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8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 v.

15 MEDICAL CAPITAL HOLDINGS,
16 INC.; MEDICAL CAPITAL
CORPORATION; MEDICAL
17 PROVIDER FUNDING
CORPORATION VI; SIDNEY M.
18 FIELD; and JOSEPH J.
LAMPARIELLO,

19 Defendants.
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Case No. 8:09-cv-0818-DOC (RNBx)

**NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT WITH
EDWARD K. BLODNICK AND
EDWARD K. BLODNICK &
ASSOCIATES, P.C.;**
**MEMORANDUM OF POINTS AND
AUTHORITIES**

Proposed Hearing Date:

Date: November 15, 2010
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

1 **TO ALL INTERESTED PARTIES:**

2 PLEASE TAKE NOTICE that Thomas A. Seaman ("Receiver"),
3 Court-appointed permanent receiver for Medical Capital Holdings, Inc., Medical
4 Capital Corporation, Medical Provider Funding Corporation VI, and their
5 subsidiaries and affiliates (collectively, "Medical Capital" or the "Receivership
6 Entities"), has filed a motion for approval of a settlement agreement with Edward K.
7 Blodnick and Edward K. Blodnick & Associates, P.C. ("Motion"). The Receiver
8 has requested that a hearing date for the Motion be set for November 15, 2010, at
9 8:30 a.m., in Courtroom 9D of the above-entitled Court located at 411 West Fourth
10 Street, Santa Ana, California 92701.

11 The Motion is based on the Memorandum of Points and Authorities below,
12 and the Declaration of Thomas A. Seaman filed herewith. The Motion and
13 supporting papers are available at the Receiver's website,
14 <http://www.medicalcapitalreceivership.com>, or may be reviewed at the Clerk's
15 Office during normal business hours at 411 West Fourth Street, Santa Ana,
16 California 92701.

17 **Procedural Requirements:** If you oppose this Motion, you are required to
18 file your written opposition with the Office of the Clerk, United States District
19 Court, 411 West Fourth Street, Santa Ana, California 92701, and serve the same on
20 the undersigned. The Receiver has requested that the deadline to file and serve
21 opposition papers be November 8, 2010.

22 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
23 above date, the Court may grant the requested relief without further notice. This
24 Motion is made following the conference of counsel pursuant to L.R. 7-3.

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1 WHEREFORE, the Receiver requests that the Court grant the relief requested
2 herein and such other relief as may be appropriate under the circumstances.

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4 Dated: November 2, 2010

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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6 By: /s/ Ted Fates

7 TED FATES
8 Attorneys for Receiver
9 Thomas A. Seaman

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 At this point, the Receiver's dispute with Edward K. Blodnick ("Blodnick")
4 and Edward K. Blodnick & Associates, P.C. (the "Blodnick Firm") is well-known to
5 the Court and the parties, and well-documented on the Court's docket. Starting in
6 May 2010, the dispute has produced numerous filings by the Receiver, Blodnick and
7 the Blodnick Firm, several orders issued by the Court, and an evidentiary hearing
8 held on September 7, 2010. By way of this Motion, the Receiver asks the Court to
9 approve a settlement agreement with Blodnick and the Blodnick Firm.

10 Blodnick has represented to the Receiver that the combined net worth of
11 Blodnick and the Blodnick Firm is less than \$300,000. Based primarily on that
12 representation, and subject to Court approval, the Receiver has agreed to accept
13 \$438,400 in full satisfaction of Blodnick and the Blodnick Firm's obligations to the
14 receivership estate. As part of the settlement, Blodnick has provided financial
15 disclosures which, to the Receiver's reasonable satisfaction, support the
16 representation regarding Blodnick and the Blodnick Firm's combined net worth.¹

17 Additionally, as part of the settlement, Thomas R. Fazio ("Fazio"), former
18 General Counsel for Medical Capital and current principal of Blodnick, Fazio &
19 Associates, P.C. (the "Blodnick/Fazio Firm"), has agreed to release all claims
20 against the receivership estate held by himself and his former firm Fazio, Rynsky &
21 Associates, LLP ("FRA"). Fazio claims to be owed wages and bonuses, and FRA
22 claims to be owed legal fees for handling various collection matters.

23 Subject to Court approval, the Receiver, Blodnick, the Blodnick Firm, the
24 Blodnick/Fazio Firm, Fazio and FRA have executed a Settlement Agreement &
25 Release ("Agreement"), the terms of which are discussed in greater detail below.

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27 ¹ Under the proposed settlement agreement, the Receiver is required to keep
28 confidential the financial disclosure provided by Blodnick and the Blodnick
Firm. If the Court wishes to review the disclosures, the Receiver will seek
permission to file them under seal for *in camera* review.

1 The Receiver believes that the receivership estate's claims for turnover, contempt
2 and sanctions against Blodnick and the Blodnick Firm are meritorious. The
3 Receiver is also aware, however, that additional litigation would be expensive and
4 time consuming. If Blodnick and the Blodnick Firm were financially capable of
5 satisfying a turnover, contempt and sanctions order in the Receiver's favor, the
6 expense and delay would be less of a concern. Blodnick's representations and
7 supporting financial disclosures show, however, that Blodnick and the Blodnick
8 Firm would likely be unable to pay the full turnover amount (\$650,000), let alone
9 the full amount of fees and costs incurred by the Receiver as a result of Blodnick's
10 failure to comply with the Preliminary Injunction (approximately \$125,000).
11 Therefore, in all likelihood, continuing to incur litigation expenses (in this Court and
12 on appeal) would simply reduce the receivership estate's net recovery from Blodnick
13 and the Blodnick Firm. The Receiver believes that the Agreement will generate the
14 highest net recovery for the receivership estate, and therefore requests that it be
15 approved.

16 II. FACTS

17 Starting in 1999, Medical Capital made loans to Dr. Robert Schepp and his
18 medical practices, Deajess Medical Imaging, P.C., Boston Post Road Medical
19 Imaging, P.C., and Preferred Medical Imaging, P.C. (collectively, "Schepp"), and
20 the management companies he contracted with, MRI Global Imaging Services, Inc.
21 and Forum Medical Management, Inc. The loans were secured by Schepp's rights to
22 payment from insurance carriers. Seaman Declaration ¶ 2.

23 Patients who received radiology diagnostic services from Schepp did so as a
24 result of being in automobile-related accidents. Accordingly, the relevant insurance
25 claims are governed by the New York Comprehensive Automobile Insurance
26 Reparations Act, commonly known as the New York "No-Fault" insurance system.
27 Seaman Declaration ¶ 3.

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1 Starting in 2005, the manner in which the Schepp medical practices were
2 operated and financed became the subject of substantial litigation in New York
3 between various insurance carriers and Schepp ("Schepp Litigation"). The
4 insurance carriers argued that the way the medical practices were operated and
5 financed violated New York "No-Fault" laws, rendering the relevant insurance
6 claims uncollectible. The insurance carriers also sought to recover payments
7 previously made, which payments had gone directly to Medical Capital. Schepp
8 contested these allegations, arguing that his medical practices were operated and
9 financed in compliance with New York law. The Blodnick Firm represented
10 Schepp in the Schepp Litigation. Seaman Declaration ¶ 4.

11 Schepp was not only unable to repay the loans from Medical Capital, he was
12 also unable to pay the Blodnick Firm's legal bills. Accordingly, in order to collect
13 on the insurance claim receivables that were its collateral, Medical Capital made
14 additional loans to Schepp in the form of direct payments to Blodnick. Between
15 September 2005 and February 2009, Medical Capital paid \$5,208,602.11 directly to
16 Blodnick. Seaman Declaration ¶ 5.

17 Medical Capital was late in paying some of the Blodnick Firm's bills in 2008.
18 In September 2008, Medical Capital agreed to pay Blodnick a flat fee of \$30,000 per
19 week, \$25,000 for ongoing fees and \$5,000 for prior bills. This arrangement was
20 later modified via a letter dated December 11, 2008 from Blodnick that was
21 countersigned by then Medical Capital President Joseph Lampariello. The letter
22 agreement gives the Blodnick Firm the right to twenty (20%) percent of all
23 settlements in addition to the weekly flat fee of \$25,000 (the "Letter Agreement").
24 Seaman Declaration ¶ 6.

25 Medical Capital made some of the weekly payments to Blodnick, but not
26 others. Accordingly, when settlements with insurance carriers were executed and
27 settlement checks were received by Blodnick, he deducted his twenty (20%) percent
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1 fee and the weekly payments not made by Medical Capital. Seaman Declaration
2 ¶ 7.

3 On July 16, 2009, the Securities and Exchange Commission commenced an
4 enforcement action against Medical Capital Holdings, Inc., Medical Capital
5 Corporation, Medical Provider Funding Corporation VI, Sidney M. Field and Joseph
6 J. Lampariello ("Defendants"), alleging various violations of securities laws ("SEC
7 Action"). The SEC Action was filed in the United States District Court for the
8 Central District of California ("District Court"). On the same day, the Commission
9 filed an Ex Parte Application for Temporary Restraining Order and Orders: (1)
10 Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting the
11 Destruction of Documents; (4) Granting Expedited Discovery, and (5) Requiring
12 Accountings; and Order to Show Cause Re: Preliminary Injunction and
13 Appointment of a Permanent Receiver. Seaman Declaration ¶ 8.

14 On August 3, 2009, the Court entered the Temporary Restraining Order and
15 Orders: (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting
16 the Destruction of Documents; and (4) Requiring Accountings; and Order to Show
17 Cause Re: Preliminary Injunction and Appointment of a Permanent Receiver
18 ("TRO"). The TRO appointed Thomas A. Seaman as temporary receiver for the
19 Receivership Entities. On August 18, 2009, the Court entered a Preliminary
20 Injunction and Order Appointing A Permanent Receiver ("Preliminary Injunction"),
21 extending the provisions of the TRO and making the Receiver's appointment
22 permanent. Seaman Declaration ¶ 9.

23 Shortly after the TRO was entered on August 3, 2009, a notice and copy
24 thereof was filed in the Schepp Litigation, putting all parties and their counsel on
25 notice of the Receiver's appointment. Prior to the Receiver's appointment, the
26 Medical Capital entities had been represented in the Schepp Litigation by New York
27 attorney Kenneth C. Henry, Jr. Pursuant to the powers granted to him in the TRO
28 and Preliminary Injunction, the Receiver retained Mr. Henry to continue to represent

1 the Medical Capital entities. Additionally, pursuant to 28 U.S.C. § 754, the
2 Receiver filed the TRO as its own miscellaneous case in the United States District
3 Court for the Eastern District of New York. Seaman Declaration ¶ 10.

4 The parties dispute whether Blodnick disclosed the Letter Agreement from
5 the time of the Receiver's appointment through December 2009.

6 In November 2009, the Receiver was informed by Mr. Henry that one of the
7 insurance carriers, State Farm, had agreed to the terms of a settlement ("State Farm
8 Settlement"). Unlike most of the insurance carriers, State Farm had named the
9 Medical Capital entities in its action. The proposed State Farm settlement,
10 therefore, included releases in favor of State Farm from the Receiver on behalf of
11 Medical Capital. Seaman Declaration ¶ 11.

12 In late December 2009, the Blodnick Firm sent a check and settlement
13 breakdown worksheet to the Receiver, which was received by the Receiver in
14 January 2010. The settlement breakdown worksheet shows \$2,011,522.75 in gross
15 settlement proceeds, \$198,338.80 in payments to a third party lender on insurance
16 claims not financed by Medical Capital, \$98,210 in payments to Schepp, other
17 attorneys representing him, and Mr. Henry, \$1,174,158.73 in payments to the
18 Blodnick Firm, and \$540,815.30 paid to the Receiver (the amount of the check
19 enclosed with the worksheet). Seaman Declaration ¶ 12.

20 On February 2, 2010, the Blodnick Firm sent a second check and settlement
21 breakdown worksheet. The settlement breakdown worksheet shows \$957,216.09 in
22 gross settlement proceeds, \$83,309.29 in payments to a third party lender on
23 insurance claims not financed by Medical Capital, \$25,434.43 in payments to
24 Schepp, other attorneys representing him, and Mr. Henry, \$399,781.36 in payments
25 to the Blodnick Firm, and \$448,691.01 paid to the Receiver (the amount of the
26 check enclosed with the worksheet). Seaman Declaration ¶ 13.

27 In May of 2010, State Farm, Schepp and the Receiver executed the State
28 Farm Settlement. The Receiver, the Blodnick Firm and Mr. Henry executed a

1 separate Escrow Agreement providing that the full State Farm Settlement amount
2 would go to Mr. Henry's trust account, the amount designated for an unrelated
3 lender would be released to that lender, and, of the remaining amount, the twenty
4 (20%) percent Blodnick was claiming would be released to the Blodnick Firm and
5 held, and the rest would be released to the Receiver. The funds released to the
6 Blodnick Firm are to be held pending an agreement between the Receiver and
7 Blodnick or an order of a New York court of competent jurisdiction. Seaman
8 Declaration ¶ 14.

9 On May 14, 2010, the Blodnick Firm sued the Receiver in New York state
10 court for a declaration that he is entitled to \$38,400 from the State Farm settlement
11 proceeds ("New York Action"). The Receiver moved to dismiss the New York
12 Action, which motion is pending. Seaman Declaration ¶ 15.

13 On June 11, 2010, the Receiver filed a motion for order to show cause
14 regarding contempt and sanctions against Blodnick and the Blodnick Firm for
15 failure to turn over property of the receivership estate ("OSC Motion"). The
16 Receiver alleged that Blodnick and the Blodnick Firm violated the Preliminary
17 Injunction by failing to turn over \$650,000 in proceeds of Schepp-related
18 settlements. The Receiver also sought a finding that Blodnick and the Blodnick
19 Firm were in contempt and an order sanctioning them in the amount of the
20 Receiver's fees and costs to obtain their compliance. Seaman Declaration ¶ 16.

21 The OSC Motion has been litigated to some extent. On August 3, 2010, the
22 District Court issued an Order concerning the order to show cause. On August 16,
23 2010, Blodnick and the Blodnick Firm filed a Petition for Writ of Mandamus in the
24 Ninth Circuit Court of Appeals concerning the August 3, 2010 order ("Writ of
25 Mandamus"). On September 7, 2010, the District Court held an evidentiary hearing
26 concerning the OSC Motion. On October 12, 2010, the Ninth Circuit denied the
27 Writ of Mandamus. Seaman Declaration ¶ 17.

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III. THE SETTLEMENT AGREEMENT

Subject to Court approval, the Receiver, Blodnick, the Blodnick Firm, the Blodnick/Fazio Firm, Fazio and FRA have executed the Agreement, the basic terms of which are as follows:

(1) Blodnick will pay \$438,400 cash to the Receiver. Blodnick will pay the \$38,400 he claims from the State Farm settlement to the Receiver (discussed further below) no later than November 10, 2010. Blodnick will pay the remaining \$400,000 to the Receiver within 48 hours of entry of an order approving the Agreement.

(2) Blodnick will dismiss the New York Action with prejudice.

(3) Blodnick will take all steps necessary to close the State Farm settlement. The settlement is contingent on the Receiver having received \$192,000 (which includes the \$38,400 Blodnick has claimed) from the State Farm settlement no later than November 10.

(4) Blodnick will release all claims against the Receiver, the Medical Capital receivership estate, and Medical Capital on behalf of himself, Edward K. Blodnick & Associates, P.C. and Blodnick, Fazio & Associates, P.C.

(5) Fazio will release all claims against the Receiver, the Medical Capital receivership estate, and Medical Capital on behalf of himself and FRA.

(6) The Receiver will release all claims against Blodnick and Edward K. Blodnick & Associates, P.C.

The Agreement is also contingent on full financial disclosures, which disclosures were made by Blodnick and the Blodnick firm on October 13, 2010. The Receiver has reviewed and accepted the disclosures as supportive of the representation that the combined net worth of Blodnick and the Blodnick Firm is less than \$300,000, not including Blodnick's 401(k) retirement account. Accordingly, this contingency has been satisfied. Under the Agreement, the Receiver is required to file a motion to approve the settlement by October 15 and

1 request that the motion be heard on November 15, which obligation is satisfied by
2 the filing of this Motion. Finally, as noted above, Blodnick is required to take all
3 steps necessary to close the State Farm settlement such that the Receiver receives
4 \$192,000 from the State Farm settlement no later than November 10. The Receiver
5 will promptly notify the Court if this contingency is not satisfied.

6 IV. ARGUMENT

7 A federal equity receiver's power to compromise claims is subject to court
8 approval. As noted by the Ninth Circuit Court of Appeals in *S.E.C. v. Hardy*, 803
9 F.2d 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an equity
10 receivership and to determine the appropriate action to be taken in the
11 administration of the receivership is extremely broad." With regard to settlements
12 entered into by a federal equity receiver, the Court's supervisory role includes
13 reviewing and approving those settlements in light of federal court policy to
14 promote settlements before trial. *See* Fed. R. Civ. P. 16(c), Advisory Committee
15 Notes.

16 Federal courts of equity often look to bankruptcy law for guidance in the
17 administration of receivership estates. *See SEC v. Capital Consultants, LLC*, 397
18 F.3d 733, 745 (9th Cir. 2005); *SEC v. American Capital Investments, Inc.*, 98 F.3d
19 1133, 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Resources*, 273 F.3d
20 657, 665 (6th Cir. 2001); *see also* Local Civil Rule 66-8 ("a receiver shall
21 administer the estate as nearly as possible in accordance with the practice in the
22 administration of estates in bankruptcy"). A bankruptcy court may approve a
23 compromise of claims asserted by or against the estate if the compromise is "fair
24 and equitable." *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*, 839
25 F.2d 610, 620 (9th Cir. 1988). The approval of a proposed compromise negotiated
26 by a court-appointed fiduciary "is an exercise of discretion that should not be
27 overturned except in cases of abuse leading to a result that is neither in the best
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1 interest of the estate nor fair and equitable for the creditors." *In re MGS Marketing*,
2 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

3 The Court has great latitude in approving compromises. In passing on the
4 proposed compromise, the Court should consider the following:

- 5 a. The probability of success in litigation;
- 6 b. The difficulties, if any, to be encountered in the matter of
7 collection;
- 8 c. The complexity of the litigation involved and the expense,
9 inconvenience, and delay necessarily attending; and
- 10 d. The paramount interest of the creditors and a proper
11 deference to their reasonable views in the premises.

12 *Woodson*, 839 F.2d at 620.

13 Here, the Receiver believes that the receivership estate's claims for turnover,
14 contempt and sanctions against Blodnick and the Blodnick Firm are meritorious.
15 The Receiver is also aware, however, that additional litigation would be expensive
16 and time consuming. If Blodnick and the Blodnick Firm were financially capable of
17 satisfying a turnover, contempt and sanctions order in the Receiver's favor, the
18 expense and delay would be less of a concern. Blodnick's representations and
19 supporting financial disclosures show, however, that Blodnick and the Blodnick
20 Firm would likely be unable to pay the full turnover amount (\$650,000), let alone
21 the full amount of fees and costs incurred by the Receiver as a result of Blodnick's
22 failure to comply with the Preliminary Injunction (approximately \$125,000).
23 Therefore, in all likelihood, continuing to incur litigation expenses (in this Court and
24 on appeal) would simply reduce the receivership estate's net recovery from Blodnick
25 and the Blodnick Firm. The Receiver believes that the Agreement will generate the
26 highest net recovery for the receivership estate, and therefore requests that it be
27 approved.
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V. CONCLUSION

WHEREFORE, the Receiver requests entry of an order granting the Motion and approving the Agreement.

Dated: November 2, 2010

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates

TED FATES
Attorneys for Receiver
Thomas A. Seaman