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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.
20

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

**NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT
WITH DOMENICK MARINARO,
CENTURY AMBULANCE
SERVICES, INC., DR. ROBERT
J. AQUINO, AND
CAS ACQUISITION I, LLC;
MEMORANDUM OF POINTS
AND AUTHORITIES**

Date: June 13, 2011
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

1 **TO ALL INTERESTED PARTIES:**

2 PLEASE TAKE NOTICE that on June 13, 2011, at 8:30 a.m., in
3 Courtroom 9D of the above-entitled Court located at 411 West Fourth Street,
4 Santa Ana, California 92701, a hearing will be held on the motion of Thomas A.
5 Seaman ("Receiver"), Court-appointed permanent receiver for Medical Capital
6 Holdings, Inc., Medical Capital Corporation, Medical Provider Funding
7 Corporation VI, and their subsidiaries and affiliates, including Medical Provider
8 Financial Corporation II (collectively, "Medical Capital" or the "Receivership
9 Entities"), for approval of a settlement agreement with Domenick Marinaro, Century
10 Ambulance Services, Inc., Dr. Robert Aquino and CAS Acquisition I, LLC
11 ("Motion").

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

18 **Procedural Requirements:** If you oppose this Motion, you are required to
19 file your written opposition with the Office of the Clerk, United States District
20 Court, 411 West Fourth Street, Santa Ana, California 92701, and serve the same on
21 the undersigned not later than twenty-one (21) calendar days prior to the hearing.

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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Dated: May 11, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates
TED FATES
Attorneys for Receiver
Thomas A. Seaman

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTS**

3 **A. Loans to Parkway, Aquino, Capitol**

4 Starting in 2006, Medical Capital made a series of loans to (a) Parkway
5 Acquisitions I, LLC, formerly known as Parkway Hospital Associates, owner of a
6 hospital property in Queens, New York ("PAI"), (b) Parkway Hospital, Inc.
7 ("Parkway"), operator of the hospital on the PAI property, (c) Parkway's principal
8 Dr. Robert J. Aquino ("Aquino"), and (d) Capitol Health Management, Inc.
9 ("Capitol"), another entity owned by Aquino. In July 2005, prior to any of the loans
10 being made, Parkway filed chapter 11 bankruptcy in the Southern District of
11 New York. The hospital closed in November 2008, and the bankruptcy case was
12 converted to chapter 7 in September 2010. Seaman Declaration ¶ 2.

13 Capitol and six other Aquino controlled entities filed chapter 11 bankruptcy in
14 October 2008 in the Southern District of New York. These seven bankruptcy cases
15 are all jointly administered. A chapter 11 trustee was appointed in all seven cases in
16 September 2010. Recently, the Capitol bankruptcy case and one other was
17 converted to chapter 7. The chapter 11 trustee is now acting as chapter 7 trustee in
18 those two cases. Seaman Declaration ¶ 3.

19 The Receiver's counsel is in regular contact with the bankruptcy trustee for
20 Parkway and the bankruptcy trustee for Capitol and the related Aquino entities
21 regarding the trustees' respective investigations of assets and pursuit of claims that
22 are subject to Medical Capital's liens. Additional information about the Receiver's
23 activities with respect to the Parkway, Aquino and Capitol loans is contained in the
24 Receiver's monthly reports to the Court. Seaman Declaration ¶ 4.

25 **B. Century Ambulance Services**

26 One of the Medical Capital loans to Capitol, which was made in July 2007,
27 was in the principal amount of \$2,060,000 ("Loan"). However, only \$1,565,000
28 was advanced under the Loan. The Loan matured and became due in full on

1 July 19, 2009. As of March 31, 2011, including accrued interest, the total owed on
2 the Loan was \$2,040,535.96. Seaman Declaration ¶ 5.

3 Of the \$1,565,000 advanced under the Loan, \$200,000 was used by Aquino to
4 make a deposit toward the purchase of ambulance licenses held by Century
5 Ambulance Services, Inc. ("Century"). Century holds licenses to operate an
6 ambulance service and an ambulette/para-transit service. Century's owner is
7 Domenick Marinaro ("Marinaro"). Aquino formed CAS Acquisition I, LLC
8 ("CAS") to purchase the licenses. The \$200,000 deposit was placed in the attorney
9 escrow account of Century's counsel pursuant to an Escrow Agreement dated
10 July 12, 2007. The sale was subject to Aquino/CAS obtaining approval of the
11 transfer of the licenses from the New York authorities. While Aquino/CAS was
12 seeking such approval, CAS managed Century pursuant to a management
13 agreement. Medical Capital recorded Uniform Commercial Code financing
14 statements ("UCCs") that placed liens on Century's assets as collateral for the Loan.
15 Seaman Declaration ¶ 6.

16 The contemplated sale of the licenses from Century/Marinaro to Aquino/CAS
17 never closed. Century and Marinaro sued Aquino and CAS in New York state court
18 for breaches of the transfer agreement and management agreement, among other
19 things ("New York Litigation"). Aquino and CAS asserted counterclaims in the
20 New York Litigation. Throughout the New York Litigation, the \$200,000 deposit
21 has remained in the attorney escrow account of Century/Marinaro's counsel. After
22 the Receiver was appointed, Century's counsel contacted the Receiver and
23 demanded that the UCCs be terminated. The Receiver investigated the advances
24 made under the Loan, learned that \$200,000 was being held in the attorney escrow
25 account, and demanded return of the funds. Seaman Declaration ¶ 7.

26 **C. The Proposed Settlement**

27 The Receiver engaged Century/Marinaro and Aquino/CAS in settlement
28 discussions. The settlement discussions were lengthy, primarily due to the

1 contentious nature of the New York Litigation, and the parties' mistrust of one
2 another. The Receiver's counsel facilitated the discussions and encouraged the
3 parties to work toward a consensual resolution. As part of the settlement
4 discussions, Aquino agreed to produce to Marinaro the books and records for
5 Century that were in Aquino's possession and control. Subject to Court approval,
6 the parties agreed to a settlement on the following terms and conditions:¹

- 7 (a) Judgment in the New York Litigation will be entered against Aquino and
- 8 CAS;
- 9 (b) The Receiver will cause the UCCs to be terminated;
- 10 (c) The \$200,000 deposit will be divided up as follows:
 - 11 (i) \$16,000 to Century/Marinaro's counsel;
 - 12 (ii) \$16,000 to Aquino/CAS's counsel; and
 - 13 (iii) \$168,000 to the Receiver.

14 Seaman Declaration ¶ 8.

15 The parties executed a Settlement Agreement and Deposit Release
16 Agreement, true and correct copies of which are attached as Exhibits A and B to the
17 Declaration of Thomas Seaman in Support of this Motion. It should be noted that,
18 even though the borrower under the Loan is Capitol, the automatic stay in the
19 Capitol bankruptcy case does not apply to the New York Litigation or this
20 settlement agreement because Capitol is not a party.

21 II. ARGUMENT

22 A federal equity receiver's power to compromise claims is subject to court
23 approval. As noted by the Ninth Circuit Court of Appeals in *S.E.C. v. Hardy*, 803
24 F.2d 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an equity
25 receivership and to determine the appropriate action to be taken in the
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27 ¹ The Settlement Agreement is summarized herein for ease of reference only. In
28 the event of a conflict between the summary provided herein and the Settlement
Agreement, the Settlement Agreement controls and governs.

1 administration of the receivership is extremely broad." With regard to settlements
2 entered into by a federal equity receiver, the Court's supervisory role includes
3 reviewing and approving those settlements in light of federal court policy to
4 promote settlements before trial. *See* Fed. R. Civ. P. 16(c), Advisory Committee
5 Notes.

6 Federal courts of equity often look to bankruptcy law for guidance in the
7 administration of receivership estates. *See SEC v. Capital Consultants, LLC*, 397
8 F.3d 733, 745 (9th Cir. 2005); *SEC v. American Capital Investments, Inc.*, 98 F.3d
9 1133, 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Resources*, 273 F.3d
10 657, 665 (6th Cir. 2001); *see also* Local Civil Rule 66-8 ("a receiver shall
11 administer the estate as nearly as possible in accordance with the practice in the
12 administration of estates in bankruptcy"). A bankruptcy court may approve a
13 compromise of claims asserted by or against the estate if the compromise is "fair
14 and equitable." *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*, 839
15 F.2d 610, 620 (9th Cir. 1988). The approval of a proposed compromise negotiated
16 by a court-appointed fiduciary "is an exercise of discretion that should not be
17 overturned except in cases of abuse leading to a result that is neither in the best
18 interest of the estate nor fair and equitable for the creditors." *In re MGS Marketing*,
19 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

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

- 22 a. The probability of success in litigation;
- 23 b. The difficulties, if any, to be encountered in the matter of
24 collection;
- 25 c. The complexity of the litigation involved and the expense,
26 inconvenience, and delay necessarily attending; and
- 27 d. The paramount interest of the creditors and a proper
28 deference to their reasonable views in the premises.

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

1 Here, if the Settlement Agreement is approved, the Receiver will terminate
2 the UCCs, which place liens on Century's assets, in exchange for the majority of the
3 \$200,000 deposit, which funds were borrowed from Medical Capital. The facts
4 suggest that the UCCs were improperly recorded in that Aquino did not own
5 Century, and therefore did not have authority to pledge its assets as collateral for the
6 Loan. Therefore, Century/Marinaro would likely prevail in an action to have the
7 UCCs terminated. Additionally, the transfer agreement between Marinaro and
8 Aquino/CAS contains a liquidated damages clause, under which Marinaro, if
9 successful in the New York Litigation, could likely retain the \$200,000 deposit.
10 Furthermore, the Receiver has not found any evidence of a relationship or direct
11 dealings between Marinaro and the Medical Capital entities or their principals.
12 Therefore, it is unlikely the Receiver would be able to recover the deposit from
13 Marinaro under an equitable theory.

14 Under the Settlement Agreement, other than the security interests in Century's
15 assets, the Receiver retains all rights and claims, including all rights and claims
16 against Parkway, Aquino and Capitol. The Receiver will continue to pursue those
17 claims in the manner that will maximize the recovery for the receivership estate.

18 The Settlement Agreement requires that the Receiver give up very little in
19 exchange for \$168,000. Accordingly, the Receiver believes that the settlement is in
20 the best interests of the receivership estate and asks that it be approved by the Court.

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III. CONCLUSION

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

Dated: May 11, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates

TED FATES
Attorneys for Receiver
Thomas A. Seaman