reflected by what's before you. The issue that they want
11 to dispute is a determination by an arbitrator that this
12 provision was ambiguous and that he considered all the --
13 two days of extrinsic evidence, that I guess we shouldn't
14 have had an arbitration at all if it wasn't subject,
15 subject to arbitration, but the judge compelled arbitration
16 in these remaining issues. So, we just don't think that
17 this rises to the level that a circuit court should step in
18 and overturn the province of a party's agreement to binding
19 arbitration. We think the award should stand.

20 THE COURT: Very good. Now, here's what I'm going to
21 do. I'm going to ask each of you to submit any further
22 briefing materials you want to submit to me by -- today is
23 Wednesday or Tuesday -- Tuesday of next week. I don't
24 think we need any back and forth or one party and then
25 another party. I will consider that, together with all of

1 this material in this file, and either myself or my law
2 clerk, Amelia Waring, will communicate with you the
3 outlines of my decision. And I will ask the prevailing
4 party to draw an order and submit it to the other side, and
5 then we will move from there as to what I sign. Fair
6 enough?

7 MR. STEGMAIER: Yes, ma'am.

8 MR. MULLINS: Fair enough.

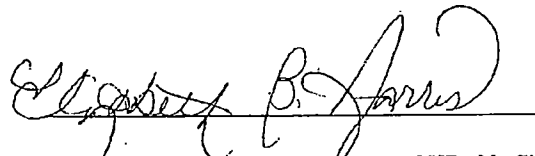
9 THE COURT: Very good. Thank you so much. Well
10 presented, both sides.

11 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 29TH DAY OF NOVEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 3RD, 2017

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-40-6017

Rajinder Parmar,

Plaintiff,

AFFIDAVIT OF RAJINDER PARMAR, M.D.

vs.

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

Defendants.

PERSONALLY APPEARED before me Rajinder Parmar who, being duly sworn, deposes and states the following:

RICHLAND COUNTY
FILED
2014 DEC 29 PM 2:08
JEANNETTE W. ROBERTS
C.C.P. & G.S.
ng Eyom,

1. My name is Rajinder Parmar, and I am over the age of eighteen years.
2. I am a resident of Richland County, South Carolina.
3. This affidavit is true and correct and it is based on my own personal knowledge and I give it in opposition to Defendants' request for a Preliminary Injunction and in support of my motion to compel this action to the AHLA for final and binding arbitration.
4. I am a medical doctor licensed to practice medicine in the State South Carolina and am board certified in Gastroenterology.
5. Prior to May 30, 2014, I was a fifty (50%) percent member of Midlands Endoscopy Center, LLC ("MEC").
6. Dr. Balbir S. Minhas ("Minhas") was the other fifty (50%) percent member of MEC.
7. Prior to May 30, 2014, I was a fifty (50%) percent shareholder in Midlands Gastroenterology, PC ("MG").
8. Minhas was the other fifty (50%) percent shareholder in MG.
9. During the time I had an ownership interest in MEC and MG, the corporate attorney for MEC and MG was Edward K. White, Esquire ("White") of Nelson Mullins Riley & Scarborough, LLP.
10. As a fifty percent owner of MEC and MG, I relied on the legal advice of White that he gave to the entities, who was a duly authorized agent of the principals MEC and MG.

11. On March 23, 2014, MEC and MG held a corporate meeting at which it was agreed that I would sell my ownership interests in MEC and MG to Minhas as per the terms of the governing agreements between us. At this meeting, White and Minhas both made the following representations:

- A. White would draft the transfer agreements for the sale of my interests to Minhas which would occur on or before June 15, 2014. White further rejected the position that he was attorney for Minhas. White emphatically stated he was attorney for the two entities only and would not be advocating for any of the owners in the matter;
- B. Any major equipment purchases and other outside the ordinary business expenses for MEC and MG would be put on hold until I sold my ownership interests;
- C. The corporate accountant for MEC and MG, Donny Burkett, CPA, would conduct an accounting for MEC and MG to determine the accrued accounts receivables, bank account amounts, cash positions, and any other compensation due to the owners at the time of the purchase of my interests;
- D. Mr. Burkett would also determine the fair market value of the Nissan Murano, which was a corporate asset; and
- E. At the closing, I would be entitled to 50% of the accrued accounts receivables, bank accounts, cash positions, and any other compensation due to the owners and would be allowed to purchase the Nissan Murano at a price based upon Mr. Burkett's valuation ("Compensation Issues").

12. I relied on White's March 23rd representations and his representations were not altered in any way through the May 30, 2014, closing in which I transferred my ownership interests in MEC and MG to Minhas.

13. On May 28, 2014, White prepared two five page Settlement Agreements which contained global release language for the transfer of my MEC and MG ownership interests to Minhas. Copies are attached hereto as Exhibits A and B.

14. I refused to execute these settlement documents because they did not correspond with White's or Minhas' March 23rd and subsequent representations and did not preserve the Compensation Issues.

15. In my view, the proposed settlement agreements were an attempt to release the previous disputes as to the Compensation Issues which were separate and apart from the sale of my ownership interests. It was a clear attempt on White's and Minhas' part to have me release Minhas from his obligations to pay me for my share of the Compensation Issues.

16. Due to my refusal to execute White's settlement documents and broader transfer agreements as to my ownership, White then drafted two new limited agreements entitled "Agreement for Sale of Limited Company Interest" for MEC and a "Stock Sale Agreement" for MG (hereinafter collectively referred to as "Agreements") without corresponding separate settlement agreements.

17. These limited Agreements dealt only with the sale of my MEC membership interests and MG stock to Minhas. Prior to executing the limited Agreements, I was reluctant and wanted confirmation from White that by signing the new Agreements, my rights to pursue Compensation Issues other than the valuation of my ownership were preserved.

18. In a May 30, 2104 email, White represented that the limited Agreements did not address **other issues**, such as my rights with regard to the accounts receivables, bank accounts, cash positions, and any other compensation due to the owners, nor did it address the intended purchase of the Nissan Murano by me.

19. In the email White further represented that these "other issues" would remain "open" for either "mediation" or "arbitration" after the closing of the sale of my interests occurred. (See White's May 30, 2014, email attached hereto as Exhibit C and incorporated by reference.)

20. For example, in Exhibit C, White further represented that, "**All other issues** are issues are still *open* between the parties" and that "Cory Manning, in our firm, will take the lead on mediation and, if necessary, the *arbitration* of these issues with me assisting as necessary." (Emphasis supplied.)

21. White gave these assurances with the intent for me to rely upon them. When White gave these material representations he was a duly authorized agent and attorney for the MG and MEC and he did not tell me or my attorney that he was not authorized to make these representations and that we should not rely upon them for their truthfulness.

22. I relied to my detriment on White's March 23, 2014, subsequent and May 30, 2104 representations as attorney for the entities when I executed White's limited Agreements to sell my ownership interests in MEC and MG to Minhas. I would not have signed the limited Agreements but for his representations that the Compensation Issues were preserved and not being extinguished at that time.

23. After the May 30th sale, White, as corporate attorney and agent for MEC and MG, and Corey Manning, Esquire ("Manning") and as Minhas' personal attorney at that time, also of Nelson Mullins Riley & Scarborough, LLP, continued to provide my attorney with emails indicating that the "open" Compensation Issues would be either mediated or arbitrated. (See attached as Exhibit D emails which are hereby incorporated by reference.)

24. For example, Manning and my attorney scheduled an August 8, 2014, mediation with Tom Wills in Charleston, South Carolina, but Minhas subsequently refused to attend and

canceled it after he terminated Manning's services and hired Joel W. Collins, Jr., Esquire ("Collins").

25. On July 15, 2014, Minhas' current personal attorney, Collins, also informed my attorney that he wanted to arbitrate these "open" issues with the AHLA per the entities' governing documents and was not inclined to mediate them at that time. (See attached hereto as Exhibit E Collins' July 15, 2014, letter which is hereby incorporated by reference.)

26. In direct reliance on White's representations and Collins' letter, on September 22, 2014, I initiated an arbitration action with the AHLA for which I paid a filing fee of \$800.00..

27. However, Minhas and Collins have now refused to arbitrate and have filed for a temporary injunction to stop the AHLA from arbitrating the "open" issues. Despite the assurances of White and Manning (which were later ratified by Collins) that all issues related to my compensation as a former owner of MEC and MG were preserved for mediation and/or arbitration, Minhas and Collins have taken a bad faith radical about face by asserting that the limited Agreements do in fact preclude the arbitration of such matters.

28. I make these true and accurate statements of my own free will, under the penalty of perjury, and that I am not under the influence or any drugs, alcohol or duress of any type.

FURTHERMORE THE AFFIANT SAYETH NOT.



Rajinder Parmar, M.D.

SWORN TO AND SUBSCRIBED before me this
9th day of December, 2014



Notary Public for South Carolina
My Commission Expires: 6/26/2024

EXHIBIT A

00592

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is made and entered into effective as of May 30, 2014 (the "Effective Date"), by and between RAJINDER PARMAR, M.D. ("Physician") and MIDLANDS ENDOSCOPY CENTER, LLC (the "Company") (collectively the "Parties").

WITNESSETH:

WHEREAS, Physician's ownership interest in the Company is being redeemed as of the Effective Date;

WHEREAS, the Company has agreed to pay Physician a final distribution from the Company as calculated below (the "Final Distribution");

WHEREAS, as partial consideration for the Final Distribution, Physician has agreed to execute and deliver this Agreement to the Company; and

WHEREAS, Physician acknowledges and agrees that the Final Distribution constitutes sufficient consideration for the releases and covenants granted by Physician under this Agreement.

NOW, THEREFORE, in consideration of the mutual promises recited herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Physician's Final Distribution will be computed as follows:

a) By June 15, 2014, a cut-off statement shall be prepared detailing the total amount of the Company's accounts receivable and cash on hand as of May 30, 2014 (the "Cut-off Statement").

b) Using the Cut-off Statement, the Company shall calculate the amount of the distributable assets ("Distributable Assets") available for distribution to the Company's members as follows:

i) The total amount of accounts receivable as of May 30, 2014 shall be multiplied by ____% (representing the Company's trailing 12-month collection rate for its accounts receivable) and the resulting product shall be added to the cash on hand as of May 30, 2014 and the resulting total shall be the Distributable Assets. For this purpose, "accounts receivable" shall mean all physician services billed in the 120 days preceding May 30, 2014 which remain unpaid.

ii) The working capital needs of the Company ("Working Capital Needs") shall be computed by totaling the following:

- 1) All expenses and liabilities of the Company accrued through May 30, 2014 (which amounts shall be determined by June 30, 2014);
 - 2) All additional legal, accounting or other expenses or costs the Company incurs subsequent to May 30, 2014 in connection with the conclusion of (a) the matters covered by this Agreement or (b) the transfer of Physician's membership interest in the Company;
 - 3) \$261,412 representing the four month's operating expense reserves of the Company required by Section 8 of the Company's Operating Agreement dated April 23, 2003, and
 - 4) \$80,000 representing the additional working capital needs of the Company to upgrade outdated equipment, as determined by the Managing Member, Balbir Minhas.
- c) The amount of the Working Capital Needs shall be deducted from the Distributable Assets. If the resulting difference is a positive number then such amount shall be the distribution amount ("Distribution Amount").
- (d) Once the Distribution Amount is determined, Dr. Parmar shall receive fifty percent (50%) of the Distribution Amount payable in three equal monthly installments on July 15, August 15 and September 15 of 2014.

3. Release of the Company. In consideration of the benefits conferred by this Agreement and the Final Distribution, Physician (on behalf of himself, his family members, heirs, assigns, executors, and other representatives) releases the Company and its past, present, and future parents, subsidiaries, affiliates, and their predecessors, successors, assigns, and their past, present, and future officers, directors, employees, owners, investors, shareholders, members, managers, administrators, business units, employee benefit plans (together with all plan administrators, trustees, fiduciaries, and insurers) and agents (Physician's Releasees) from all claims and waives all rights known or unknown, he may have or claim to have against any of the Physician's Releasees, including, but not limited to, any claim relating to his relationship, including ownership of, or employment with, the Company, or his separation therefrom, or on any other basis arising before the execution of this Agreement, including, but not limited to, claims for: (i) discrimination, harassment or retaliation arising under federal, state or local laws prohibiting sex, national origin, race, religion, disability, veteran status or other protected class discrimination, the Family Medical Leave Act, as amended (FMLA), harassment or retaliation for protected activity; (ii) for compensation, bonus payments, and/or benefits including but not limited to claims under the Fair Labor Standards Act of 1938 (FLSA), as amended, Employee Retirement Income Security Act of 1974, as amended, (ERISA), FMLA and similar federal, state, and local laws; (iii) breach of contract, or for benefits under any other contractual theory; (iv) in wrongful termination law; (v) state tort law or express or implied contract law; (vi) attorney's fees; and (vii) any other amounts in exchange for or related to his ownership interest

in the Company. Provided, however, that this release does not cover: (i) claims under workers compensation laws; (ii) any claims related to the provision of medical services by a physician other than Physician, or other Company employee, to any patient at any time; (iii) any claims related to billing and coding of medical services provided by a physician or other Company employee other than Physician, to any patient at any time; or (iv) any claims related to a breach of this Agreement.

4. Physician's Covenant Not To Sue. In consideration of the benefits offered to Physician, Physician shall not sue the Company or any of Physician's Releasees on any of the released claims or join as a party with others who may sue on any such claims and if Physician does not abide by this provision, then he will indemnify Physician's Releasees for all expenses, including attorney's fees, they incur in defending the action. This covenant not to sue will apply in all cases, except where prohibited by law.

5. Release of Physician. In consideration of benefits conferred by this Agreement, the Company (on behalf of itself; its predecessors, successors, assigns; its past, present, and future parents, subsidiaries, affiliates, and their predecessors, successors, assigns, and their past, present, and future officers, directors, employees, owners, investors, shareholders, members, managers, administrators, business units, employee benefit plans (together with all plan administrators, trustees, fiduciaries, and insurers) and agents) hereby releases Physician and his heirs, assigns, executors, and agents (Company's Releasees) from all claims and waives all rights known or unknown, it, they, or any one of them, may have or claim to have against Physician, including, but not limited to, any claim relating to his employment with, or relationship to, the Company or any of its shareholders, directors, officers, employees, agents, or affiliates, or to his stock ownership in the Company, or on any other basis, including, but not limited to, any claims: (i) in tort or in contract, whether express or implied; (ii) in law or in equity; (iii) under any state or federal statute or regulation; or (iv) for attorney's fees. Provided, however, that this release does not cover: (i) any claims related to the provision of medical services by Physician to any patient at any time; (ii) any claims related to billing and coding of medical services provided by Physician during the course of his employment with Company; or (iii) any claims related to a breach of this Agreement, a fraudulent act, willful misconduct or a knowing violation of law.

6. Company Covenant Not To Sue. In consideration of the benefits offered to the Company, the Company shall not sue Physician or any of Company's Releasees on any of the released claims or join as a party with others who may sue on any such claims and if the Company does not abide by this provision, then it will indemnify Physician or Company's releases for his, their or its expenses, including attorney's fees, incurred in defending the action. This covenant not to sue will apply in all cases, except where prohibited by law.

7. Non-Disparagement. Physician shall refrain from making any disparaging remarks about or otherwise disrupting the business of, the Company or any of the Company's employees. The Company shall refrain, and shall cause its employees to refrain, from making any disparaging remarks about or otherwise disrupting the business of the Physician.

8. Confidentiality. The terms and provisions of this Agreement are confidential and the Parties agree that they will not disclose the terms and conditions of this Agreement to third parties, except as required by law or legal process. Notwithstanding the above, the Parties may reveal the terms and provisions of this Agreement to their attorneys, tax or financial advisors whom they may consult for legal, tax or financial advice, provided that all such persons agree to maintain the confidentiality of this Agreement.

9. Cooperation with Respect to Claims. In the event of any lawsuit or claim or threat thereof by a patient or other person against the Company or Physician with respect to Physician's practice of medicine as an employee of the Company, the Party against whom the lawsuit, claim, or threat has been brought promptly shall give the other Party written notice of such matter and shall cooperate with the other Party in providing documents and other similar matters reasonably requested by such other Party in connection with the investigation and assessment of such lawsuit, claim, or threat thereof.

10. Governing Law and Enforcement. This Agreement shall be governed by the laws of South Carolina, without regard to its conflict of laws provisions, and the applicable provisions of federal law. The Parties hereby consent to jurisdiction in the federal and state courts of South Carolina for purposes of any litigation relating to this Agreement. The Parties agree that, should a Party institute litigation against another Party, then the losing Party in such litigation shall reimburse the prevailing Party for all of the costs and expenses of such litigation, including reasonable attorney's fees.

11. Severability. If any portion, provision, or part of this Agreement is held, determined, or adjudicated by any court of competent jurisdiction to be invalid, unenforceable, void, or voidable for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Agreement, and such determination or adjudication shall not affect the validity or enforceability of such remaining portions, provisions, or parts.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

13. Modification; Waiver of Breach. No part of this Agreement shall be modified or amended except by a writing signed by each of the Parties. A waiver of any breach of this Agreement shall not constitute a waiver of any other provision of this Agreement or any subsequent breach of this Agreement.

14. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any other agreements or understandings, whether oral or written. This Agreement is binding on, and inures to the benefit of, the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the Parties have entered into this Settlement Agreement effective as of the Effective Date.

PHYSICIAN:

Rajinder Parmar, M.D.

THE COMPANY:

**MIDLANDS ENDOSCOPY CENTER, LLC, a South
Carolina limited liability company**

By: _____
Balbir S. Minhas, M.D., Member

-#4822-2761-0395 v.4 -

EXHIBIT B

00598

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is made and entered into effective as of May 30, 2014 (the "Effective Date"), by and between RAJINDER PARMAR, M.D. ("Physician") and MIDLANDS GASTROENTEROLOGY PC (the "Practice") (collectively the "Parties").

WITNESSETH:

WHEREAS, the Parties have agreed that Physician's employment with the Practice will terminate on the Effective Date;

Whereas, Physician's ownership interest in the Practice is being redeemed as of the Effective Date;

WHEREAS, the Practice has agreed to pay Physician a final distribution from the Practice as calculated below (the "Final Distribution");

WHEREAS, as partial consideration for the Final Distribution, Physician has agreed to execute and deliver this Agreement to the Practice; and

WHEREAS, Physician acknowledges and agrees that the Final Distribution constitutes sufficient consideration for the releases and covenants granted by Physician under this Agreement.

NOW, THEREFORE, in consideration of the mutual promises recited herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Physician shall receive his regular paycheck, subject to normal payroll deductions through May 30, 2014.

2. Physicians Final Distribution will be computed as follows:

a) By June 15, 2014, a cut-off statement shall be prepared detailing the total amount of the Practice's accounts receivable and cash on hand as of May 30, 2014 (the "Cut-off Statement").

b) Using the Cut-off Statement, the Practice shall calculate the amount of the distributable assets ("Distributable Assets") available for distribution to the Practice's members as follows:

i) The total amount of accounts receivable as of May 30, 2014 shall be multiplied by ____% (representing the Practice's trailing 12-month collection rate for its accounts receivable) and the resulting product shall be added to the

cash on hand as of May 30, 2014 and the resulting total shall be the Distributable Assets. For this purpose, "accounts receivable" shall mean all accounts for physician services billed in the 120 days preceding May 30, 2014 which remain unpaid.

ii) The working capital needs of the Practice ("Working Capital Needs") shall be computed by totaling the following:

1) All expenses and liabilities of the Practice accrued through May 30, 2014 (which amounts shall be determined by June 30, 2014);

2) All additional legal, accounting or other expenses or costs the Practice incurs subsequent to May 30, 2014 in connection with the conclusion of (a) the matters covered by this Agreement or (b) the transfer of Physician's membership interest in the Practice; and

3) \$139,180 representing four months of operating expenses for the working capital needs of the Practice, as determined by the President, Balbir Minhas.

c) The amount of the Working Capital Needs shall be deducted from the Distributable Assets. If the resulting difference is a positive number then such amount shall be the distribution amount ("Distribution Amount").

(d) Once the Distribution Amount is determined, Dr. Parmar shall receive fifty percent (50%) of the Distribution Amount, payable in three equal monthly installments on July 15, August 15 and September 15 of 2014.

3. Release of the Practice. In consideration of the benefits conferred by this Agreement and the Final Distribution, Physician (on behalf of himself, his family members, heirs, assigns, executors, and other representatives) releases the Practice and its past, present, and future parents, subsidiaries, affiliates, and their predecessors, successors, assigns, and their past, present, and future officers, directors, employees, owners, investors, shareholders, members, managers, administrators, business units, employee benefit plans (together with all plan administrators, trustees, fiduciaries, and insurers) and agents (Physician's Releasees) from all claims and waives all rights known or unknown, he may have or claim to have against any of the Physician's Releasees, including, but not limited to, any claim relating to his relationship, including ownership of, or employment with, the Practice, or his separation therefrom, or on any other basis arising before the execution of this Agreement, including, but not limited to, claims for: (i) discrimination, harassment or retaliation arising under federal, state or local laws prohibiting sex, national origin, race, religion, disability, veteran status or other protected class discrimination, the Family Medical Leave Act, as amended (FMLA), harassment or retaliation for protected activity; (ii) for compensation, bonus payments, and/or benefits including but not limited to claims under the Fair Labor Standards Act of 1938 (FLSA), as amended, Employee Retirement Income Security Act of 1974, as amended, (ERISA), FMLA and similar federal, state, and local laws; (iii) breach of contract, or for benefits under any other contractual theory;

(iv) in wrongful termination law; (v) state tort law or express or implied contract law; (vi) attorney's fees; and (vii) any other amounts in exchange for or related to his ownership interest in the Practice. Provided, however, that this release does not cover: (i) claims under workers compensation laws; (ii) any claims related to the provision of medical services by a physician other than Physician, or other Practice employee, to any patient at any time; (iii) any claims related to billing and coding of medical services provided by a physician or other Practice employee other than Physician, to any patient at any time; or (iv) any claims related to a breach of this Agreement, a fraudulent act, willful misconduct, or a knowing violation of law.

4. Physician's Covenant Not To Sue. In consideration of the benefits offered to Physician, Physician shall not sue the Practice or any of Physician's Releasees on any of the released claims or join as a party with others who may sue on any such claims and if Physician does not abide by this provision, then he will indemnify Physician's Releasees for all expenses, including attorney's fees, they incur in defending the action. This covenant not to sue will apply in all cases, except where prohibited by law.

5. Release of Physician. In consideration of benefits conferred by this Agreement, the Practice (on behalf of itself; its predecessors, successors, assigns; its past, present, and future parents, subsidiaries, affiliates, and their predecessors, successors, assigns, and their past, present, and future officers, directors, employees, owners, investors, shareholders, members, managers, administrators, business units, employee benefit plans (together with all plan administrators, trustees, fiduciaries, and insurers) and agents) hereby releases Physician and his heirs, assigns, executors, and agents (Practice's Releasees) from all claims and waives all rights known or unknown, it, they, or any one of them, may have or claim to have against Physician, including, but not limited to, any claim relating to his employment with, or relationship to, the Practice or any of its shareholders, directors, officers, employees, agents, or affiliates, or to his stock ownership in the Practice, or on any other basis, including, but not limited to, any claims: (i) in tort or in contract, whether express or implied; (ii) in law or in equity; (iii) under any state or federal statute or regulation; or (iv) for attorney's fees. Provided, however, that this release does not cover: (i) any claims related to the provision of medical services by Physician to any patient at any time; (ii) any claims related to billing and coding of medical services provided by Physician during the course of his employment with Practice; or (iii) any claims related to a breach of this Agreement, a fraudulent act, willful misconduct or a knowing violation of law.

6. Practice Covenant Not To Sue. In consideration of the benefits offered to the Practice, the Practice shall not sue Physician or any of Practice's Releasees on any of the released claims or join as a party with others who may sue on any such claims and if the Practice does not abide by this provision, then it will indemnify Physician or Practice's releases for his, their or its expenses, including attorney's fees, incurred in defending the action. This covenant not to sue will apply in all cases, except where prohibited by law.

7. Non-Disparagement. Physician shall refrain from making any disparaging remarks about or otherwise disrupting the business of, the Practice or any of the Practice's employees. The Practice shall refrain, and shall cause its employees to refrain, from making any disparaging remarks about or otherwise disrupting the business of the Physician.

8. Confidentiality. The terms and provisions of this Agreement are confidential and the Parties agree that they will not disclose the terms and conditions of this Agreement to third parties, except as required by law or legal process. Notwithstanding the above, the Parties may reveal the terms and provisions of this Agreement to their attorneys, tax or financial advisors whom they may consult for legal, tax or financial advice, provided that all such persons agree to maintain the confidentiality of this Agreement.

9. Cooperation with Respect to Claims. In the event of any lawsuit or claim or threat thereof by a patient or other person against the Practice or Physician with respect to Physician's practice of medicine as an employee of the Practice, the Party against whom the lawsuit, claim, or threat has been brought promptly shall give the other Party written notice of such matter and shall cooperate with the other Party in providing documents and other similar matters reasonably requested by such other Party in connection with the investigation and assessment of such lawsuit, claim, or threat thereof.

10. Governing Law and Enforcement. This Agreement shall be governed by the laws of South Carolina, without regard to its conflict of laws provisions, and the applicable provisions of federal law. The Parties hereby consent to jurisdiction in the federal and state courts of South Carolina for purposes of any litigation relating to this Agreement. The Parties agree that, should a Party institute litigation against another Party, then the losing Party in such litigation shall reimburse the prevailing Party for all of the costs and expenses of such litigation, including reasonable attorney's fees.

11. Severability. If any portion, provision, or part of this Agreement is held, determined, or adjudicated by any court of competent jurisdiction to be invalid, unenforceable, void, or voidable for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Agreement, and such determination or adjudication shall not affect the validity or enforceability of such remaining portions, provisions, or parts.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

13. Modification; Waiver of Breach. No part of this Agreement shall be modified or amended except by a writing signed by each of the Parties. A waiver of any breach of this Agreement shall not constitute a waiver of any other provision of this Agreement or any subsequent breach of this Agreement.

14. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any other agreements or understandings, whether oral or written. This Agreement is binding on, and inures to the benefit of, the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the Parties have entered into this Settlement Agreement effective as of the Effective Date.

PHYSICIAN:

Rajinder Parmar, M.D.

THE PRACTICE:

**MIDLANDS GASTROENTEROLOGY PC, a South
Carolina professional corporation**

By:

Balbir S. Minhas, M.D., President

~#4837-9719-7339 v.3 ~

EXHIBIT C

00604

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; balbmjnh@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. Parmar 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 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; balbmjnh@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 docs 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 SCAP (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

EXHIBIT D

00607

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 penciled 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

Can 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.

CM

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
Bland Richter, LLP
Attorneys at Law
1500 Calhoun Street (29201)
Post Office Box 72
Columbia, South Carolina 29202
803.256.9664 (telephone)
803.256.3056 (facsimile)
803.600.7476 (cellular)
ericbland@blandrichter.com

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

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 parmam tonight. Will keep you posted. Thanks ed.

Eric S. Bland

Bland Richter, LLP

Attorneys at Law
1500 Calhoun Street (29201)
Post Office Box 72
Columbia, South Carolina 29202
803.256.9664 (telephone)
803.256.3056 (facsimile)
803.600.7476 (cellular)
ericbland@blandrichter.com

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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. Parmar 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 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 docs 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 SCAP (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 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 is 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 MEC's 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

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 Mongillo; Eric S. Bland; Raj Parmar; baibminh@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

[mailto:donnyb@burkettcpas.com]

Sent: Thursday, May 29, 2014 7:50 AM

To: Eric S. Bland

Subject: FW: VA moneys

FYI

Burkett
Burkett & Burkett
Certified Public Accountants, P.A.

Donny Burkett CPA
803-794-3712

3101 Sunset Blvd. | West Columbia, SC 29171-2044
Web Site | Client Portal

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From: balbminh@aol.com [mailto:balbminh@aol.com]

Sent: Thursday, May 29, 2014 7:46 AM

To: Donny Burkett

Cc: ed.white@nelsonmullins.com; rparmar67@gmail.com
Subject: VA moneys

Donny,

After further consideration and thought, I disagree with your methodology as far as adding Dr. Parmar's VA medical center in MG "productivity" calculations for the following reasons:

1. Dr. Parmar worked at the VAMC without my written consent. You can not ignore contractual breach since you always had the "agreements" for both MG and MEC.
2. He was instructed to put his earnings in MG which he did not. In lieu, he agreed to your recommendation that I take the same amount from MG to equalize compensation. Dr. Parmar accepted at that time that I was being compensated for administrative and marketing which obviously he was not doing while being absent from MG working at the VA.
3. Dr. Parmar's earnings never passed through MG; no MG overhead expenses were paid out of those earnings, therefore, they can not be computed years later while determining individual physician "MG productivity". As officer of the company my position is that "MG productivity" is only what Dr. Parmar produced in MG and paid overhead expense out of that before component for compensation can be calculated exactly the way I have done.
4. The equal money I got from MG was MG "productivity" money after paying overhead (by Dr. Parmar and I) and half of that money was generated by me anyway. Technically, Dr. Parmar took the entire amount (VA money) and I took only half of that. In nutshell, Dr. Parmar's money did not follow the usual course of MG productivity moneys.
5. Moneys generated without paying overhead for MG "out side work", if you and Dr. Parmar wish to compare, it should be moneys from the VAMC for Dr. Parmar compared to my DMH clinic moneys since in both cases there were no overhead expenses incurred by MG. Dr. Parmar did say at one time that I could keep DMH clinic moneys but since you came up with the idea of "equalizing" compensation, I decided to leave DMH clinic moneys in MG and paid overhead and after paying overhead expense that money was shared by Dr. Parmar and I equally.

The above situation as well as several other "adjustments" were made by me as a response to Dr. Parmar's incessant changing requests/demands. You, as the accountant for MG and MEC, while having both MG and MEC contractual agreements, witnessed and approved disbursement of funds as per our "side agreements" on several occasions. In all those instances, Dr. Parmar was the initiator and was the responder.

I understand some of your detailed investigative work at this stage is to have information requested by attorneys and potential litigation, but I do feel that your assertions, that I have some how "over compensated" myself, are unjustified, and frankly hurting. Either you were not discharging your professional obligation before by ignoring contractual agreements or you are now doing something that is redundant by redoing calculations under new approach mostly dictated by Dr. Parmar's changed goals. At a fundamental level, I feel if the adjustments I made in response to Dr. Parmar's frequent requests can not be reversed, recalculations on the basis of his new requests now should not be entertained.

Dr. Parmar, as a shareholder, may be okay with wasting MG and MEC funds. To the contrary, as officer of the company, I do not think it is in the best interest of the company to waste any more resources on some issues that were ratified by the parties by agreeing and subsequent conduct for an extended period of time. I have no objection to Dr. Parmar obtaining the numbers he wishes to generate for his arguments as long as he individually pays for it.

Thanks,
Balbir

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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.

EXHIBIT E

00620



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.

Eric S. Bland, Esquire
July 15, 2014
Page 2

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

00622

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Rajinder Parmar,

Plaintiff,

v.

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

Defendants

Civil Action No. 2014-CP-22-06017

AFFIDAVIT OF
CORY E. MANNING

RICHLAND COUNTY
FILED
2015 JAN -5 AM 9:12
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

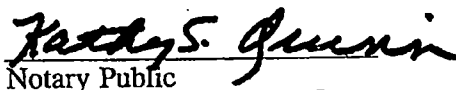
Cory E. Manning, being duly sworn, deposes and says:

1. I am over 18 years of age and am a partner at the law firm of Nelson Mullins Riley & Scarborough LLP.
2. I am fully familiar with the facts set forth in this affidavit through my own personal knowledge.
3. I drafted the emails (dated June 2, 2014, 12:30 PM; 1:31 PM; 2:30 PM; and 3:32 PM) that are contained in the chain of emails attached as Exhibit D to the Declaratory Judgment Complaint Seeking Arbitration, filed in the above-captioned matter on September 30, 2014 (the "Manning Email Messages").
4. I meant what I stated in the Manning Email Messages, and did not intend to mislead any of the recipients listed on the Manning Email Messages.
5. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.


CORY E. MANNING

Sworn to before me this 3 day of January 2015.


Notary Public

8-12-2019

00623

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Rajinder Parmar,

Plaintiff,

v.

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

Defendants

Civil Action No. 2014-CP-⁴⁰~~22~~-06017

AFFIDAVIT OF
EDWARD K. WHITE

RICHLAND COUNTY
FILED
2015 JAN -5 AM 9:12
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Edward K. White, being duly sworn, deposes and says:

1. I am over 18 years of age and am a partner at the law firm of Nelson Mullins Riley & Scarborough LLP.
2. I am fully familiar with the facts set forth in this affidavit through my own personal knowledge.
3. I drafted the email, dated May 30, 2014, 3:36 PM, that is attached as Exhibit C to the Declaratory Judgment Complaint Seeking Arbitration, filed in the above-captioned matter on September 30, 2014 (the "White Email").
4. I meant what I stated in the White Email, and did not intend to mislead any of the recipients listed on the White Email.
5. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.


EDWARD K. WHITE

Sworn to before me this 3 day of January 2015.


Notary Public
8-12-2019

00624

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Rajinder Parmar,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-40-6017

**AFFIDAVIT OF
DR. BALBIR S. MINHAS**

RICHLAND COUNTY
FILED
2015 FEB -2 AM 10:35
JANET W. GIBSON
CLERK, P.R.G.S.

PERSONALLY APPEARED BEFORE ME, the undersigned, Dr. Balbir S. Minhas, who after being duly sworn, testifies as follows:

1. I am a citizen of South Carolina and resident of Richland County. I am of the age of majority and possess the requisite mental acuity to provide this testimony.
2. I am a defendant in this case, as are two entities that I now own solely: Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC.
3. I am in possession of and have carefully read the pleadings filed in this case, as well as the various motions and supporting memoranda and affidavits that followed.
4. It is based on what I have read and heard, which has been submitted or otherwise argued to the Court by Plaintiff Rajinder Parmar relating to his rendition of the "facts" surrounding the sale of his shares and interest in Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC on May 30, 2014, which compels me to provide this affidavit to the Court.
5. The underlying dispute between the parties arises out of the termination of the business relationship between Plaintiff and me (and Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC).
6. Plaintiff and I, both physicians, were joint owners of two medical practices, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC.
7. This relationship formally ended on May 30, 2014, when Plaintiff sold his interests in the two companies to me.

8. Following Plaintiff's execution of the sale agreements on May 31, 2014, an ancillary dispute arose pertaining to Plaintiff's purported rights to, among other things, 50% of the accounts receivable and operating accounts of Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC.
9. There is no written agreement that would entitle Plaintiff to these additional monies and the other things demanded by Plaintiff; therefore, I dispute his contention. Moreover, the sale agreements for both Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC are silent as to these alleged rights. Hence, the parties' disagreement.
10. At issue before the Court on January 5, 2015, is whether this parties' dispute is to be resolved in the Court of Common Pleas in Richland County or in arbitration. I desire to resolve this dispute, as well the counterclaim that accompanied by answer, in this Court.
11. First and foremost, it my position the sale documents that were executed on May 30, 2014, which were silent concerning arbitration, govern disposition of the question of whether the overarching dispute that exists between the parties should be resolved in the Court of Common Pleas for Richland County or by arbitration. Therefore, I believe the injection of ancillary documents and arguments by Plaintiff, including the affidavits of attorneys Ed White and Cory Manning, are inappropriate and unnecessary to determining if the parties' underlying dispute is to be arbitrated.
12. Nevertheless, it has come to my attention in the various filings submitted to this Court, as well as in Plaintiff's oral argument to this Court on Monday, January 5, 2015, that Plaintiff has attempted to inject into the Court's analysis the contents of an April 7, 2014, meeting and subsequent pre-May 31, 2014, discussions between the parties and others as a basis for supporting resolution of the parties' dispute via arbitration.
13. On April 7, 2014, Plaintiff and I had a shareholder's meeting, which was called for the purpose of negotiating Plaintiff's sale of his shares and interest in Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC.
14. Plaintiff was accompanied by counsel, as were Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC.
15. Curiously, Plaintiff's counsel brought a court reporter to record and transcribe the events at this meeting. This was notwithstanding the fact that Attorney Ed White, then counsel for Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, expressly and unequivocally stated prior to the meeting's start that its purpose was solely for discussion and negotiation.
16. Again, while I believe that whatever transpired at the April 7, 2014, meeting and thereafter in the lead up to the May 31, 2014, closing should not be considered by this Court when disposing of the arbitration question (because what occurred prior to the execution of the sale agreements was simply a negotiation), I am nevertheless compelled

to outline some truths relating to those discussions, which have not been presented to the Court.

17. In the course of the discussions on April 7, 2014, Plaintiff stated would he allow the companies, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC, to buy his shares. This agreement can be found in the transcript created by Plaintiff's court reporter.
18. However, when this agreement was subsequently committed to writing, Plaintiff and his counsel objected to Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC purchasing the shares from him. Instead, Plaintiff insisted I personally buy the shares. The date of this objection was on or about May 29, 2014.
19. Though he possesses no written agreement entitling him to 50% of Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC's respective operating accounts, Plaintiff nevertheless believes these monies are his. It is therefore my belief Plaintiff insisted on me personally purchasing the shares of Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC so as to ensure monies in these companies' operating accounts that would have otherwise been used to facilitate the purchase were not spent prior to his demand for 50% of these accounts.
20. It was due to this sudden change in course by Plaintiff so close to the final closing (scheduled for May 30, 2014), along with Plaintiff's averments that Ed White was conflicted out from assisting me, that I quickly retained attorney Lowndes Pope to assist with finalizing the sale agreements with Plaintiff's counsel, which he did.
21. Attorney Ed White was not representing me personally nor was he my agent at the time of the closing or thereafter.
22. At Plaintiff's insistence, I personally paid the sums required to purchase his shares/interest in Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC. I had to withdraw monies from various personal bank accounts to pay the entire amount (almost \$400,000.00) in about 24 hours.
23. Plaintiff bought Midlands Endoscopy Center, LLC shares from the company and paid for those shares from the distributions he got over the approximately 2 ½ years he was affiliated with the practice. In essence, my giving him Midlands Endoscopy Center, LLC shares before payment by him enabled him to pay Midlands Endoscopy Center, LLC for those shares. Midlands Endoscopy Center, LLC paid me that amount to complete the sale. Plaintiff (through his counsel) insisted that I buy back his shares personally (contrary to the discussion in April 7 meeting) in lump sum payment with a very short notice of 24 hours. As demanded by Plaintiff and his attorney, I paid the negotiated amount and the sale documents were executed, signed and delivered, on May 30, 2014.
24. Plaintiff terminated his employment on May 30, 2014. Accordingly, per the contractual agreements, Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC (and

I as the purchaser) were permitted to pay Plaintiff for his shares over 24 months. However, to conclude the sale once and for all, I paid the negotiated amount in lump sum. This amount also included \$37,000.00 of interest on \$300,000.00 (the value of shares purchased by Plaintiff). In essence, this amount was lent to Plaintiff by Midlands Endoscopy Center, LLC since Plaintiff did not pay anything on July 1, 2011, when he joined Midlands Endoscopy Center, LLC.

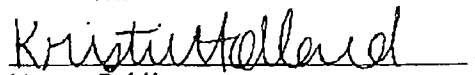
25. Finally, I note that during April 7, 2014 meeting, sale of a Midlands Gastroenterology, PC-owned automobile to Plaintiff was discussed by the parties. Plaintiff had been using this automobile prior to the sale of his interest in the practice. This sale was supposed to take place after the Midlands Gastroenterology, PC-retained accountant determined its value. In my judgment, the accountant incorrectly calculated the purchase price due to erroneous information regarding the automobile was provided to him by Plaintiff. Due to this incorrect calculation, it was my determination that it was not in Midlands Gastroenterology, PC's best interest to sell the company car to Plaintiff at the calculated price; thus, there was no sale. Despite having sold his interest in the practice on May 30, 2014, and my repeated requests, Plaintiff has elected to continue to possess and use the automobile. Midlands Gastroenterology, PC possesses the title to the automobile. There is no sale agreement for the automobile signed by the seller (Midlands Gastroenterology, PC) and the purchaser (Plaintiff).
26. It is my belief that it is important this Court knows about the sequence of events and what occurred in the lead up to the final execution of the sale agreements for Midlands Gastroenterology PC, and Midlands Endoscopy Center, LLC.

FURTHER AFFIANT SAYETH NOT.


Balbir S. Minhas

Columbia, South Carolina
January 26, 2015

Sworn to and subscribed before me
this 26 day of Jan, 2015


Notary Public

My Commission Expires Feb 14, 2022

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material. I also certify that this Record is in compliance with the August 13, 2007 order of the South Carolina Supreme Court.

Robert L. Widener by *James Bredtke*
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ATTORNEYS FOR APPELLANTS

August 1, 2018

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