

1 DAVID R. ZARO (BAR NO. 124334)
MICHAEL R. FARRELL (BAR NO. 173831)
2 LORAIN L. PEDOWITZ (BAR NO. 120614)
ALLEN MATKINS LECK GAMBLE
3 MALLORY & NATSIS LLP
515 South Figueroa Street, Ninth Floor
4 Los Angeles, California 90071-3309
Phone: (213) 622-5555
5 Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com
6 mfarrell@allenmatkins.com
lpedowitz@allenmatkins.com

7 Attorneys for Receiver Thomas A. Seaman
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
21
22

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

**RECEIVER'S REPORT ON THE
STATUS OF CLAIMS AND
REQUEST TO DETERMINE
OUTSTANDING UNRESOLVED
CLAIMS AND APPROVE MIMO
CLAIM APPROACH**

Date: May 11, 2012
Time: 3:00 p.m.
Ctm: 9D
Judge: Hon. David O. Carter

1 **I. INTRODUCTION**

2 Thomas Seaman, Permanent Receiver ("Receiver") for Medical Capital
3 Holdings, Inc. ("MCH"), Medical Capital Corporation ("MCC"), Medical Provider
4 Funding Corporation VI ("MP VI"), and their subsidiaries and affiliates
5 (collectively, "Medical Capital") submits this report on the status of claims which
6 were unresolved at the time of March 12th hearing on the Receiver's Omnibus
7 Objection to Trade Creditor Claims, Omnibus Objection to Employee Claims, and
8 Omnibus Objection to Noteholder Claims (collectively, "Omnibus Objections").
9 After the hearing on the Omnibus Objections, the Court entered orders on both the
10 Employee (Docket No. 674) and the Trade Creditor (Docket No. 672) Omnibus
11 Objections. No order was issued with respect to Noteholders, as there were
12 approximately 102 Noteholder claims that the Receiver was still actively working to
13 resolve. This pleading is filed to advise the Court on the status of all claims.

14 Since the March 12th hearing, the Receiver and his team have worked
15 diligently to resolve as many claim disputes as possible, and the Receiver is pleased
16 to report that these efforts have been successful. In sum:

- 17 • All Employee claims have now been resolved. Of the three disputed
18 claims remaining as of March 12th, two have been withdrawn by the
19 claimants and the third claimant has agreed to accept a reduced allowed
20 claim amount.
- 21 • The sole disputed Trade Creditor claims existing at the time of the
22 hearing, submitted by Anthony Macaluso/TEEM, Inc. in the aggregate
23 amount of over \$42,000,000, have been withdrawn. A few additional
24 Trade Creditor claims have arisen, which the Receiver addresses below.
- 25 • Of the 404 unresolved Noteholder claims identified at the hearing
26 (referenced below as Exhibit B and C Noteholders), only two are still
27 actively disputed by the Noteholders. The remainder were either
28 resolved consensually or the Noteholders failed to respond to the

1 Receiver's evidence in support of the proposed allowed claim amounts.
2 An issue has arisen with respect to certain Noteholder entities and the
3 application of the MIMO calculation to their claims, which is addressed
4 in detail below.

5 Overall, of the over 8,000 claims submitted in this action, only a handful
6 remain to be addressed by the Court at the hearing on May 11, 2012, as discussed
7 below.

8 **II. EMPLOYEE CLAIMS**

9 The only unresolved employee claims were those of Christian Tureaud, David
10 Salzberg and Jason French. Messrs. Tureaud and Salzberg have withdrawn their
11 claims. The Receiver proposed that the Jason French's claim be allowed in the
12 amount of \$6,400. Mr. French has agreed to the Receiver's proposal, and the
13 Receiver requests that the Court enter an order allowing Mr. French's claim in that
14 amount.

15 **III. TRADE CREDITOR CLAIMS**

16 **A. Macaluso/TEEM Claim**

17 The only unresolved trade creditor claims remaining after the March 12th
18 hearing, other than that submitted by the I.R.S., were the claims of Anthony
19 Macaluso and his company, TEEM, LLC, in the aggregate amount of over
20 \$42,000,000. The Receiver initiated a lawsuit to pursue claims against TEEM and
21 Mr. Macaluso currently pending before Judge Carney. Mr. Macaluso's initial
22 response to the Receiver's claim objection was to request that it be postponed until
23 resolution of the litigation pending before Judge Carney. The Court's order on the
24 Trade Creditor Omnibus Objection provided that the Receiver's objection to the
25 claim would be determined at the May 11, 2012 hearing, if not resolved by the
26 parties. The Receiver has had productive discussions with Mr. Macaluso regarding
27 the Receiver's claims asserted in the lawsuit before Judge Carney, but a final
28

1 settlement has not been reached or documented. Mr. Macaluso and TEEM have
 2 nevertheless agreed to withdraw their trade creditor claims.

3 **B. New Trade Creditor Claims Arising Out of Production of The**
 4 **Perfect Game**

5 In February 2012, the Receiver was contacted by a union representing
 6 musicians who worked on the soundtrack for the film The Perfect Game regarding
 7 their right to residuals from the gross revenue of the film pursuant to their contract
 8 with Receivership Entity The Perfect Game, LLC (“TPG”). The Receiver
 9 investigated the claim and learned that certain other guilds and unions with potential
 10 claims against TPG relating to production of the film had not participated in the
 11 claims process.¹ The Receiver promptly sent notice of the requirement to submit a
 12 claim to these guilds and unions. A total of nine claims were submitted (“TPG-
 13 Related Claims”).² The Receiver reviewed and analyzed the TPG-Related Claims
 14 and engaged in discussions with the claimants. The Receiver has reached agreement
 15 on proposed allowed claim amounts for seven of the nine claimants in the aggregate
 16 amount of \$83,505.00. The claimants and allowed claims are as follows:

Claimant	Original Amount	Nature of Claim	Proposed Allowed Amount
Director's Guild of America	\$22,315.19	Residuals	\$13,998.16
SAG-AFTRA	\$343,037.68	Residuals	\$16,002.09
Motion Picture Industry Pension and Health Plans	At least \$4,523.00	Benefits	\$44,116.00
Film Musicians Secondary Markets Fund	1% of gross revenue worldwide	Residuals	\$5,363.00
Studio Utility Employee Ruben Arce	\$1,964.75	Wages	\$1,964.75
Studio Utility Employee Aunfrance Crosby II	\$1,454.43	Wages	\$1,454.43
Studio Utility Employee Lance Woodruff	\$606.90	Wages	\$606.90
IATSE	\$300,000		Under review

25 ¹ The Receiver and his staff were not aware of these potential claims at the time
 26 the creditor list for service of the notice of bar date was compiled and as result
 27 the claimants were not included. Thus, at the time the bar date was noticed, no
 notice was provided to these claimants, and the published notices did specifically
 name TPG as one of the receivership entities.

28 ² Given the absence of prior notice to said claimants, the Receiver does not object
 to the submission of their claims after the bar date.

1	Andre Guimond	\$15,000	Under review
---	---------------	----------	--------------

2 With respect to the claims of Andre Guimond and IATSE, the Receiver is
3 continuing to investigate these claims and discuss them with claimants. The claim
4 amounts are linked to the film's production costs, and the Receiver is reviewing
5 information related to such production costs. The Receiver anticipates completing
6 this review in the next few weeks and requests that the Court schedule a hearing as
7 to such claims for June 11, 2012, if the parties are unable to reach agreement prior to
8 that date.

9 The claims held by Director's Guild of America, SAG-AFTRA, the Film
10 Musicians Secondary Market Fund and the Motion Picture Industry Pension and
11 Health Plans are based on revenues from the film. Although the vast majority of the
12 revenue from the film has been received, there may be nominal additional revenue.
13 The Receiver estimates that such nominal additional revenue, after application of
14 claimants' aggregate percentage "share" of such revenue per the applicable contracts
15 and the likely pro rata method of distributing funds from the receivership, would
16 result in additional distributions to these claimants, in the aggregate, of less than
17 \$10,000. Therefore, in the interest of finalizing the claims process and conserving
18 the receivership estate resources that would be expended in addressing the effect of
19 future TPG-related claims adjustments on distributions, the Receiver requests that
20 the Court authorize him to pay any such future payments from funds to be reserved
21 for future administrative expenses. Given the nominal payment amounts and
22 potential drain on resources involved, the Receiver believes this is the most cost-
23 effective way to address the issue of future film revenue.

24 **IV. NOTEHOLDER CLAIMS**

25 At the March 12, 2012 hearing on claims objections, the Receiver reported
26 that there were approximately 7,345 Noteholders who did not dispute the interest
27 and principal payments reported by the Receiver.³ These uncontested Noteholder

28 ³ Of those 7.345 Noteholders, three have subsequently communicated that they

1 proposed allowed claim amounts were listed in the spreadsheet filed on November
2 28, 2011, as Exhibit B to the Omnibus Objection, Docket No. 601 ("Uncontested
3 Noteholder Claims Exhibit"). In the Receiver's Reply to Opposition/Response to
4 Receiver's Omnibus Noteholder Objection, the Receiver segregated all remaining
5 Noteholder claims into three categories: Exhibit A consisted of approximately 351
6 Noteholders whose disputes had been resolved after November 28, 2012 but before
7 the March 12th hearing. These Noteholders' allowed claims can be added to the
8 group previously listed in the Uncontested Noteholder Claims Exhibit. Exhibit B
9 consisted of two sub-groups, 262 Noteholders who had not responded to the
10 Receiver after he provided additional supporting evidence of his claim calculation,
11 and 40 Noteholders who had responded to the additional information but had failed
12 to provide sufficient evidence to refute the Receiver's calculation. The Receiver
13 requested that the Court rule on the 302 claims in Exhibit B. The final group,
14 Exhibit C, were Noteholders the Receiver was actively working with to resolve their
15 claims and seven Broker/Noteholders who objected to commissions being treated as
16 money-out, and further objected that the commissions were overstated.

17 **A. Exhibit B Noteholders**

18 After the March 12th hearing, the Receiver's staff sent all Exhibit B
19 Noteholders a new claim form with all contested and uncontested note amounts, and
20 interest payments, as well as a claim summary that reflected the MIMO claim
21 calculation. In addition, the Receiver's staff telephoned most of the 40 Noteholders
22 who had previously responded to the Receiver's claim information but had not
23 provided sufficient evidence to refute the Receiver's claim calculation.

24 As a result of these efforts, the Receiver was able to reach a consensual
25 resolution of the claim dispute with 34 of the 40 Noteholders who had responded to
26

27 dispute their claim calculation. The Noteholders are Denise Rachal, Karen
28 Templeton, and Gus and Doris Zogas. None of these Noteholders have provided
the Receiver with any documentation demonstrating that the calculation of the
their claims calculation is incorrect.

1 the Receiver's additional information. Five Noteholders in this group failed to
2 respond to the Receiver's supplemental information, and the Receiver requests that
3 his proposed allowed claim amount be confirmed as to such claimants. The final
4 Noteholder in this group, Mr. Sacco, provided some documentation but it did not
5 refute the Receiver's calculation.

6 Of the 262 Noteholders who had not previously responded to the Receiver's
7 additional information, all but one Noteholder have either affirmatively agreed that
8 the Receiver's figures are correct or have failed to respond to the Receiver's
9 additional information and request for response. The sole remaining Noteholder,
10 Carmen Rodriguez, has failed to provide any documentation or detail with respect to
11 her contention that the claim calculation is incorrect.

12 Accordingly, the Receiver requests that the claims of all Noteholders on
13 Exhibit B be allowed in the amounts designated by the Receiver in Exhibit 1 to the
14 Seaman Dec.⁴

15 **B. Exhibit C Noteholders**

16 The Noteholders on Exhibit C consisted of 102 Noteholders who the Receiver
17 was working with or was still in the process of providing additional evidence to
18 support his claim calculation as of the March 12th hearing. All of these 102
19 Noteholders have either affirmatively agreed to the Receiver's claim calculation or
20 failed to respond to the additional information provided. In addition, Exhibit C
21 included the names of seven Noteholders who were also brokers who received
22 commissions from Medical Capital for the sale of notes. These seven
23 broker/Noteholders objected to the Receiver's proposal of including the commission
24 as money out,⁵ and also objected on the basis that the commission actually received
25

26 ⁴ Declaration of Thomas A. Seaman, filed concurrently herewith. For the reasons
27 described in section IV. D below, the Receiver has attached to his declaration as
28 Exhibit 1 an updated Comprehensive Noteholder Proposed Allowed Claim
Amounts.

⁵ A total of nine broker/Noteholders, including the seven listed in Exhibit C,
objected to the inclusion of commissions as money-out in the MIMO calculation.

1 was less than that stated in their claim calculation. The Receiver's staff contacted
2 each of these broker/Noteholders and asked for documentation evidencing the actual
3 commission received. Only two broker/Noteholders provided that information,
4 Barbara Culver and Jim McGuffin. The claim calculations for these two brokers
5 have been adjusted accordingly.

6 Accordingly, the Receiver requests that the claims of all Noteholders on
7 Exhibit C be allowed in the amounts designated by the Receiver in Exhibit 1 to the
8 Seaman Dec.

9 **C. First Worldsec Securities Limited and SinoPac Securities**

10 A dispute has arisen with respect to two Hong Kong brokerage firms: First
11 Worldsec Securities Limited ("First World") and SinoPac Securities (Asia) Ltd.
12 ("SinoPac"). The brokers state that they hold Medical Capital notes on behalf of
13 various other investors, and assert, among other things, that the Receiver must
14 calculate each such investor's MIMO claim amount individually, rather than
15 calculate the MIMO claim amount for the brokers who actually held the notes. Not
16 surprisingly, calculation of claim amounts as suggested by First World and SinoPac
17 results in net increases in the applicable claim amounts of approximately \$800,000
18 and \$200,000, respectively. For the reasons identified below, the Receiver requests
19 that the Court reject the brokers' assertions and affirm the Receiver's proposed
20 allowed claim amounts for First World and SinoPac.

21 First World owns 52 notes and SinoPac owns 9 notes. The title for each of
22 First World's notes is held by "First Worldsec Securities Limited –A/C clients."
23 Title for each of SinoPac's notes is held by "SinoPac Securities (Asia) Ltd." Prior to
24 the initiation of the receivership, neither company provided Medical Capital with
25 any information or details about who their purported clients were or what their
26 interests in the notes might have been. In fact, all pre-receivership payments of
27 interest or principal were made by ACH transfer to First World or SinoPac.

28

1 In the receivership claims process, each of First World and SinoPac returned
2 claim information forms confirming that *it* was the holder of the notes. First World
3 also confirmed the accuracy of the Receiver's information concerning principal
4 invested and principal and interest returned as to the notes. SinoPac did not return
5 the Receiver's pre-populated claim information form, but returned a claim
6 information document that included only the note that was not paid off and omitted
7 the interest paid on that note. Based on the confirmed figures of First World and the
8 Medical Capital records with respect to SinoPac, the Receiver calculated First
9 World's allowed MIMO claim would be \$3,088,125.78 and SinoPac's allowed
10 MIMO claim amount would be \$84,472.43.

11 It was not until each company received summaries of the MIMO claim
12 calculation that each first raised the issue of their individual clients' interests in the
13 notes, protested the combining of notes, and requested that the applicable allowed
14 claim amounts be adjusted to \$3,875,108.80 and \$297,937.43, respectively.⁶ The
15 Receiver's staff has endeavored to communicate with First World and SinoPac to
16 explain the logistical and equitable barriers to their request. However, the brokers
17 have refused to accept the Receiver's proposed allowed claim amounts.

18 The Receiver believes that the Court should reject First World's and SinoPac's
19 proposed allowed claim amounts and confirm the Receiver's proposed amounts for
20 the following reasons:

- 21 • First World omits from its list of notes all notes that have been paid off
22 entirely. This omission avoids the deduction of interest paid on such
23 notes, and therefore artificially inflates the MIMO claim amount.

24
25
26 ⁶ See, e.g., First World's January 9, 2012 letter demanding that the Receiver
27 disaggregate the notes and issue payments to multiple parties on each note. The
28 letter included a table listing the notes and multiple investors associated with
each note. A true and correct copy of the letter and table are attached as Exhibit
2 to the Seaman Dec. SinoPac sent an e-mail on May 8, 2012 protesting the
aggregation of its notes but has provided no information about the interests
allegedly held by its clients.

- 1 • Both First World and SinoPac elected to hold title to the notes in its
2 own name, and should not be permitted manipulate claim amounts by
3 revisiting that election long after the fact. There are a number of other
4 Noteholders from Hong Kong who purchased notes through brokers in
5 Hong Kong, who in turn had been introduced to Medical Capital by
6 brokers in the United States. First World and SinoPac, however, are
7 the only brokers who took title to the notes in their own name rather
8 than in the names of the individual investors.
- 9 • First World omitted from its calculations all interest paid to prior
10 investors who apparently sold their interests in the notes, post-
11 receivership, to an entity called FSC Asia Investment Limited ("FSC").
12 First World asserts that such interest was paid to different entities and
13 should not reduce FSC's claim amount. However, the sale of a note (or
14 a purported interest in a note), in and of itself, does not justify
15 differential treatment in claim calculations. Thus, disregarding the
16 prior interest paid on the applicable notes would artificially inflate the
17 MIMO claim amounts for such notes.
- 18 • As a practical matter, the Receiver cannot verify the accuracy of the
19 information provided by First World and SinoPac. It appears that all of
20 the underlying investors are located in Hong Kong or China, and that
21 there have been numerous post-receivership transfers of interests in
22 notes. The investigation necessary to verify the identity of each interest
23 holder, the history of transfers of interests, and the amounts of principal
24 and interest paid by First World and SinoPac (who received the
25 payments from Medical Capital) to investors on each note would be
26 very time consuming and prohibitively expensive. The Receiver
27 believes such an expenditure of receivership resources is not warranted
28 under the circumstances.

1 For all of the foregoing reasons, the Receiver requests that the Court reject the
2 assertions by First World and SinoPac and approve the Receiver's proposed allowed
3 claim amounts of \$3,088,125.78 for First World and \$84,427.43 for SinoPac.

4
5 **D. MIMO Claim Calculation Issues**

6 Prior to the last hearing, the Receiver summarized and reported on Noteholder
7 objections to the proposed MIMO approach. Certain parties also filed opposition
8 and/or comments on the Receiver's proposed approach. The Court gave all
9 interested parties the opportunity to be heard on the issue of whether the MIMO
10 claim calculation was an appropriate approach for calculating claims in this case.

11 As previously described, the Receiver's MIMO proposed allowed claim
12 amount was calculated by adding together all principal invested by a Noteholder and
13 subtracting from that number the all funds paid to that Noteholder whether
14 characterized as principal or interest, to arrive at a net claim amount. The Receiver's
15 approach was to net all notes that were held by the same Noteholders.

16 The Receiver and his staff have determined that the database maintained by
17 Medical Capital for purposes of tracking Noteholder investments and payments on
18 those investments was generally very reliable. However, in order to calculate the
19 proposed MIMO claim amount, it was necessary to aggregate the individual notes
20 held by Noteholders, which in turn required that portions of the database be
21 exported to an excel spreadsheet. After this process was completed, and in the
22 process of working through the remaining Noteholder disputes, the Receiver's staff
23 discovered that the "name" field used in the database did not always accurately
24 reflect the manner in which legal title to a particular note was held. For example, a
25 particular individual investor might have had an interest in three notes; two owned
26 jointly with his wife and one note that was owned by his business. However, the
27 "name" field might only reflect the individuals' names and not that of the business,
28 thus causing all three notes to be netted even though it was only appropriate to

1 aggregate the two notes owned by the individuals. In addition, some investors had
2 been entered into the database with slight variations in how their name appeared on
3 multiple notes; i.e., with and without a middle initial, causing, in some instances, a
4 failure to aggregate two notes owned by the same individual.

5 The Receiver's staff has reviewed and compared the "title" field with the
6 "name" field and have corrected all anomalies identified. The number of affected
7 Noteholders is less than 200. The necessity of making these corrections, however,
8 means that there have been minor adjustments to some claim calculations previously
9 filed with the Court in the Uncontested Noteholder Claims Exhibit.⁷ Attached as
10 Exhibit 1 to the Seaman Declaration is a comprehensive spreadsheet that adjusts for
11 the foregoing issue and now accurately reflects the amounts of principal and interest
12 paid and returned for all Noteholders and the proposed allowed MIMO claim
13 amount netting the investments that were held by the same individuals or entities at
14 the time the Receivership case was initiated. The Receiver will post Exhibit 1 on
15 the website and to provide copies of the relevant portions to all Noteholders who
16 have opted out of email notices.

17 Since all disputes with respect to the amounts invested or returned have been
18 resolved, no further proceedings are necessary to address the adjustment reflected in
19 Exhibit 1. Therefore, the Receiver requests that the Court approve MIMO claim
20 calculation approach and enter an order allowing Noteholder claims in the amounts
21 reflected in Exhibit 1.

22 V. CONCLUSION

23 The Receiver has received, processed and determined the claims of over
24 11,000 Noteholders and other claimants. The Receiver respectfully requests that the
25 Court enter an order approving the MIMO claim calculations approach, allowing
26
27

28 ⁷ Exhibit B to Docket No. 601.

1 Noteholder claims in the amounts reflected in Exhibit 1 of the Seaman Declaration,
2 and allowing Employee and Trade Creditor claims as identified herein.

3 Dated: May 9, 2012

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

4
5 By: /s/ Loraine L. Pedowitz

LORAIN L. PEDOWITZ
Attorneys for Receiver
Thomas A. Seaman

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28