

Duane K. Thompson (D.C. Bar # 376180)
Marie K. N. DeBonis (D.C. Bar # 491358)
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-4010
(202) 551-7159
(202) 772-9244 (fax)
thompsond@sec.gov

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**U.S. SECURITIES AND EXCHANGE
COMMISSION,
100 F Street, N.E.
Washington, D.C. 20549,**

Plaintiff,

CV No. _____

v.

**THEODORE R. MALONEY,
40 Saint Michael
Dana Point, California 92629-4131**

Defendant.

COMPLAINT

Plaintiff, U.S. Securities and Exchange Commission (“Commission”) alleges as follows:

SUMMARY

1. This case concerns fraud and other misconduct committed by defendant Theodore R. Maloney in concealing material information about his company from investors and auditors. Maloney was the chief executive officer of MediCor Ltd., which in 2004 was a start-up medical device company with no revenues. From 2004 through 2006, Maloney prepared, approved and

signed financial reports, proxy statements and management representation letters that he knew, or was reckless in not knowing, were materially false and misleading because they falsely stated that MediCor was being funded primarily through its chairman's personal wealth or legitimate transactions with an affiliate controlled by the chairman's family. Maloney knew that MediCor's chairman did not have the ability to finance MediCor through personal funds or legitimate transactions with the affiliate.

2. In truth, the primary source of MediCor's funding was money illegally removed from a separate company named Southwest Exchange Corporation. Southwest was a "qualified intermediary" under Section 1031 of the Internal Revenue Code, whose depositors were entitled to defer capital gains on certain real estate transactions. Such deposits, until returned to depositors, were not supposed to be moved from qualified accounts without the depositors' written consent in accordance with Nevada law. Maloney was a securities lawyer prior to joining MediCor and assisted MediCor's chairman in acquiring Southwest in 2004. Maloney was on Southwest's "investment committee" and knew that depositors had not been informed of the diversion of funds to MediCor.

3. The scheme in which Maloney played a key role depended on new deposits into Southwest continuing to be made. The real estate market deteriorated in 2006, however, and new deposits with Southwest greatly diminished. MediCor lost its primary source of funding, eventually went bankrupt and has recently ceased to exist. Southwest collapsed and was unable to repay approximately \$97 million owed to its clients. MediCor's former chairman, Donald McGhan, is currently incarcerated for his part in the scheme. Maloney has not been criminally prosecuted to date, and is currently the managing director and general counsel of a California company that advertises the ability to obtain financing for micro- and mid-cap companies.

4. By his conduct, Maloney has violated Sections 10(b), 13(b)(5) and 14(a) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b), 78m(b)(5) and 78n(a)] and Exchange Act Rules 10b-5, 13b2-2(a), and 14a-9 [17 C.F.R. §§ 240.10b-5, 240.13b2-2(a), and 240.14a-9] and aided and abetted violations by MediCor of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)] and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13]. As more particularly set forth below, the Commission therefore seeks final judgment: (a) permanently restraining and enjoining Maloney from (i) violating the federal securities laws and regulations and (ii) from aiding and abetting violations; (b) barring Maloney from serving as an officer or director of a public company; (c) ordering Maloney to pay a civil penalty; and (d) granting such other relief as the Court deems appropriate.

JURISDICTION and VENUE

5. This Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa]. In connection with the transactions, acts, practices, and courses of business described in this Complaint, Maloney, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails.

6. Personal jurisdiction exists and venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. §78aa] because certain of the acts, practices, and courses of business occurred within this District.

DEFENDANT

7. **Theodore Robert Maloney** currently lives in Dana Point, California and is the managing director and general counsel of a California company that advertises the ability to

obtain financing for micro- and mid-cap companies. Maloney joined MediCor as the company's CEO in September 2003, shortly after MediCor's formation, and remained as CEO through April 2007, shortly before MediCor entered into bankruptcy. Before joining MediCor, Maloney practiced corporate and securities law with a private law firm.

RELEVANT ENTITIES

8. **MediCor, Ltd.** was a Delaware corporation headquartered in Las Vegas, Nevada whose business plan was to acquire companies that could manufacture breast implants and other medical devices. MediCor reported on a fiscal year basis that ended on June 30, and its stock was traded on the OTC Bulletin Boards beginning in September 2001. MediCor began restructuring efforts in January 2007 and formally filed for Chapter 11 bankruptcy in June 2007. MediCor and certain related entities submitted a plan of liquidation in January 2009. That plan was approved by the bankruptcy court, and MediCor was dissolved on November 24, 2010.

9. **Southwest Exchange Corp.** was a Nevada corporation and a "qualified intermediary" under Section 1031 of the Internal Revenue Code, 26 U.S.C. § 1031. On June 28, 2004, Southwest was acquired by a private company controlled by McGhan known as Capital Reef Management Corporation. Under I.R.C. Section 1031, a taxpayer may defer capital gains tax when he or she sells business or investment property and purchases a like-kind replacement property, if, among other things, the exchange of properties closes within 180 days and the taxpayer places the proceeds of the sale of the original property with a qualified intermediary. The qualified intermediary must keep the proceeds out of the control of the taxpayer during the exchange period. Southwest's client contracts stated explicitly that all sums deposited by its clients would be deposited "in one or more financial institutions whose accounts are insured by the Federal Deposit Insurance Corporation or as otherwise directed by Exchanger." Under

Nevada law, proceeds from the sale of an exchange client's property are required to be deposited in a qualified escrow account as defined in 26 C.F.R. § 1.1031(k)-1(g)(3) and could not be withdrawn without the written approval of the exchange client.

10. **International Integrated Industries, LLC ("III")** was a Nevada holding company owned and funded by Don McGhan.

11. **Blackstone LLC** was a Delaware shell company formed by Don McGhan's wife and daughter. Blackstone was controlled by Don McGhan and was used as an intermediary to move money from Southwest to III. The "Blackstone" entity identified herein is not the same entity as, and bears no relation to, the well known investment and advisory firm known as the Blackstone Group LP.

FACTS

Maloney Knew that McGhan Could Not Fund MediCor's Business Plan Through Personal Wealth or Legitimate Transactions with Affiliates

12. As a start-up company in 2003, MediCor was financed primarily by a revolving loan from III. MediCor's public filings stated that McGhan would continue to pay for any cash or capital needs of the company.

13. MediCor's strategy was to grow through the acquisition of other companies, but it did not have sufficient funds to do so with funding from McGhan or III. MediCor's first significant acquisition was to be a French breast implant manufacturer, Laboratoires Eurosilicone, S.A. Maloney knew that McGhan did not have the personal wealth to finance such acquisitions, despite statements to the contrary in MediCor's public filings. As a result, McGhan, Maloney, and others had to find outside funding sources for MediCor.

14. On May 19, 2004, MediCor formally announced that it had signed an agreement to acquire Eurosilicone. The closing date was eventually set for June 30, 2004. The purchase price was approximately \$40 million.

15. Maloney and McGhan attempted to raise funds for the Eurosilicone acquisition from private equity firms, but as the closing date drew close, none of the firms would commit to funding the company.

16. On or about June 9, 2004, with the Eurosilicone closing deadline fast approaching, Maloney, McGhan, and others invited the senior vice president at Southwest responsible for managing Southwest's investments (the "Southwest SVP") to a meeting, at which the group asked the Southwest SVP to invest Southwest money in MediCor. The Southwest SVP declined to invest Southwest funds with MediCor.

17. In the process of discussing the investment in MediCor by Southwest and in other conversations about Southwest, Maloney, McGhan, and others learned about Southwest's business and the amount of client funds on deposit with Southwest. Among other things, they learned that in June 2004, Southwest had liquid investments in excess of \$40 million. They further learned that the owner of Southwest was interested in selling the company.

Maloney Assisted in the Acquisition of Southwest and Facilitated the Transfer of Southwest Client Funds to Acquire Eurosilicone

18. In June 2004, a securities broker familiar with Southwest called Maloney and suggested that Maloney should research whether MediCor could acquire Southwest and use Southwest's client funds to acquire Eurosilicone on behalf of MediCor.

19. In mid-June 2004, Maloney, McGhan, and others met with the Southwest SVP again. This time, Maloney pitched the idea that MediCor could acquire Southwest outright, and

offered to make the Southwest SVP the president of Southwest once it had joined “the Don McGhan family of companies.” The Southwest SVP told Maloney that MediCor, which he considered akin to a venture capital firm, had no business being in the 1031 exchange industry and declined the offer.

20. The weekend of June 12, 2004, Maloney, McGhan, and others flew to Chicago, Illinois to meet with the owner of Southwest and negotiated an agreement to buy Southwest. Under the agreement, a McGhan-controlled entity named Capital Reef would purchase Southwest, McGhan would pay \$3 million for a 75% interest in Capital Reef, Capital Reef would pay \$3 million to Southwest’s owner, and Southwest’s owner would receive a 25% interest in Capital Reef. Maloney also expected to receive some ownership interest in Capital Reef.

21. Capital Reef, however, did not have the cash to pay the \$3 million needed to gain control of Southwest. As a result, after returning from Chicago, Maloney and others immediately began working (a) to raise \$3 million to gain control of Southwest, and (b) to establish a way to use Southwest’s cash deposits to fund the Eurosilicone acquisition and other MediCor expenses.

22. McGhan obtained a \$1.5 million loan from a third-party investor. With no other options, on June 26, 2004, he pledged all of his MediCor stock to secure another \$1.5 million loan, this time from Maloney and two other individuals. Maloney loaned \$100,000 of the \$1.5 million and earned \$10,000 for the seven-day loan. Through Capital Reef, McGhan completed the transaction and gained control of Southwest on June 28, 2004.

23. After McGhan gained control of Southwest, Maloney was appointed to the Southwest Investment Committee. In documents dated June 28, 2004, Maloney and the other Southwest Investment Committee members, McGhan and his daughter, approved investments of Southwest client funds.

24. Among the “investments” that Maloney approved was the transfer of Southwest client funds to Blackstone

25. After McGhan gained control of Southwest, Maloney flew to France to provide assurance to the seller of Eurosilicone that the money for the acquisition was coming and to oversee the transfer of the Southwest client funds through Blackstone to the seller of Eurosilicone.

26. With Maloney’s help and direction, money from Blackstone’s account was wired directly to the seller of Eurosilicone. In total, \$37 million was wired from Southwest through Blackstone to fund MediCor’s acquisition of Eurosilicone.

27. After the Eurosilicone transaction closed, Maloney directed the creation of documents to give the appearance that the money for the acquisition had come from III. These documents were created so that disclosures about funding sources in MediCor’s filings with the Commission could state that the funding for the Eurosilicone acquisition came from III. Investors reading those filings would not learn that the money for the Eurosilicone acquisition really came from Southwest client funds.

**Maloney Prepares and Signs MediCor’s 2004 Annual Report and
Management Representation Letter, as well as Three Fiscal Year 2005
Quarterly Reports, and Approves MediCor’s 2004 Proxy Statement,
All of Which Are Materially False and Misleading**

28. On August 20, 2004, Maloney signed a management representation letter to MediCor’s independent auditor in connection with the audit of MediCor’s financial statements for fiscal year 2004. In that letter, he represented, among other things, that all related party transactions had been properly recorded or disclosed.

29. At the time, Maloney knew, but concealed, that McGhan had acquired control of Southwest and, with Maloney's knowledge and participation, had used Southwest client funds to acquire Eurosilicone for MediCor.

30. On September 20, 2004, MediCor filed its annual report on Form 10-KSB with the Commission. Maloney had substantial responsibility for the preparation of MediCor's annual report. In addition, he signed the annual report and approved its filing with the Commission. MediCor's 2004 annual report provided that the "financing for the Eurosilicone acquisition was provided through additional loans from [III]" and that the company had received "a written commitment from [III], an affiliate of our chairman, to provide sufficient cash to fund any operating expenses and capital expenditures" through the following fiscal year. The annual report also included a section on "Certain Relationships and Related Transactions" which incorporated by reference information to be included in MediCor's upcoming proxy statement. The annual report also included a footnote on related party transactions to MediCor's financial statements, which provided only that III had funded "significant expenses" for MediCor and made no disclosure regarding Southwest. As such, there was no disclosure in MediCor's annual report that MediCor had received and used Southwest client funds for the acquisition of Eurosilicone, nor was there disclosure of the relationship of Southwest to MediCor and its chairman.

31. On October 29, 2004, MediCor filed the definitive proxy statement on Form DEF 14A referenced in the company's annual report and described in paragraph 29 of this Complaint. The section of the proxy statement on "Certain Relationships and Related Transactions" included a description of III and provided that (a) III "acted on behalf of MediCor by funding significant expenses," (b) III would continue "to fund any operating shortfalls for fiscal 2005," and (c)

MediCor was indebted to III. As with MediCor's annual report, there was no disclosure that the funding for the Eurosilicone acquisition actually had come from Southwest, or of the relationship of Southwest to MediCor or its chairman. Maloney was responsible for the preparation of the proxy statement and approved its filing with the Commission.

32. On November 15, 2004, February 14, 2005, and May 16, 2005, MediCor filed with the Commission quarterly reports on Form 10-QSB for the fiscal year ended June 30, 2005. Maloney had substantial responsibility for preparing , and overseeing the preparation of, MediCor's quarterly reports. Maloney signed the quarterly reports and approved their filing with the Commission. All three quarterly reports stated that the "financing for the [Eurosilicone] acquisition was provided primarily by additional loans from [III]" and that the company had received "a written commitment from [III], an affiliate of its chairman, to provide sufficient cash to fund any operating losses" through the following 12 months. The Related Party Transactions section in the quarterly reports provided only that III had funded "significant expenses" for MediCor, and made no disclosures regarding Southwest. There was no disclosure in MediCor's quarterly reports that MediCor had received and used Southwest client funds for the acquisition of Eurosilicone, nor was there disclosure of the relationship of Southwest and MediCor or its chairman.

33. At the times when he signed MediCor's 2004 annual report on Form 10-KSB, approved the company's 2004 proxy statement on Form DEF 14A, and signed the company's 2005 quarterly reports on Form 10-QSB, Maloney knew that Southwest was a primary source of funding for MediCor and that McGhan was unable to continue to fund MediCor. He also knew of the relationship of Southwest to MediCor and its chairman. He further knew or was reckless in not knowing that MediCor's disclosures misled investors because investors were not informed

that a primary source of MediCor's funds was money deposited by Southwest clients on a short-term basis and, consequently, any inability of Southwest to repay its clients on a timely basis could have a direct impact on MediCor's existing and future funding. Maloney, therefore, knew or was reckless in not knowing that MediCor's 2004 annual report, the company's 2004 proxy statement, and its 2005 quarterly reports were materially false and misleading.

**MediCor and its Chairman Continue to Use Southwest Client Funds
to Pay MediCor Expenses in 2005 and 2006
and Exhaust Southwest as a Funding Source**

34. Throughout fiscal years 2005 and 2006, McGhan continued to use Southwest client funds to help pay MediCor expenses. By December 31, 2006, they had used at least an additional \$17 million dollars of Southwest client funds for various MediCor expenses. Maloney knew of the continued use of Southwest as a funding source for MediCor.

35. By late 2005 or early 2006, Maloney also knew that Southwest's deposits had become low enough that Southwest was in danger of not being able to return money to its clients. As a result, Southwest changed its marketing strategy in order to garner new deposits to meet those obligations. By mid-2006, however, the real estate market had cooled, and new exchange deposits declined. As a result, Southwest's financial condition continued to deteriorate. Maloney knew of Southwest's deteriorating financial condition.

**Maloney Prepares and Signs MediCor's 2005 and 2006 Annual Reports and Management
Representation Letters, its 2006 Quarterly Reports, a 2007 Quarterly Report, and
Approves its 2005 and 2006 Proxy Statements,
All of Which Are Materially False and Misleading**

36. On June 30, 2005, Maloney signed a management representation letter to MediCor's auditor in connection with the audit of MediCor's financial statements for fiscal year

2005. In that letter, he represented, among other things, that all related party transactions had been properly recorded or disclosed.

37. At the time, Maloney knew, but failed to disclose, that McGhan had acquired control of Southwest through Capital Reef and that MediCor had used Southwest client funds to acquire Eurosilicone and to fund MediCor expenses.

38. On September 28, 2005, MediCor filed its annual report on Form 10-KSB with the Commission. Maloney was responsible for its preparation, signed the report, and approved its filing with the Commission. MediCor's 2005 annual report provided that the "financing for the Eurosilicone acquisition was provided through additional loans from [III]" and that the company had received "a written commitment from [III], an affiliate of our chairman, to provide sufficient cash to fund any operating expenses and capital expenditures" through the following fiscal year. The section of the annual report for "Certain Relationships and Related Transactions" incorporated by reference information to be included in MediCor's upcoming proxy statement. The related party transactions footnote to the financial statements, however, provided only that III had funded "significant expenses" for MediCor, and made no disclosures regarding Southwest. As with MediCor's 2004 annual report, there was no disclosure in the 2005 annual report that MediCor was receiving and using Southwest client funds for MediCor expenses, or of the relationship of Southwest to MediCor or its chairman.

39. On October 21, 2005, MediCor filed the definitive proxy statement on Form DEF 14A referenced in the company's 2005 annual report, described in paragraph 37 of this Complaint. The section on "Certain Relationships and Related Transactions" included a description of III and provided that (a) III "acted on behalf of MediCor by funding significant expenses," (b) III would continue "to fund any operating shortfalls for fiscal 2006," and (c)

MediCor was indebted to III. As with MediCor's 2005 annual report, there was no disclosure that MediCor was receiving funding from Southwest, or of the relationship of Southwest to MediCor or its chairman. Maloney was responsible for the preparation of the proxy statement and approved its filing with the Commission.

40. On November 14, 2005, February 6, 2006, and May 15, 2006, MediCor filed with the Commission quarterly reports on Form 10-QSB for the fiscal year ended June 30, 2006. Maloney had substantial responsibility for preparing, and overseeing the preparation of, MediCor's quarterly reports. Maloney signed the quarterly reports and approved their filing with the Commission. All three quarterly reports provided that the company had received "a written commitment from [III], an affiliate of its chairman, to provide sufficient cash to fund any operating losses" through the following 12 months. The Related Party Transactions section in the quarterly reports provided only that III had funded "significant expenses" for MediCor, and made no disclosures regarding Southwest. There was no disclosure in MediCor's quarterly reports of the relationship of Southwest and MediCor or its chairman.

41. On August 25, 2006, Maloney signed a management representation letter to MediCor's auditor in connection with the audit of MediCor's financial statements for fiscal year 2006. In that letter, he represented, among other things, that all related party transactions had been properly recorded or disclosed. At the time, however, he knew, but failed to disclose that, through Capital Reef, McGhan had acquired control of Southwest and that MediCor and its chairman had used Southwest client funds as a primary source of funding for MediCor.

42. On September 28, 2006, MediCor filed its annual report on Form 10-KSB with the Commission. Maloney once again was primarily responsible for its preparation, signed the report and approved its filing with the Commission. MediCor's 2006 annual report provided that

the “financing for the Eurosilicone acquisition was provided through additional loans from [III]” and that the company had received “a written commitment from [III], an affiliate of our chairman, to provide sufficient cash to fund any operating expenses and capital expenditures” through the following fiscal year. The section of the annual report for “Certain Relationships and Related Transactions” incorporated by reference information to be included in MediCor’s upcoming proxy statement. The related party transactions footnote to the financial statements in the annual report provided only that III had funded “significant expenses” for MediCor, and made no disclosures regarding Southwest. As with MediCor’s 2004 and 2005 annual reports, there was no disclosure in MediCor’s 2006 annual report that MediCor was receiving and using Southwest client funds for MediCor expenses, or of the relationship of Southwest to MediCor or its chairman.

43. On October 20, 2006, MediCor filed the definitive proxy statement on Form DEF 14A referenced in the company’s annual report described in paragraph 41 of this Complaint. The section on “Certain Relationships and Related Transactions” included a description of III and provided that (a) III “acted on behalf of MediCor by funding significant expenses,” (b) III would continue “to fund any operating shortfalls through July 30, 2007,” and (c) MediCor was indebted to III. As with MediCor’s 2006 annual report, there was no disclosure that MediCor was receiving funding from Southwest, or of the relationship of Southwest to MediCor or its chairman. Maloney prepared the proxy statement and approved its filing with the Commission.

44. On November 2, 2006, MediCor filed with the Commission a quarterly report on Form 10-QSB for the first quarter of the fiscal year ending June 30, 2007. Maloney had substantial responsibility for preparing, and overseeing the preparation of, MediCor’s quarterly report. Maloney signed the quarterly report and approved its filing with the Commission. The

quarterly report provided that the company had received “a written commitment from [III], an affiliate of its chairman, to fund any operating expenses and capital expenditures” through the following 12 months. The quarterly report provided only that III “has provided to us over \$77 million in funding through September 30, 2006,” and made no disclosures regarding Southwest. There was no disclosure in MediCor’s quarterly report of the relationship of Southwest and MediCor or its chairman.

45. At the times when he was responsible for the preparation, signing, and approval of the filing of MediCor’s 2005 and 2006 annual reports on Form 10-KSB, 2006 and 2007 quarterly reports on Form 10-Q, and 2005 and 2006 annual proxy statements on Form DEF 14A, Maloney knew that Southwest was a primary source of funding for MediCor and that McGhan was unable to fund MediCor. He also knew of the relationship of Southwest to MediCor and its chairman. He further knew or was reckless in not knowing that MediCor’s disclosures misled investors because investors were not informed that a primary source of MediCor’s funds was money deposited by Southwest clients on a short-term basis and consequently any inability of Southwest to repay its clients on a timely basis could have a direct impact on MediCor’s existing and future funding. Maloney, therefore, knew or was reckless in not knowing that MediCor’s 2005 and 2006 annual reports, its 2006 and 2007 quarterly reports, and its 2005 and 2006 proxy statements were materially false and misleading.

**Southwest Becomes Unable to Pay Its Clients
and MediCor Enters Into Bankruptcy**

46. From June 2004 through Southwest’s collapse in January 2007, the total amount of money taken from Southwest and used for MediCor exceeded \$54 million.

47. By January 2007, so much money had been transferred out of Southwest for MediCor expenses and other uses that Southwest was unable to fulfill its obligations and defaulted on its exchange contracts with clients. Southwest ceased operating in January 2007. At the time, Southwest had approximately \$97 million outstanding in exchange contracts.

48. Shortly after Southwest ceased operating, on January 24, 2007, McGhan resigned. That resignation triggered the hiring on January 29, 2007, of a restructuring advisor for MediCor. On June 29, 2007, MediCor entered into voluntary Chapter 11 bankruptcy proceedings and began the process of liquidating its assets.

FIRST CLAIM

Violations of Section 10(b) of the Exchange Act [15 U.S.C. 78i(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]

49. The Commission realleges and incorporates by reference Paragraphs 1 through 48, above.

50. Defendant Maloney, directly or indirectly, by the use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national security exchange: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon other persons, in connection with the purchase or sale of securities.

51. As set forth more fully above, Maloney knew or was reckless in not knowing that by omitting all references to Southwest and its use as a MediCor funding source, the annual reports on Form 10-KSB and quarterly reports on Form 10-Q for fiscal years 2004 through 2006,

which defendant signed, and the proxy statements on Form DEF 14A for fiscal years 2004 through 2006, which he prepared and approved, were materially false and misleading.

52. By reason of the foregoing, Maloney violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

SECOND CLAIM

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)]

53. The Commission realleges and incorporates by reference Paragraphs 1 through 52, above.

54. Defendant Maloney knowingly circumvented or failed to implement a system of internal accounting controls or knowingly falsified MediCor's books, records, or accounts.

55. As set forth more fully above, Maloney was responsible for preparing MediCor's public filings, including the footnotes to the financial statements. Maloney knew that omitting the use of Southwest as a funding source and Don McGhan's relationship with Southwest from MediCor's financial statements would render them false and misleading.

56. By reason of the foregoing, Maloney violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

THIRD CLAIM

Violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Exchange Act Rule 14a-9 [17 C.F.R. §240.14a-9]

57. The Commission realleges and incorporates by reference Paragraphs 1 through 56, above.

58. Maloney, directly or indirectly, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or

otherwise, solicited or permitted the use of his name to solicit by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral statements which, at the time and in the light of the circumstances under which they were made, were false or misleading with respect to any material fact, or which omitted to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

59. As set forth more fully above, Maloney knew or was reckless in not knowing that by omitting all references to Southwest and its use as a MediCor funding source, the proxy statements on Form DEF 14A for fiscal years 2004 through 2006, which he prepared and approved, were materially false and misleading.

60. By reason of the foregoing, Maloney violated Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9].

FOURTH CLAIM

Violations of Exchange Act Rule 13b2-2(a) **[17 C.F.R. § 240.13b2-2(a)]**

61. The Commission realleges and incorporates by reference Paragraphs 1 through 60, above.

62. Maloney, an officer and director of an issuer, directly or indirectly, made, or caused to be made, materially false or misleading statements to an accountant, or omitted to state, or caused another person to omit to state, a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not

misleading to an accountant in connection with an audit, review, or examination of the financial statements of MediCor required to be made under the Exchange Act rules and regulations.

63. As set forth more fully above, Maloney signed and presented to MediCor's auditor for fiscal years 2004 through 2006 management representation letters that were materially false and misleading because they omitted any reference to the use of Southwest as a funding source for MediCor and the relationship of Southwest to MediCor and instead misrepresented that all related party transactions had been properly recorded or disclosed

64. By reason of the foregoing, Maloney violated Exchange Act Rule 13b2-2(a) [17 C.F.R. § 240.13b2-2(a)].

FIFTH CLAIM

Aiding and Abetting Violations of Exchange Act Section 13(a) [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13]

65. The Commission realleges and incorporates by reference Paragraphs 1 through 64, above.

66. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13] require every issuer of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. §78l] to file with the Commission annual and quarterly reports that accurately reflect the issuer's financial performance and provide other true and accurate information.

67. As set forth more fully above, MediCor violated Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-13 by filing annual and quarterly reports on Forms 10-KSB and Forms 10-Q for fiscal years 2004 through 2006 that, by omitting all references to Southwest, its use as a MediCor funding source, and the relationship of Southwest

to MediCor. Maloney was responsible for preparing MediCor's annual and quarterly reports and signed each of them.

68. By engaging in the conduct described above, Maloney knowingly provided substantial assistance to MediCor in its violation of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13].

69. By reason of the foregoing, Maloney aided and abetted MediCor's violations of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Exchange Act Rules 12b-20 and 13a-1 [17 C.F.R. §§ 240.12b-20 and 240.13a-1].

SIXTH CLAIM

Aiding and Abetting Violations of Exchange Act Section 13(b)(2)(A) **[15 U.S.C. § 78m(b)(2)(A)]**

70. The Commission realleges and incorporates by reference Paragraphs 1 through 69, above.

71. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires every issuer of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. §78l] to maintain books, records and accounts that accurately and fairly reflect the issuer's transactions.

72. As set forth more fully above, MediCor violated Section 13(b)(2)(A) of the Exchange Act by failing to maintain books, records and accounts that accurately and fairly reflected the issuer's transactions because its books, records and accounts omitted all references to Southwest, its use as a MediCor funding source, and the relationship of Southwest to MediCor.

73. By engaging in the conduct described above, Maloney knowingly provided substantial assistance to MediCor in its violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by knowingly concealing information about the Southwest funding from the persons at MediCor responsible for maintaining the company's books, records, and accounts, and by drafting agreements between Blackstone and III and other documents that concealed the fact that Southwest's money was used to fund the Eurosilicone transaction.

74. By reason of the foregoing, Maloney aided and abetted MediCor's violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78(b)(2)(A)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment that:

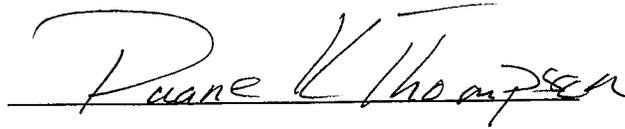
75. permanently restrains and enjoins defendant and his agents, servants, employees, attorneys, and assigns, and those persons in active concert or participation with them, from violating Sections 10(b), 13(b)(5) and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(b)(5) and 78n(a)] and Exchange Act Rules 10b-5, 13b2-2(a) and 14a-9 [17 C.F.R. §§ 240.10b-5, 240.13b2-2(a) and 240.14a-9], and from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13];

(b) bars defendant from serving as an officer or director of any public company, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)];

(c) orders defendant to pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

(d) grants such other and further relief as this Court may determine to be just and necessary.

Respectfully submitted,

A handwritten signature in cursive script, reading "Duane K. Thompson", written over a horizontal line.

Duane K. Thompson
Marie K. N. DeBonis
U.S. SECURITIES AND EXCHANGE COMMISSION
100 F Street, N.E.
Washington, D.C. 20549-4010
(202) 551-7159
(202) 772-9244 (Fax)
Attorneys for Plaintiff

Dated: January 14, 2011