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8 THOMAS A. SEAMAN

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

12 SECURITIES AND EXCHANGE  
COMMISSION,  
13 Receiver,  
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.

Case No. SA CV09-0818 DOC (RNBx)

NOTICE OF MOTION AND MOTION  
FOR ORDER AUTHORIZING THE  
EMPLOYMENT OF SPECIAL NEW  
YORK COUNSEL (*FORMAN HOLD  
ELIADES & RAVIN LLC*) AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES

[Declarations of Thomas A. Seaman and  
Harry M. Gutfliesh, and Proposed Order,  
Filed Concurrently Herewith]

Date: March 14, 2011  
Time: 8:30 a.m.  
Ctvm: 9D  
Judge: Hon. David O. Carter

22 PLEASE TAKE NOTICE that on March 14, 2011, at 8:30 a.m., or as soon  
23 thereafter as this matter may be heard, before the Honorable David O. Carter, in  
24 Courtroom 9D of the United States District Court for the Central District of  
25 California, Southern Division, located at 411 W. Fourth Street, Santa Ana,  
26 California 92701, Thomas A. Seaman, as receiver, ("Receiver") will move  
27 ("Motion") this Court for an Order authorizing the employment of special counsel to  
28 address claims involving persons and issues in New York ("Special Counsel") on

1 behalf of the receivership estates of Medical Capital Holdings, Inc., Medical Capital  
2 Corporation, Medical Provider Funding Corporation VI, and their subsidiaries and  
3 affiliates (collectively, ("Receivership Estates")).

4 The Receiver's general counsel, Allen Matkins Leck Gamble Mallory &  
5 Natsis, LLP, is a California firm and has no offices outside of the state. The  
6 Receiver, in order to determine the appropriate course of action as to a significant  
7 debt owed to the receivership estate, as described herein, requires legal advice as to  
8 the merits of the claims and the likelihood of collecting any award. Since the claims  
9 potentially involve New York law, the primary parties are located in and around  
10 New York, and collection efforts would be carried out in and around New York, the  
11 Receiver requires experienced New York counsel to assist him.

12 The Receiver seeks to employ the law firm of Forman Holt Eliades & Ravin  
13 LLC, to act as Special Counsel, to (i) evaluate the merits and costs of pursuing  
14 actions to collect on (a) certain note obligations made in favor of certain of the  
15 entities of the Receivership Estates ("Receivership Entities"), which are in default  
16 and have outstanding loan obligations, (the "Note Actions") and (b) certain amounts  
17 due to the Receivership Entities under accounts receivable purchase agreements,  
18 where the Receivership Entities sold its interests in healthcare accounts receivables  
19 to third parties (the "Receivable Actions"), (the Note Actions and Receivable  
20 Actions, are collectively referred to herein as the "Collection Actions"), and (ii)  
21 pursue the Collection Actions as appropriate.

22 Given his estimate that the Receivership Estates are owed over \$38 million by  
23 the pertinent parties, the Receiver believes that the determination of whether the  
24 Collection Actions have any recoverable value to the Receivership Estates is critical,  
25 and that the employment of Special Counsel is necessary to make that  
26 determination. The proposed compensation structure for Special Counsel, as set  
27 forth in the Motion, contemplates that Special Counsel will initially provide an  
28 evaluation of the Collection Actions to determine, among other things, the viability

1 of such claims, the difficulty of collection on such claims (e.g., whether venue and  
2 choice of law issues could make pursuing such actions difficult), and possible  
3 defenses to such claims. The cost of this evaluation is capped, and no further fees  
4 will be incurred unless and until the Receiver determines further pursuit of claims is  
5 cost-efficient and appropriate. Of course, all fees will be subject to approval by the  
6 Court.

7 The Receiver sets forth in the Motion the basis for its selection of Special  
8 Counsel, based upon office location, favorable billing rates, law firm size, and  
9 general expertise in handling creditors' rights, bankruptcy, and collection matters.  
10 The Receivership Estates believe that the compensation structure is in the best  
11 interest of the Receivership Estates, as detailed in the Motion.

12 This Motion is based on the attached Memorandum of Points and Authorities,  
13 the Declarations filed concurrently herewith, and such other papers and pleadings  
14 and arguments of counsel as may be presented to the Court at or before the hearing  
15 on the motion. PLEASE TAKE FURTHER NOTICE any objecting party may file  
16 a response not later than twenty-one (21) days prior to the hearing date, pursuant to  
17 Local Rule 7-9. Failure to file a response may be deemed a waiver of any  
18 opposition to the Motion.

19 This Motion is made following the conference of counsel pursuant to Central  
20 District of California Local Rule 7-3. In regard to the conference of counsel, both  
21 counsel to the SEC and the Defendants have indicated that they have no objection to  
22 the Motion.

23 Dated: February 7, 2011

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

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By: /s/ Michael R. Farrell

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MICHAEL R. FARRELL  
Attorneys for Receiver  
THOMAS A. SEAMAN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 A potentially significant asset of the receivership estate, a \$38 million debt,  
5 involves people, assets, and the law of New York and the surrounding area. The  
6 receiver Thomas A. Seaman ("Receiver") requires legal advice to determine the  
7 appropriate course of action and his general counsel is a California firm with no  
8 offices outside the state.

9 Therefore, the Receiver seeks to employ the law firm of Forman Holt Eliades  
10 & Ravin LLC, to act as special New York counsel ("Special Counsel"), to (i)  
11 evaluate the merits and costs of pursuing actions to collect on (a) certain note  
12 obligations made in favor of certain of the entities of the Receivership Estates  
13 ("Receivership Entities"), which are in default and have outstanding loan  
14 obligations, (the "Note Actions") and (b) certain amounts due to the Receivership  
15 Entities under accounts receivable purchase agreements, where the Receivership  
16 Entities sold its interests in healthcare accounts receivables to third parties (the  
17 "Receivable Actions"), (the Note Actions and Receivable Actions, are collectively  
18 referred to herein as the "Collection Actions"), and (ii) pursue the Collection  
19 Actions as appropriate.

20 In light of the circumstances, the Receiver believes that the employment of  
21 Special Counsel, pursuant to the terms and conditions discussed below, is necessary  
22 and appropriate.

23 **II.**

24 **FACTS**

25 The Receiver was appointed as permanent receiver in this action on or about  
26 August 3, 2009, pursuant to the Preliminary Injunction and Order Appointing a  
27 Permanent Receiver (the "Receiver Order"). The Receiver Order at Section VI  
28 provides that the Receiver is "authorized, empowered and directed: (G) to employ

1 attorneys, accountants, and others to investigate and, where appropriate to institute,  
2 pursue, and prosecute all claims and causes of action of whatever kind and nature  
3 which may now or hereafter exist as a result of the activities of present or past  
4 employees or agents of MCHI, MCC, and MP VI, and their subsidiaries and  
5 affiliates . . . ."

6 Pursuant to the Receiver Order, the Receiver seeks to employ Special Counsel  
7 to "investigate" the Collection Actions, which are based on underlying business  
8 transactions of the Receivership Entities, and, then if appropriate, for Special  
9 Counsel to pursue and prosecute such Collection Actions. The Receiver sets forth  
10 below a brief description of the transactions which serve as a basis for the Note  
11 Actions and Receivables Actions.

12 A. **The Note Actions**

13 The Receiver seeks to employ Special Counsel to evaluate the Note Actions,  
14 which outstanding amounts in the aggregate approximate \$9.5 million, and  
15 determine whether it would be appropriate to pursue the Note Actions to collect on  
16 the outstanding obligations due under the following promissory notes and guaranties  
17 in favor of certain of the Receivership Entities:

- 18 1. Note from Preferred Medical Imaging, P.C.: There is a note from  
19 Preferred Medical Imaging, P.C. ("PMI"), a New York corporation, in  
20 favor of Receivership Entity Medical Capital Corporation ("MCC"),  
21 dated in October 2006, which has a current outstanding balance of  
22 \$6,130,000, and is guaranteed by Robert Schepp ("Schepp").
- 23 2. Note from Boston Post Road Medical Imaging, P.C.: There is a note  
24 from Boston Post Road Medical Imaging, P.C. ("BPRMI"), a New  
25 York corporation, in favor of MCC, dated February 28, 2006, which  
26 has a current outstanding balance of \$1,298,000.
- 27 3. Note from Deajess Medical Imaging, P.C.: There is a note from  
28 Deajess Medical Imaging, P.C. ("DMI"), a New York corporation, in

1 favor of MCC, dated February 28, 2006, which has a current  
2 outstanding balance of \$1,704,000.

- 3 4. Note from Schepp: There is a note from Deajess Medical Imaging,  
4 P.C. ("DMI"), a New York corporation, in favor of Receivership Entity  
5 Medical Capital Holdings, Inc., dated November 3, 2005, which has a  
6 current outstanding balance of \$454,000.

7 **B. The Receivables Actions**

8 The Receiver also seeks to employ Special Counsel to evaluate the  
9 Receivables Actions, and determine whether it would be appropriate to pursue them  
10 to collect on the outstanding amounts due under purchase agreements for certain  
11 healthcare receivables. The Receiver believes there is in aggregate approximately  
12 \$29,000,000 outstanding under the purchase agreements. The agreements were in  
13 favor of various Receivership Entities and involved the following entities which  
14 were counter-parties to one or more of the purchase agreements: PMI, Forum  
15 Medical Management Inc., BPRMI, MRI Global Imaging Services, Inc., and  
16 Deajess, (many of which were guaranteed by Schepp and Hillel Scher).

17 **C. The Terms of Special Counsel Employment**

18 The terms of compensation for Special Counsel employment for the  
19 Collection Actions are, as follows:

- 20 1. For the evaluative portion of the Collection Actions, Special Counsel's  
21 fees will be capped at \$30,000 ("Evaluation Fee Maximum");  
22 2. If the Receiver elects to proceed with any of the Collection Actions,  
23 Special Counsel's fees will be authorized (subject to Court approval) up  
24 to an additional \$70,000, based on hourly fees, incurred in connection  
25 with prosecuting the Collection Actions ("Hourly Fee Maximum");  
26 3. If Special Counsel collects in recoveries more than \$100,000 in any of  
27 the Collection Actions, Special Counsel will be entitled to a  
28

1 contingency fee of 25% of such recoveries in excess of \$100,000  
2 ("Contingency Fee");

3 4. In the event that in any of the Collection Actions, any of the defendants  
4 (a) raises any counterclaims in the action, that is not related to the  
5 transactions underlying the Collection Actions, or (b) files a third party  
6 complaint, Special Counsel and the Receivership Estates may discuss  
7 and negotiate an alternative fee structure (such as increasing the  
8 amount of the Hourly Fee Maximum or the Contingency Fee, or both),  
9 subject to Court approval;

10 5. For any disbursements (out-of-pocket expenses) ("Special Counsel  
11 Expenses"), Special Counsel will be entitled to reimbursement for such  
12 Special Counsel Expenses from the Receivership Estates, in addition to  
13 the Hourly Fee Maximum and Contingency Fee; and

14 6. All amounts Special Counsel seeks for payment of the Evaluation Fee  
15 Maximum, Hourly Fee Maximum, Contingency Fee, and Special  
16 Counsel Expenses, shall be subject to Court approval, pursuant to the  
17 filing of a fee application filed with the Court.

18 *See* Seaman Declaration, Exhibit "A". The Retainer Agreement reflects that the  
19 applicable billing rates for the attorneys at Special Counsel range from \$200 to \$500  
20 per hour, which are discounted from Special Counsel's general billing rates for  
21 matters of this nature. *See* Declaration of Harry M. Gutfleish, ¶ 3. The blended  
22 billing rate for Special Counsel is \$350. *See id.*

23 **III.**

24 **THE RECEIVER REQUESTS THAT THE COURT APPROVE THE**  
25 **EMPLOYMENT OF SPECIAL COUNSEL**

26 Pursuant to Section VI of the Receiver Order, the Receiver requests that the  
27 Court authorize the employment of Special Counsel for the evaluation and  
28 prosecution of the Collection Actions.

1 Given his estimate that the Receivership Estates are owed over \$38 million by  
2 the pertinent parties, the Receiver believes that the determination of whether the  
3 Collection Actions have any recoverable value to the Receivership Estates is critical,  
4 and that the employment of Special Counsel is necessary to make that  
5 determination. Since the Receiver's general counsel is a California firm, and the  
6 Collection Actions will most likely involve the filing of suits in the New York area,  
7 and require knowledge of local law and procedural practice, as nearly all the  
8 potential defendants in the Collection Actions are either New York corporations or  
9 reside in the New York area, the Receiver requires experienced New York counsel  
10 to advise him.

11 The proposed compensation structure for Special Counsel, as noted herein,  
12 contemplates that Special Counsel will initially provide an evaluation of the Note  
13 Actions and Collection Actions to determine, among other things, the viability of  
14 such claims, the difficulty of collection on such claims (e.g., whether venue and  
15 choice of law issues could make pursuing such actions difficult), and possible  
16 defenses to such claims. The cost of this evaluation is capped, and no further fees  
17 will be incurred unless and until the Receiver determines further pursuit of claims is  
18 cost-efficient and appropriate. Of course, all fees will be subject to approval by the  
19 Court.

20 The evaluation from Special Counsel will greatly assist the Receiver in  
21 determining whether, under a cost-benefit analysis, it would be worthwhile for the  
22 Receivership Estates to expend the necessary litigation funds to pursue such  
23 Collection Actions. For the Collection Actions pursued, the compensation structure  
24 provides the best options of covering most of the necessary fees in prosecuting the  
25 Collection Actions and provides a critical incentive for Special Counsel with a  
26 contingency fee to pursue those recoveries which would exceed \$100,000. This is a  
27 good balance in Special Counsel's perspective to pursue all Collection Actions and  
28 be fairly compensated, and for those Actions which could result in greater

1 recoveries (i.e., over \$100,000), for Special Counsel to aggressively pursue these  
2 recoveries at the prospect of greater benefit to Special Counsel.

3 The Receiver also advises that its selection of Special Counsel, was made  
4 based upon the location of its office in the New York area, its favorable billing rates  
5 as a medium sized law firm (approximately 18 attorneys), and its general expertise  
6 in handling creditors' rights, bankruptcy, and collection matters.

7 As far as its experience, and as detailed in Special Counsel's resume attached  
8 as Exhibit "A" to the Declaration of Harry M. Gutleish, filed concurrently herewith,  
9 Special Counsel has over 25 years of experience in representing bankruptcy trustees  
10 and other court-appointed fiduciaries. In particular, members of Special Counsel  
11 have served as the bankruptcy trustee and as counsel for the bankruptcy trustee in  
12 bankruptcy cases related to SEC receivership actions, including *In re NJ Affordable*  
13 *Homes Corp.*, Chapter 7 Case No. 05-60442, which is related to *SEC v. NJ*  
14 *Affordable Homes Corp.*, Civil Action No. 2:05-CV-04403 (District of New Jersey)  
15 and *In re Ameripay LLC*, Chapter 7 Case No. 09-27794, which is related to *SEC v.*  
16 *Sherbourne Capital Management Ltd. et al.*, Civil Action No. 2:09-CV-02302  
17 (District of New Jersey), as well as certain criminal investigations and actions  
18 commenced by the United States Attorney's Office. Based upon this experience,  
19 Special Counsel has substantial familiarity with the SEC receivership litigation  
20 process, the powers and duties of a SEC receiver to marshal assets for a receivership  
21 estate, and the important need to balance the cost of pursuit of assets relative to  
22 ultimate recovery. This prior familiarity with the SEC receivership process was a  
23 critical factor in selecting Special Counsel to evaluate and, if appropriate, to  
24 commence the Collection Actions.

25 The Receiver further advises that in addition to Special Counsel, his office  
26 also contacted other potential special counsel ("Other Counsel") in the New York  
27 area for evaluation and collection of the Collection Actions. But the Other Counsel  
28 was only willing to take the representation on a hourly fee, which was not capped,

1 and offered rates that were not as favorable as Special Counsel. Based upon  
2 comparison of compensation structures proposed by both Other Counsel and Special  
3 Counsel, the Receiver determined that the Special Counsel compensation structure  
4 (and rate structure) was more favorable to the Receivership Estates, and that  
5 considering overall factors, selection of Special Counsel was in the best interest of  
6 the Receivership Estates.

7 IV.

8 **SPECIAL COUNSEL DOES NOT HOLD OR REPRESENT AN INTEREST**  
9 **ADVERSE TO THE RECEIVERSHIP ESTATES ARE DISINTERESTED**  
10 **PERSONS**

11 Central District Local Rule 66-8, entitled "Permanent and Temporary  
12 Receivers – Administration of Estate", provides that "[e]xcept as otherwise ordered  
13 by the Court, a receiver shall administer the estate as nearly as possible in  
14 accordance with the practice in the administration of estates in bankruptcy". To the  
15 extent that approval of this employment of Special Counsel must closely follow any  
16 applicable bankruptcy law, the Receiver cites Section 327(a) of the Bankruptcy  
17 Code (11 U.S.C. § 101, *et seq.*), and Federal Rule of Bankruptcy Procedure 2014(a).

18 In summary, Section 327(a) provides that with the Court's approval, a  
19 bankruptcy trustee may employ attorneys that do not hold or represent an interest  
20 adverse to the estate, and are disinterested persons to represent or assist the trustee  
21 in carrying out the trustee's duties. Federal Rule of Bankruptcy Procedure 2014(a)  
22 which sets forth the procedural requirements for a bankruptcy trustee to employ  
23 counsel, follows Section 327(a) and provides that any application must show, if any,  
24 and to the best of the applicant's knowledge, the proposed attorneys' connections  
25 with the "debtor, creditors, any other party in interest, their respective attorneys and  
26 accountants, the United States Trustee, or any person employed in the office of the  
27 United States Trustee."

28

1 Here, the Receiver advises the Court that, to the best of his knowledge,  
2 Special Counsel and their members and employees: (a) do not hold or represent any  
3 interest adverse to the Receiver, the Receivership Entities, the investors and  
4 creditors, and the Receivership Estates, (b) have no connection with the Receiver,  
5 the Receivership Entities, the investors and creditors, and the Receivership Estates,  
6 any other parties in interest, their respective attorneys and accountants, and the SEC,  
7 (c) are disinterested persons as that term is defined in 11 U.S.C. § 101(14)<sup>1</sup> and as  
8 used in Section 327(a), and (d) hold no pre-receivership claims against the  
9 Receivership Estates.

10 V.

11 CONCLUSION

12 Based on the foregoing, the Receiver respectfully requests that the Court  
13 grant this Motion.

14  
15 Dated: February 7, 2011

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

17 By:           /s/ Michael R. Farrell

18 MICHAEL R. FARRELL  
19 Attorneys for Receiver  
THOMAS A. SEAMAN

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25 <sup>1</sup> Section 101(14) provides that "[t]he term 'disinterested person' means a person  
26 that – (A) is not a creditor, an equity security holder, or an insider; (B) is not and  
27 was not, within 2 years before the date of the filing of the petition, a director,  
28 officer or employee of the debtor; and (C) does not have any interest materially  
adverse to the interest of the estate or of any class of creditors or equity security  
holders, by reason of any direct or indirect relationship to, connection with, or  
interest in, the debtor, or for any other reason."