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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.  
20  
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Case No. 8:09-cv-0818-DOC (RNBx)

**[AMENDED]**  
**RECEIVER'S OMNIBUS  
OBJECTION TO TRADE  
CREDITOR CLAIMS**

Date: January 23, 2012  
Time: 8:30 a.m.  
Ctrm: 9D  
Judge: Hon. David O. Carter

1 **TO ALL INTERESTED PARTIES:**

2 PLEASE TAKE NOTICE that on January 23, 2012, 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 omnibus objection of  
5 Thomas A. Seaman ("Receiver"), Court-appointed permanent receiver for Medical  
6 Capital Holdings, Inc., Medical Capital Corporation, Medical Provider Funding  
7 Corporation VI, and their subsidiaries and affiliates (collectively, "Medical Capital"  
8 or the "Receivership Entities"), to certain trade creditor claims ("Objection").

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

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

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

22 **Meet and Confer:** The Receiver met and conferred with counsel for the  
23 Securities and Exchange Commission ("SEC") prior to filing this pleading and the  
24 SEC does not object to the Receiver's approach to claim objections.

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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: November 28, 2011

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By: /s/ Loraine L. Pedowitz

LORAIN L. PEDOWITZ  
Attorneys for Receiver  
Thomas A. Seaman



1                   **II. PROCEDURAL AND FACTUAL BACKGROUND**

2           On December 21, 2010, the Receiver filed his Motion for Order: (1) Setting  
3 Claims Bar Date; (2) Approving Proof of Claim and Claim Information Forms; and  
4 (3) Establishing Summary Procedures for Claim Administration ("Claim Procedures  
5 Motion"). There was no opposition to the Claim Procedures Motion, and on  
6 January 31, 2011, the Court entered the order granting the motion ("Claim  
7 Procedures Order"). The Claim Procedures Order set the deadline to submit claims  
8 as May 1, 2011 ("Claims Bar Date"), approved the proof of claim and claim  
9 information forms proposed by the Receiver, and provided that disputes regarding  
10 claims will be determined by the Court using summary procedures. The approved  
11 claim forms and instructions were mailed to all known Noteholders (defined below),  
12 trade creditors and former employees between February 18 and March 1, 2011.

13           On April 14, 2011, the Receiver applied for an order extending the Claims  
14 Bar Date because, among other things, many Noteholders had not maintained  
15 updated addresses with the Receiver, and as a result, many of the claim information  
16 forms the Receiver mailed out were returned. On April 18, 2011, the Court entered  
17 an order extending the Claims Bar Date to June 15, 2011.

18           The Receiver's office received 81 claims from trade creditors in the aggregate  
19 amount of over \$250,000,000. The Receiver, his staff and his counsel have  
20 reviewed each creditor claim and supporting documentation, investigated the basis  
21 for the claim, attempted to reconcile the claim with the Receivership Entities' books  
22 and records, and determined the proper amount of the claim. The Receiver's  
23 objections to the various creditor claims are discussed below.

24           As provided in the Claim Procedures Order, this Objection shifts the burden  
25 of proof to the applicable trade creditors to submit evidence sufficient to overcome  
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1 the Objection. As appropriate, the Court will implement further procedures to  
2 resolve specific claim disputes.<sup>1</sup>

3 As is well known to all interested parties, the Receivership Entities purported  
4 to be in the business of purchasing healthcare accounts receivable at a discount from  
5 healthcare providers, making other loans and investments, and managing the  
6 collection of such receivables/loans/investments. These activities were managed  
7 through its chief operating company, Medical Capital Corporation ("MCC"), a  
8 wholly owned subsidiary of Medical Capital Holdings, Inc. ("MCH"). Funds used  
9 to make investments were raised through the issuance of promissory notes to  
10 Noteholders ("Noteholders") from special purpose corporations, referred to as  
11 Medical Provider Funding/Financial Corporations ("MP Entities" or if, specifically  
12 identified MPFC \_\_). Medical Tracking Services, Inc. ("MTS") acted as the  
13 servicer to the MP Entities. MCC acted as the administrative agent for each MP  
14 Entity, which involved MCC identifying investments in receivables and other assets,  
15 and managing these investments in return for an administrative fee. At the time of  
16 the Receiver's appointment, numerous Noteholders and trade creditors were owed  
17 money by one or more Receivership Entities.

### 18 III. ARGUMENT

19 "The power of a district court to impose a receivership or grant other forms of  
20 ancillary relief does not in the first instance depend on a statutory grant of power  
21 from the securities laws. Rather, the authority derives from the inherent power of a  
22 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
23 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
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25 <sup>1</sup> The Receiver is concurrently filing omnibus objections to the claims of  
26 employees and Noteholders, as well as separate objections to the claims  
27 submitted by Bank of New York Mellon and Wells Fargo Bank, as those  
28 objections are being filed by the Receiver's conflicts counsel. With respect to  
Noteholder claims the Receiver has proposed specific summary procedures for  
resolving disputes. It may be that similar procedures will be useful in resolving  
certain creditor claim disputes as well.

1 and efficient administration of the estate by the district court for the benefit of  
2 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
3 of a receiver is authorized by the broad equitable powers of the court, any  
4 distribution of assets must also be done equitably and fairly. *See S.E.C. v. Elliot*,  
5 953 F.2d 1560, 1569 (11th Cir. 1992).

6 District courts have the broad power of a court of equity to determine the  
7 appropriate action in the administration and supervision of an equity receivership.  
8 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
9 Circuit explained:

10 A district court's power to supervise an equity receivership and  
11 to determine the appropriate action to be taken in the  
12 administration of the receivership is extremely broad. The  
13 district court has broad powers and wide discretion to determine  
14 the appropriate relief in an equity receivership. The basis for  
15 this broad deference to the district court's supervisory role in  
16 equity receiverships arises out of the fact that most  
17 receiverships involve multiple parties and complex transactions.  
18 A district court's decision concerning the supervision of an  
19 equitable receivership is reviewed for abuse of discretion.

20 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v. Topworth*  
21 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'  
22 to the court's supervisory role, and 'we generally uphold reasonable procedures  
23 instituted by the district court that serve th[e] purpose' of orderly and efficient  
24 administration of the receivership for the benefit of creditors.").

25 In general, in cases where it is clear claimants will not be paid in full on the  
26 allowed amount of their claims, equity demands that distributions be based first on  
27 the principal or net amount of the claim. *Commodity Futures Trading Commission*  
28 *v. Hoegh*, 205 F. 3d 1107, 1115 (9<sup>th</sup> Cir. 1999) With respect to creditor claims, the  
Receiver proposes that claims be disallowed to the extent amounts are claimed for  
accrued or unpaid interest, late fees, attorneys fees, consequential damages or lost  
profits arising from non-payment, and all claims for punitive or tort damages.

1 The proof of claim form and instructions approved by the Claim Procedures  
2 Order require each creditor to submit a proof of claim. Each creditor is required to  
3 state (a) the amount of their claim as of August 3, 2009, the date of the Receiver's  
4 appointment, (b) the nature of their claim, (c) the date the claim was incurred,  
5 (d) whether it is secured by any assets of the receivership estate, and (e) whether it  
6 includes interest or other charges, such as attorney's fees or late fees. The proof of  
7 claim form and instructions also require each trade creditor to provide a copy of all  
8 documents supporting the claim.

9 For the reasons stated below, the Receiver objects to the following claims and  
10 proposes that they be disallowed or reduced as indicated:

11 **A. Claims Relating to Southwest Atlanta Hospital**

12 1. Background

13 In July 2005, Tracy L. Sayer Investments, LLC ("Sayer Investments") issued  
14 a loan in the amount of \$12.85 million to Southwest Doctors Group, LLC ("SDG")  
15 secured by the 75-acre property located at 501 Fairburn Road SW, Atlanta, Georgia  
16 ("Southwest Atlanta Property"). The developed portion of the Southwest Atlanta  
17 Property (approximately 17 acres) features a 114,297 square foot, four story, 125-  
18 bed acute care hospital building, and a 31,470 square foot, two-story medical office  
19 building. The hospital was leased and operated by Legacy Medical Center  
20 ("Legacy").

21 In January 2006, Medical Capital (Medical Provider Financial Corporation II)  
22 issued a loan in the amount of \$2.5 million to SDG and took a security interest in the  
23 Property junior to Sayer Investments. In March 2006, with a foreclosure by Sayer  
24 Investments pending, Medical Capital (MPFC II) purchased the promissory note in  
25 favor of Sayer Investments for approximately \$15.5 million. At approximately the  
26 same time, Medical Capital (MPFC IV, Series 1) issued a \$13 million line of credit  
27 to Legacy, which continued to lease and operate the hospital.

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1 In October 2006, Medical Capital (MPFC II) and SDG agreed to increase the  
2 loan purchased from Sayer Investments by \$3 million, bringing the total balance to  
3 approximately \$18.8 million.<sup>2</sup> In December 2006, the line of credit issued to  
4 Legacy was increased to \$14 million.

5 In April 2007, SDG filed for relief under chapter 11 of the Bankruptcy Code.  
6 The hospital ceased operations at this time. In July 2007, Medical Capital  
7 (MPFC II) purchased the Southwest Atlanta Property via credit bid in a bankruptcy  
8 court-approved auction, and created Georgia Medical Provider Financial  
9 Corporation ("GMPFC") to hold title to the Southwest Atlanta Property.

10 In August 2007, Medical Capital (MP IV, Series 2) issued a \$500,000 loan to  
11 GMPFC, which was later increased to \$2.5 million in November 2007, to \$9 million  
12 in January 2008, to \$15 million in June 2008, and then to \$18 million later the same  
13 month. GMPFC hired Alvarez & Marsal ("A&M") in August 2007 to oversee  
14 renovations to the Property and operate the hospital, which was reopened in April  
15 2008. A&M operated the hospital until January 16, 2009, when it was closed due to  
16 lack of funding.

17 Thus far, the Receiver's efforts to sell the Southwest Atlanta Property have  
18 been unsuccessful for a number of reasons, including one proposed buyer's inability  
19 to obtain a Certificate of Need and necessary financing. The Receiver hopes to file  
20 a motion for approval of new sale agreement in the coming months. Seaman Dec.  
21 ¶¶ 60-65.

22 2. The Claims

23 The Receiver received a group of claims submitted by vendors who provided  
24 goods and services to Southwest Atlanta Hospital during the period the hospital was  
25 operated by GMPFC. The Receiver objects to these claims as follows:  
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28 <sup>2</sup> In March 2008, MP II sold the original loan purchased from Sayer Investments  
to MP IV, Series 1 for approximately \$23 million.

1 (a) *ABM Engineering Services*

2 ABM Engineering Services ("ABM") provided general engineering and  
3 facilities maintenance services to the hospital. ABM submitted a claim in the  
4 amount of \$332,735.61. The claim states that it is secured. The documentation  
5 provided with the claim shows that on July 22, 2009, ABM recorded a mechanic's  
6 lien against the Southwest Atlanta Property in the amount of \$255,446.20. An  
7 invoice provided with the claim indicates that \$290,812.33 was owed as of  
8 August 5, 2009, two days after the Receiver's appointment.

9 Shortly after his appointment, the Receiver sent a representative from his  
10 office to inspect the Southwest Atlanta Property. The Receiver's representative met  
11 with a representative of ABM on August 12 and 13, 2009, and provided ABM with  
12 a copy of the Receivership Order on August 14, 2009. Despite having notice of the  
13 Receiver's appointment and the injunction prohibiting creditors from taking action  
14 against the Receivership Entities and their assets, on August 27, 2009, ABM  
15 recorded a second lien against the Southwest Atlanta Property in the amount of  
16 \$332,735.61.

17 The second lien violates the injunction contained in Part IX of the  
18 Receivership Order. *See* Docket No. 44, Part IX. *See SEC v. Wencke*, 622 F.2d  
19 1363, 1371 (9th Cir. 1980) (District courts in SEC enforcement actions may stay  
20 proceedings against receivership entities); *FTC v. Productive Mktg., Inc.*, 136 F.  
21 Supp. 2d 1096, 1103-1105 (C.D. Cal. 2001).

22 The Receiver proposes that ABM have an allowed claim in the amount of  
23 \$290,812.33, the amount reflected in the ABM invoice as being owed at the time of  
24 the Receiver's appointment, and that as to \$255,446.20 of that amount, ABM retains  
25 whatever lien rights may have existed prior to the Receivership Date with the same  
26 validity and priority as it held on the Receivership Date. As the Court already  
27 decided in connection with the lien priority motion filed by Inamax Medical Staffing  
28 (whose claim is discussed below), the priority of the ABM asserted lien vis-à-vis

1 other liens, and therefore whether there is any security for the ABM claim, can be  
2 determined once the Receiver is able to sell the Southwest Atlanta Property. *See*  
3 Docket No. 559. To the extent it is ultimately determined that ABM does not have a  
4 valid lien, or that its lien priority is such that it is not entitled to any sales proceeds,  
5 the Receiver recommends that ABM be allowed an unsecured claim in the amount  
6 of \$290,812.33.

7 (b) *Inamax Medical Staffing, Inc.*

8 Inamax Medical Staffing, Inc. ("Inamax") submitted a claim in the amount of  
9 \$158,320.84. Inamax obtained a judgment against GMPFC in the same amount on  
10 July 8, 2009. The judgment, however, includes \$22,763.54 in interest and attorney  
11 fees. Inamax recorded a lien on the Southwest Atlanta Property on August 6, 2009.  
12 The Receiver objects to \$22,763.54 of the amount claimed by Inamax. However, as  
13 noted above, the priority of the Inamax' asserted lien vis-à-vis other liens, and  
14 therefore whether there is any security for the Inamax claim, will be determined  
15 once the Receiver is able to sell the Southwest Atlanta Property. To the extent it is  
16 ultimately determined that Inamax does not have a valid lien, or that its lien priority  
17 is such that it is not entitled to any sales proceeds, the Receiver recommends that  
18 Inamax be allowed an unsecured claim in the amount of \$135,557.30.

19 (c) *Fulton Emergency Group, LLC*

20 Fulton Emergency Group, LLC ("FEG") submitted a claim in the amount of  
21 \$373,538.99. FEG contends that the claim is secured. The documents attached to  
22 the claim show that FEG obtained a default judgment against GMPFC on  
23 September 14, 2009 in the amount of \$319,017.53. FEG then recorded a lien in the  
24 amount of \$373,538.09 on January 29, 2010. The Receiver objects to FEG's  
25 assertion of secured status and the amount of the claim.

26 The Receiver provided notice of the receivership and the injunction to FEG  
27 by letter dated September 11, 2009. Obtaining the default judgment and  
28 subsequently recording a lien were knowing violations of the injunction. Moreover,

1 the difference between the default judgment and the amount of the lien is entirely  
2 attributable to interest. The Receiver objects to the payment of interest as  
3 inconsistent with general equitable principles. Thus, the Receiver recommends that  
4 FEG be an allowed unsecured claim in the amount of \$319,017.53.

5 (d) *Elite Staffing Group, LLC/Diane Gray*

6 Elite Staffing Group, LLC/Diane Gray ("Elite") submitted a claim in the  
7 amount of \$19,000. No supporting documentation was provided with the claim. In  
8 the absence of evidence supporting the claim, the Receiver objects and proposes that  
9 the claim be disallowed in its entirety. Per the proof of claim instructions, Elite is  
10 advised to promptly submit a copy of any and all contracts, invoices, and other  
11 documents supporting the claim to the Receiver's office.

12 (e) *Sodexo*

13 Sodexo submitted a claim in the amount of \$149,698.75 for food and  
14 environmental services. Of the amount claimed, \$34,867.79 is claimed for interest.  
15 The Receiver objects to the interest portion of the claim and recommends that  
16 Sodexo be allowed an unsecured claim for \$114,830.96

17 **B. Broker Claims**

18 The following five broker-dealers submitted claims, each in "indeterminate"  
19 amounts: Valmark Securities, Inc., Barbara Culver, David Scott Coles, Intervest  
20 International Equities, Inc., and Signature Financial Group, Inc. ("Brokers"). The  
21 Brokers each claim that Medical Capital breached its contract with them, which  
22 required Medical Capital to provide an amendment or supplement to the Private  
23 Placement Memoranda ("PPMs") if any event occurred that caused the PPMs to  
24 become untrue or misleading. The Brokers also assert claims for actual fraud,  
25 constructive fraud and deceptive trade practices.

26 The Receiver objects to the Broker claims on the following grounds and  
27 requests that they be disallowed in their entirety:

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1                   1.     Disgorgement/Setoff

2                   The Brokers were paid substantial commissions by Medical Capital for  
3 selling notes. Signature Financial Group received a total of \$1,972,316.97 in  
4 commissions, Valmark Securities, with whom Barbara Culver and David Scott  
5 Coles are affiliated, received \$694,096.25, and Intervest International Equities  
6 received \$301,200.00. The funds used to pay these commissions came either  
7 directly or indirectly from the MP Entity funds, and therefore were fraudulently  
8 obtained from Noteholders. Seaman Dec. ¶ 66.

9                   A "district court has broad equity powers to order the disgorgement of 'ill-  
10 gotten gains' obtained through the violation of the securities laws." *SEC v. First*  
11 *Pacific Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998); *SEC v. Clark*, 915 F.2d 439,  
12 453 (9th Cir. 1990); *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). In  
13 *First Pacific Bancorp*, the Ninth Circuit articulated the purpose of disgorgement in  
14 securities law violation cases: "[d]isgorgement is designed to deprive a wrongdoer  
15 of unjust enrichment, and to deter others from violating securities laws by making  
16 violations unprofitable." *First Pacific Bancorp*, 142 F.3d at 1191; *Hateley v. SEC*, 8  
17 F.3d 653, 655 (9th Cir. 1993); *SEC v. Rind*, 991 F.2d 1486, 1491 (9th Cir. 1993). In  
18 case after case, courts have ordered disgorgement from recipients of ill-gotten gains,  
19 even when those recipients are not parties to the enforcement action. *See SEC v.*  
20 *Wencke*, 783 F.2d 829 (9th Cir. 1986); *Tcherepnin v. Franz*, 485 F.2d 1251, 1257  
21 (7th Cir. 1973); *SEC v. Cross Financial Servs., Inc.*, 908 F. Supp. 718, 731 (C.D.  
22 Cal 1995); *SEC v. Antar*, 831 F. Supp. 380, 402 (D.N.J. 1993); *SEC v. The Better*  
23 *Life Club of America, Inc.*, 995 F. Supp. 167, 180-82 (D.D.C. 1998).

24                   Ill-gotten gains must be disgorged even if the recipients assert that they did  
25 not participate in or have knowledge of the wrongdoing. *See SEC v. Cherif*, 933  
26 F.2d 403, 414 n.11 (7th Cir. 1991); *Antar*, 831 F. Supp. at 402; *SEC v. Egan*, 856  
27 F. Supp. 401, 402 n.3 (N.D. Ill. 1993). As the *Egan* court explained, there is no  
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1 meaningful difference between a wrongdoer and a third party for the purposes of the  
2 disgorgement remedy:

3 [T]he deterrence purpose is not dependent on that status –  
4 for it is just as important to discourage illegal conduct by  
5 taking the proceeds of that illegality from those who have  
6 given no current value for the ill-gotten gains that have  
7 been turned over to them (even though they themselves  
8 have not directly engaged in the illegal activity).

9 *Egan*, 856 F. Supp. at 402.

10 "[T]he touchstone is whether the non-party's claim to the property is  
11 legitimate, not whether the party is innocent of fraud or wrongdoing." *Cross*  
12 *Financial*, 908 F. Supp. at 732. "It is not necessary for the person holding illegal  
13 profits to have done anything wrong for that person to be required to return the  
14 profits to their rightful owners. Instead, '[t]he courts impose the remedy of  
15 constructive trust where, rightfully or wrongfully, a party has obtained property that  
16 unjustly enriches him.'" *Antar*, 831 F. Supp. at 402 (quoting *United States v.*  
17 *Cannistraro*, 694 F. Supp. 62, 72 n.11 (D.N.J. 1988)). When it is determined that  
18 the enrichment of parties "came at the expense of defrauded investors. . . [a]s  
19 between [the enriched parties] and the victims of fraud, equity dictates that the rights  
20 of victims should control." *Cross Financial*, 908 F. Supp. at 732. In addition, the  
21 Ninth Circuit had held that profits from a Ponzi scheme paid to third parties can be  
22 recovered by a receiver as fraudulent transfers. *Donell v. Kowell*, 533 F.3d 762 (9th  
23 Cir. 2008) (discussing profits paid to an investor).

24 Here, the Brokers received commissions directly from the operation of a  
25 Ponzi scheme. They had access to information that Noteholders did not. The  
26 Receiver believes that the Brokers either knew or should have known that the PPMs  
27 were inaccurate and that Medical Capital had made misrepresentations to  
28 Noteholders. The Brokers profited from the sale of notes in the form of  
commissions they received from Medical Capital. As between the Brokers and the  
Noteholders to whom they sold the notes, equity demands that the commissions be

1 returned to the receivership estate and distributed to Noteholders. For the purposes  
2 of this Objection, the Brokers' obligation to disgorge commissions should be offset  
3 against any claim for damages they might have, and the claims should be disallowed  
4 in their entirety. Alternatively, the Broker claims should be subordinated to the  
5 claims of Noteholders and other creditors.

6           2.     Insufficient Documentation/Failure to State Claim Amount

7           Valmark Securities was the only one of the five Broker claimants that  
8 attached a contract with Medical Capital to its claim. Additionally, all of the Broker  
9 claims are in an "indeterminate" amount, and provide no documentation showing  
10 that damages have actually been incurred. The claims are therefore deficient in that  
11 they fail to provide documentation necessary to establish a claim. Claims cannot be  
12 allowed in undefined amounts. To the extent the Court is inclined to allow the  
13 Broker claims in any amount, the Brokers should be required to submit evidence  
14 proving and quantifying their actual damages, and the Receiver should have the  
15 opportunity to respond to such evidence.

16           C.     Claims Related to Castle Hill/Autumn Senior Living

17           In September 2005, Medical Capital (Medical Provider Financial  
18 Corporation II), issued loans in the amount of approximately \$21 million to SMB  
19 King Properties, Inc. for the acquisition of the property located at 3575 North  
20 Moorpark Road, Thousand Oaks, California, known as the Castle Hill Retirement  
21 Village ("Castle Hill Property"). After SMB King defaulted on the loan, MCC  
22 accepted a deed in lieu of foreclosure and created a special purpose entity, Castle  
23 Hill Investors, Inc. ("CHII"), to hold title to the Castle Hill Property. CHII entered  
24 into a lease and a management agreement with Autumn Senior Living, Inc.  
25 ("ASLI"), under which ASLI operated the Castle Hill Retirement Village. Prior to  
26 the Receiver's appointment, Medical Capital had been marketing the Castle Hill  
27 Property for sale. On October 29, 2009, the Court approved a sale of the Castle Hill  
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1 Property to WSL Castle Hill Retirement, LLC for a purchase price of \$14,400,000.  
2 Seaman Dec. ¶ 67.

3 The Receiver received a group of claims for employee wages and other debts  
4 incurred during the time the Castle Hill Property was being operated and managed  
5 by ASLI. The documentation provided with these claims shows that the relevant  
6 claimants were either employees or vendors of ASLI. There is no evidence  
7 indicating that CHII (the receivership entity) is responsible for debts incurred by  
8 ASLI during its lease and management of the Castle Hill Property. Accordingly, the  
9 Receiver believes that the following claimants do not have claims against the  
10 receivership estate, and therefore their claims should be disallowed:

Name	Basis for Claim	Amount
Carlson, Jolene	Wages	\$9,662.93
City of Thousand Oaks	Goods sold	\$15,643.11
Dobrich, Francalieu	Wages	Not stated
Med Center	Services Performed	\$428.10
Moran, Enma	Wages	\$2,804.85
Reece, Jim	Goods/Services	\$3,843.00
Ward, Lisa	Wages	\$2,485.82
Winkler, Janet	Services/Wages	\$1,170.00

21 **D. Lawyer Claims**

22 The Receiver received a group of claims from law firms that represented one  
23 or more Receivership Entities prior to the Receiver's appointment. The Receiver  
24 objects to these claims as follows:

25 1. Guida Slavich & Flores, P.C.

26 Guida, Slavich & Flores, P.C. ("Guida") submitted a claim in the amount of  
27 \$32,211.96. The documents attached to the claim state that Guida's client was  
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1 Ecosystems Environmental, Inc. The Receiver is not familiar with this entity. The  
2 Receiver's counsel contacted Guida to inquire about the connection to the  
3 Receivership Entities. Although a representative of Guida stated she would check  
4 and provide the information, no information was provided. Accordingly, Guida has  
5 failed to establish a claim against the Receivership Entities, and the Receiver  
6 proposes that the claim be disallowed. Seaman Dec. ¶ 68.

7           2.     Law Offices of Matthew Hoffman, P.C.

8           The Law Offices of Matthew Hoffman, P.C. ("Hoffman") submitted a claim  
9 in the amount of \$8,291.82. The claim is for pre-receivership legal services  
10 rendered in connection with enforcing a judgment obtained by Medical Capital.  
11 After his appointment, the Receiver agreed to continue Hoffman's engagement on  
12 the matter, and that the \$8,291.82 owed to Hoffman would be paid at the time of  
13 recovery and from the amounts collected. To date, no amounts have been collected  
14 on the relevant judgment. Accordingly, at this time, Hoffman has only a contingent  
15 claim. Until such time as funds are collected, the Hoffman claim should not be paid.  
16 Seaman Dec. ¶ 69.

17           3.     Michael J. Whitten & Associates, P.C.

18           Michael J. Whitten & Associates, P.C. ("Whitten") submitted a claim in the  
19 amount of \$13,936.70. The claim is for legal fees related to Medical Capital's  
20 interests in Trace Life Sciences, Inc. The bills provided with the claim show that  
21 only \$4,019.91 was owed as of the Receiver's appointment. Whitten failed to  
22 identify any post-receivership work performed at the Receiver's request, or the  
23 amount of fees incurred for any such work. Accordingly, Whitten's claim for post-  
24 receivership services should be rejected as submitted, and the claim should be  
25 reduced to \$4,019.91. Seaman Dec. ¶ 70.

26           **E. Other Claims**

27           The following trade claims do not fall into the above categories and are  
28 addressed individually:

1                   1.     Dr. Gez Agolli

2                   Dr. Gez Agolli ("Agolli") submitted two claims, each in the amount of  
3 \$5,000,000. Agolli is the principal of Spherios Holdings, LLC, a Georgia limited  
4 liability company ("Spherios"). Agolli was on the board of directors of GMPFC, the  
5 receivership entity that holds title to the Southwest Atlanta Property. In  
6 March 2006, MCH and Spherios entered into (i) a Credit Agreement evidencing a  
7 loan to be made by MCH to Spherios in an amount not to exceed \$1 million, and  
8 (ii) a Loan and Security Agreement evidencing a loan to be made by MCH to  
9 Spherios in an amount not to exceed \$5 million ("Spherios Loans"). The Spherios  
10 Loans were personally guaranteed by Agolli ("Agolli Guaranty").

11                  In March 2009, the \$1 million Spherios Loan matured. Spherios defaulted,  
12 failing to pay principal and interest then due. In December 2009, the Receiver,  
13 Spherios and Agolli entered into a Forbearance Agreement under which the  
14 Receiver agreed to extend the maturity date to October 14, 2014 on certain terms  
15 and conditions. Most importantly, the Forbearance Agreement contains a release of  
16 claims by Spherios and Agolli. Forbearance Agreement § 12. Specifically,  
17 Spherios and Agolli released all claims "by reason of any damages or injuries  
18 whatever sustained by [Spherios] or [Agolli], and occasioned, directly or indirectly,  
19 by any act or omission of Receiver or any other person or entity arising out of or in  
20 connection with the loans or credit advanced or extended by [MCH] to [Spherios]."

21                  The claims submitted by Agolli are directly connected to the Spherios Loan.  
22 Accordingly, the claims were released and should be disallowed in their entirety.  
23 Should the Court determine that the claims were not released, the Receiver further  
24 objects to the Agolli claims on the grounds that Spherios and Agolli defaulted on the  
25 \$1 million Spherios Loan, Agolli Guaranty and Forbearance, and that no amount is  
26 owed to Agolli. In fact, Agolli owes the receivership estate over \$800,000. On  
27 November 19, 2010, the Receiver sued Agolli in Georgia state court to enforce the

28

1 Agolli guaranty. The action is on the Georgia court's current trial calendar, with  
2 trial expected to start this month. Seaman Dec. ¶ 71.

3 Furthermore, to the extent there are any valid claims under the Spherios  
4 Loans, such claims would be the property of Spherios, which filed chapter 7  
5 bankruptcy in November 2010. The bankruptcy trustee is the only party with  
6 standing to pursue claims held by Spherios. Accordingly, Agolli has no standing to  
7 submit the claims.

8 Finally, the documentation provided with the claim simply does not establish  
9 a claim against the receivership estate or provide any support for the claimed  
10 \$10 million in damages. Accordingly, the Receiver recommends that the Agolli  
11 claims be disallowed in their entirety.

12 2. Coalition America, Inc.

13 Coalition America, Inc. ("Coalition") submitted two claims, one in the  
14 amount of \$4,042,169.00 on account of the judgment it obtained against  
15 Receivership Entity National Health Benefits Corporation ("NHBC") in Georgia  
16 federal court ("Judgment Claim"), and one in the amount of \$150,159.15 on account  
17 of service agreements with NHBC ("Service Claim"). The Receiver does not object  
18 to the Judgment Claim. The Receiver believes, however, that the Service Claim is  
19 overstated. With the assistance of NHBC's controller Shari Mesicko, the Receiver  
20 carefully reviewed and analyzed the Service Claim. Based on that review the  
21 Receiver objects to any service claim of Coalition in excess of \$40,254.88. The  
22 Receiver has communicated with Coalition and provided the detail of his analysis of  
23 the claim to Coalition and will continue to work towards an agreed allowed claim,  
24 but, proposes at this time the Service Claim be allowed in the amount of \$40,245.88.  
25 Seaman Dec. ¶ 72

26 3. Comerica Bank

27 Comerica Bank ("Comerica") submitted a claim in the amount of \$51,658.61.  
28 Medical Capital maintained lock box accounts and other accounts at Comerica. The

1 claim is for unpaid fees associated with these accounts. Comerica contends that  
2 \$20,952.00 of the claim was incurred after the Receiver's appointment, and therefore  
3 is entitled to priority as an administrative expense of the receivership. Although the  
4 Receiver does not object to the \$30,706.61 in account charges that were incurred  
5 pre-receivership, the Receiver does not believe Comerica has a valid claim for post-  
6 receivership account charges. All accounts were frozen pursuant to the Court's  
7 receivership order. The Receiver reviewed the accounts and determined that most  
8 of them had no activity. The Receiver also determined that the cash management  
9 services Comerica provided to the Receivership Entities were no longer necessary.  
10 Most of the accounts were then closed by the Receiver. For the few accounts the  
11 Receiver kept open, all post-receivership account charges have been paid. Seaman  
12 Dec. ¶ 73. Accordingly, the Receiver proposes the Comerica claim be reduced to  
13 \$30,706.61.

14 4. Dr. Michael Gerstenfeld

15 Dr. Michael Gerstenfeld ("Gerstenfeld") submitted a claim in the amount of  
16 \$987,000. Gerstenfeld owned and operated three medical practices in Connecticut –  
17 Integrated Medical Center of Norwalk, IMC of Fairfield, and IMC of New Haven  
18 (collectively, the "IMC's"). Gerstenfeld also owned Integrated Medical MSO  
19 ("MSO") which managed the IMCs. In June 2007, an entity formed by MCC,  
20 Integrative Healthcare Solutions ("IHS"), purchased 80% of MSO from Gerstenfeld.  
21 At the same time, MSO entered into accounts purchase agreements with each of the  
22 IMCs. Finally, Medical Capital (MPFV IV) issued a line of credit to MSO in the  
23 amount of \$1,428,320. Conceptually, MCC was to run MSO, which would manage  
24 the IMC's.

25 The transaction was not successful and MSO filed bankruptcy in March,  
26 2009. A settlement was reached between the Medical Capital entities and  
27 Gerstenfeld and his entities which essentially unwound the original transaction. The  
28 settlement involved, inter alia, dismissal of the bankruptcy, mutual releases, re-

1 assumption of lease obligations by Gerstenfeld/IMC's and payment by the Medical  
2 Capital entities of \$75,000 to Gerstenfeld. The \$75,000 settlement amount was to  
3 be paid \$15,000 within 15 days of execution of the settlement agreement and six  
4 monthly installments of \$10,000. The mutual releases contemplated by the  
5 settlement agreement were to be held in escrow until all payments were made.

6 According to the books and records of the Receivership Entities, the first  
7 \$15,000 was paid to Gerstenfeld, leaving a balance owed of \$60,000. Gerstenfeld  
8 appears to claim that because MCC failed to pay the full \$75,000, the settlement is  
9 void all damage claims are resurrected. Gerstenfeld further claims a priority over  
10 other creditors with respect to any amounts collected on purchased accounts  
11 receivable after the settlement agreement was reached under a constructive trust  
12 theory. According to the Receiver's review of the books and records only  
13 approximately \$6,600 was collected by the Medical Capital with respect MSO  
14 receivables after the settlement agreement was entered into, and none of those funds  
15 were subject to a lockbox. Seaman Dec. ¶ 74.

16 The Receiver therefore objects to the claim filed jointly by Gerstenfeld and  
17 the IMC entities to the extent it exceeds \$66,600 and to the extent that the claimants  
18 assert any security interest or right to priority. The Receiver's objection is based on  
19 the failure of Gerstenfeld and the IMC entities to provide sufficient support for their  
20 actual asserted damages. In addition, based on the information that has been  
21 provided, it appear that the claim filed by these entities consists entirely of  
22 consequential damages rather than direct or out-of-pocket damages. Accordingly,  
23 the Receiver also objects to the claim to that basis.

24 5. Glenn M. Gelman & Associates

25 Glenn Gelman ("Gelman") is a C.P.A. that was engaged to prepare an  
26 accountants report based on his review of the consolidated balance sheet of MCH  
27 and its subsidiaries and has filed a claim for \$10,150 for unpaid invoices. After the  
28 Receiver was appointed Gelman advised the Receiver that he wished to withdraw

1 his review and would return the unearned retainer. Medical Capital's records reflect  
2 that Gelman was paid approximately \$17,000 during 2009. The Receiver objects to  
3 Gelman's claim in its entirety until such time as Gelman returns the retainer and/or  
4 demonstrates an entitlement to payment. Seaman Dec. ¶ 75.

5           6.     Felicia Gordon

6           Felicia Gordon, formerly known as Felicia MacDonald ("Gordon"), submitted  
7 two claims, one in the amount of \$635,578.21, and one in the amount of  
8 \$3,578,696.71. The documentation submitted with the claims indicates that Gordon  
9 is the former wife of Robert MacDonald ("MacDonald"), and that at one time,  
10 MacDonald held stock in Medical Capital Corporation. It appears that Gordon  
11 obtained a judgment against Robert MacDonald, his daughter Leslie Anne  
12 MacDonald, and a trust established by Robert for the benefit of Leslie Anne. The  
13 documentation does not establish a claim against any of the Receivership Entities.  
14 Accordingly, the Receiver objects to the claims and proposes that they be  
15 disallowed in their entirety. Seaman Dec. ¶ 76.

16           7.     High Road Entertainment Group

17           High Road Entertainment Group ("High Road") submitted a claim in the  
18 amount of \$1,750,000. High Road is a Receivership Entity in that MCH holds a  
19 controlling interest in the company (67%). High Road was formed to produce the  
20 feature film The Perfect Game which is owned by the Receivership Entity, The  
21 Perfect Game, LLC ("TPG"). The claim was submitted by David Salzberg and  
22 Christian Tureaud, who together own the balance of High Road.

23           The Receiver did not authorize the submission of any claim by High Road  
24 and objects to the claim on that basis. Furthermore, under their agreements with  
25 Medical Capital, the shareholders of High Road are not to receive any distributions  
26 until Medical Capital has recouped amounts advanced to TPG and High Road.  
27 Medical Capital loaned more than \$18 million to TPG most of which is still  
28 outstanding. In addition, Medical Capital loaned approximately \$2 million to High

1 Road which more than offsets the amount of High Road's unauthorized claim.  
2 Seaman Dec. ¶ 77. For all of the above reasons, the Receiver requests that this  
3 claim be disallowed in its entirety.

4 8. Intermix Capital

5 Intermix Capital submitted a claim in the amount of \$17,000. Attached to the  
6 claim is a settlement agreement between MCC and Intermix, under which Intermix  
7 is to be paid a total of \$35,000. The Receivership Entities' books and records show  
8 that two payments totaling \$19,000 were made to Intermix, leaving \$16,000 owed  
9 under the settlement agreement. Seaman Dec. ¶ 78. Accordingly, the Receiver  
10 proposes that the Intermix claim be reduced to \$16,000.

11 9. Internal Revenue Service

12 The Internal Revenue Service ("IRS") submitted two claims. One is for pre-  
13 receivership taxes, penalties and interest in the total amount of \$169,113,217.32.  
14 The other is for post-receivership taxes, penalties and interest for 2009 in the total  
15 amount of \$10,294,326.76.

16 With respect to the pre-receivership tax claim, the Receiver has prepared and  
17 filed amended tax returns for the Receivership Entities. The tax returns that had  
18 been prepared and filed by the Receivership Entities reported income that did not in  
19 fact exist. The Receivership Entities paid taxes on this non-existent income. The  
20 amended returns eliminate the non-existent income, and claim a refund of taxes that  
21 were paid, but in reality were not owed. The refund claim is currently being  
22 analyzed by the IRS.

23 With respect to the post-receivership tax claim, the Receiver is currently  
24 preparing 2009 and 2010 tax returns for the receivership estate as a Qualified  
25 Settlement Fund. The returns will show that no taxes are due during the post-  
26 receivership period. Seaman Dec. ¶ 79.

27 The Receiver objects to both IRS claims and requests that they be disallowed  
28 in their entirety. However, the Receiver continues to discuss these issues with the

1 IRS and is optimistic that they can be resolved consensually prior to the hearing on  
2 this Objection. If such a resolution is reached, the Receiver will promptly notify the  
3 Court.

4 10. Anthony Macaluso/TEEM, LLC

5 Anthony Macaluso ("Macaluso") and his company TEEM, LLC ("TEEM")  
6 submitted three claims, two in the amount of \$15,000,000 each, and one in the  
7 amount of "\$12,055,000 plus," none of which are supported by any documentation.  
8 Medical Capital issued a revolving line of credit in the amount of \$10 million to  
9 TEEM. The credit line was personally guaranteed by Macaluso. As of September  
10 30, 2011, \$14,094,741.77 was owed on the revolving line of credit. In addition,  
11 Medical Capital loaned an additional \$15 million to Macaluso or his entities. In  
12 December 2010, the Receiver sued TEEM and Macaluso in this Court to collect on  
13 the revolving line of credit. Macaluso and TEEM have filed an answer. Seaman  
14 Dec. ¶ 80.

15 The Receiver believes that no amount is owed to Macaluso or TEEM.  
16 Furthermore, Macaluso failed to provide any documentation supporting the claims.  
17 Accordingly, the Receiver objects to the Macaluso/TEEM claims and requests that  
18 they be disallowed in their entirety. Alternatively, the Court should defer ruling on  
19 the Receiver's objections to the claims until the Receiver's action against Macaluso  
20 and TEEM is resolved.

21 11. Mass Action Plaintiffs

22 The plaintiffs in the mass action entitled *Abbate, et al. v. Wells Fargo Bank*  
23 *and The Bank of New York Mellon*, Case No. 10-CV-06561-DOC-RNB pending  
24 before this Court ("Abbate Mass Action") submitted a claim in the amount of  
25 \$103,012.56. The claim is for fees purportedly owed to Waverton Group, LLC  
26 ("Waverton") and Signature Advisors Limited Company ("Signature"). Waverton  
27 and Signature were hired by MCC to provide financial advisory, asset disposition  
28 and investment banking services regarding the Medical Capital loans to three

1 borrowers – Trace Life Sciences, Inc., Lavipharm, Inc., and Pyramid Technologies,  
2 Inc. The Abbate Plaintiffs contend that Waverton and Signature assigned them their  
3 rights to the fees.

4 The attachment to the Waverton/Signature claim indicates that they were paid  
5 \$125,395.55 for consulting services during the five month period preceding the  
6 appointment of the Receiver, and that an additional \$103,012.56 is owed for  
7 consulting services. Waverton/Signature, however, has failed to provide any  
8 information or detail on what services were actually provided, nor do they provide a  
9 formal assignment of the claim to the Abbate Plaintiffs. Seaman Dec. ¶ 81. In the  
10 absence of evidence supporting the claim, the Receiver objects and proposes that the  
11 claim be disallowed in its entirety. Per the proof of claim instructions,  
12 Waverton/Signature and/or the Abbate Plaintiffs are advised to promptly submit a  
13 copy of any and all contracts, invoices, and other documents supporting the claim to  
14 the Receiver's office.

15 12. New York State Department of Taxation & Finance

16 The New York State Department of Taxation & Finance (NYSDTF)  
17 submitted a claim for taxes owed by MCC in the amount of \$536,899.24. The  
18 Receiver has filed amended tax returns in New York for MCC for the years 2004  
19 through 2009. The amended returns show that a refund in the total amount of  
20 \$326,328 is due to MCC. NYSDTF recently sent the Receiver a letter reducing its  
21 claim to \$63,832. The Receiver believes that no taxes are due, that a refund of  
22 \$326,328 is due, and therefore proposes that the NYSDTF claim be disallowed in its  
23 entirety. Seaman Dec. ¶ 82.

24 13. People's Community Health Center

25 The Receiver does not object to the amount of the claim filed by People's  
26 Community Health Center ("PCHC") arising out of the failure of the Medical  
27 Capital entities to remit payments owed to PCHC under the accounts receivable  
28 purchase agreement. However, PCHC asserts in its claim that due to its not-for-

1 profit status its claim should be given priority over other claimants. The Receiver,  
2 although sympathetic to PCHC's mission, does not believe it provides a basis for  
3 elevating the priority of its claim. Accordingly, the Receiver recommends that  
4 PCHC be allowed an unsecured claim in the amount of \$1,007,437.93.

5           14. Pugh International, Inc.

6           Pugh International, Inc. ("Pugh") submitted a claim in the amount of  
7 \$155,000. Pugh contends that the claim is secured by a lien on the Gulf Pines  
8 Hospital property located in St. Joe, Florida. No supporting documentation was  
9 provided with the claim. In the absence of evidence supporting the claim, the  
10 Receiver objects and proposes that the claim be disallowed in its entirety. Per the  
11 proof of claim instructions, Pugh is advised to promptly submit a copy of any and all  
12 contracts, invoices, and other documents supporting the claim to the Receiver's  
13 office. Furthermore, there is no equity in the Gulf Pines Hospital property to secure  
14 any amount that might be owed to Pugh. The property is encumbered by tax liens  
15 that vastly exceed its value. The Receiver obtained permission from the Court to  
16 abandon the property on October 22, 2010. Seaman Dec. ¶ 83. The Receiver  
17 recommends that the claim be disallowed in its entirety.

18           15. RSRN Associates

19           RSRN Associates Inc. ("RSRN"), asserts a claim for \$129,166.65 based on a  
20 consulting agreement entered into with MCC. Although the agreement provides no  
21 information about what type of services are to be provided, it contemplates  
22 payments of \$25,883.33 per month for the first year and monthly payments of  
23 \$30,000 per month in the second year. Services were to be provided by Sebastian  
24 Raspanti, the principal of RSRN. No documentation or information was provided  
25 with the claim about services actually provided. From February 2008 through May  
26 2009, RSRN, Raspanti, and Axela Consulting, another Raspanti controlled entity,  
27 received a over \$925,000 in consulting fees from the Medical Capital. The Receiver  
28 objects to the claim of RSRN in its entirety on the grounds that RSRN/Raspanti has

1 already received significant compensation without demonstrating that any value was  
2 conferred on the Receivership Entities. Seaman Dec. ¶ 89. In addition, the Receiver  
3 objects to RSRN's claims on the basis that the compensation paid to RSRN  
4 constitutes ill-gotten gains subject to disgorgement under the authorities cited in  
5 section B.1, above.

6 16. Keith Rustvold

7 Keith Rustvold submitted a claim in the amount of \$24,399.65. The  
8 documentation provided by Rustvold shows that he was an employee of Trace Life  
9 Sciences, Inc. ("Trace"). Rustvold had an employment agreement directly with  
10 Trace. Medical Capital made loans to Trace and held security interests in Trace's  
11 assets. After his appointment, the Receiver agreed to pay certain expenses of Trace  
12 in order to protect the value of the collateral. The receivership estate, however, is  
13 not responsible for Trace's failure to pay its employees. Rustvold stopped working  
14 for Trace in April 2009, before the Receiver's appointment. Seaman Dec. ¶ 85.  
15 Accordingly, the Receiver believes that Rustvold does not have a claim against the  
16 receivership estate, and proposes that the claim be disallowed in its entirety.

17 17. Kelly Services, Inc.

18 Kelly Services, Inc. submitted a claim for \$6,500. As in the Rustvold claim,  
19 this is an obligation of Trace Life Sciences, not the Receivership estate. Seaman  
20 Dec. ¶ 86. The Receiver proposes this claim be denied in its entirety.

21 18. Larry Shapiro PT

22 Larry Shapiro PT, a physical therapist located in New York ("Shapiro"),  
23 submitted a claim in the amount of \$159,236.23. In January 2008, Shapiro and  
24 Healthcare Financial Management & Acquisitions, Inc., a Receivership Entity  
25 ("HCFMA") entered into a Billing & Collection Agreement. In support of his  
26 claim, Shapiro contends that HCFMA "failed to bill certain patients and then billed  
27 me as if fees were collected." He also contends that HCFMA neglected to submit  
28

1 certain proof of mailings to insurance carriers for some claims, and waived the right  
2 to collect other claims by failing to timely bill them.

3 The Receiver reviewed the documentation submitted with the claim, reviewed  
4 HCFMA records regarding Shapiro's account, and discussed Shapiro's claims with  
5 two former HCFMA employees who were directly involved in the billing and  
6 collection work. Based on this initial investigation, the Receiver believes that  
7 HCFMA timely billed all claims it received from Shapiro, that Shapiro was unable  
8 to provide required proof of mailings for the older claims he asked HCFMA to  
9 pursue (rendering the claims uncollectible), and Shapiro failed to pay HCFMA for  
10 some of the services it performed in breach of the Billing & Collection Agreement.  
11 Seaman Dec. ¶ 87. Accordingly, the Receiver believes that nothing is owed to  
12 Shapiro and proposes that the claim be disallowed in its entirety.

13 19. U.S. Department of Labor

14 The Department of Labor ("DOL") has filed a claim on behalf of the MCC  
15 401K Plan in the amount of \$27,670.14 for amounts that MCC withheld from  
16 employees' wages as 401K contributions or 401K loan repayments but failed to  
17 actually contribute to the 401K Plan. The Receiver objects to this claim in its  
18 entirety as duplicative of claims filed and/or allowed by the Receiver with respect to  
19 employees. As reflected in the concurrently filed Omnibus Objection to Employee  
20 Claims, employees who had amounts withheld from wages for, but not contributed  
21 to, the 401K plan will receive priority distributions that will reimburse for that  
22 failure to fund. The only exceptions are with respect any 401K contributions that  
23 should have been made with respect to Sidney Field, Joseph Lampariello, and Tom  
24 Fazio. The DOL's claim reserves the right to amend the claim pending the results of  
25 its audit of MCC's 401K plan and further indicates that the DOL is making the claim  
26 on behalf of the plan and its participants and beneficiaries and does request  
27 duplicate amounts be paid twice. The Receiver has been in contact with the DOL  
28 and will continue to cooperate with its investigation. Seaman Dec. ¶ 88.

