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

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

FIFTH INTERIM FEE APPLICATION
OF TRACHTENBERG RODES &
FRIEDBERG LLP, COUNSEL FOR
RECEIVERSHIP ENTITY MEDICAL
CAPITAL CORPORATION AND ITS
AFFILIATES AND SUBSIDIARIES

Date: July 9, 2012

Time: 8:30 a.m.

Ctrm: 9D

Judge: Hon. David O. Carter

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7 MEDICAL CAPITAL CORPORATION
AND ITS AFFILIATES AND SUBSIDIARIES

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

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 vs.

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

18 Defendants.

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20 Trachtenberg Rodes & Friedberg ("TR&F"), counsel retained by Thomas A. Seaman
21 ("Receiver"), the Court-appointed permanent receiver for defendants Medical Capital Holdings, Inc.,
22 Medical Capital Corporation, Medical Provider Funding Corporation VI and their subsidiaries and
23 affiliates, submits this fifth interim application for approval and payment of fees and reimbursement
24 of expenses on behalf of TR&F. This application covers fees and expenses incurred during the five-
25 month period December 1, 2011 through April 30, 2012 (the "Fifth Application Period"), for legal
26 work performed on behalf of the Receiver and receivership entity Medical Capital Corporation and
27 its affiliates and subsidiaries ("Medical Capital").
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1 By this Fifth Interim Fee Application, TR&F seeks an order allowing TR&F compensation
2 for services rendered and expenses incurred during the Fifth Application Period in the amount of
3 \$48,890.00 in fees, representing 163.05 hours of attorney and paralegal time at a blended rate of
4 \$299.85 per hour, and \$2,341.10 in costs; and authorizing the Receiver to pay 90% of the requested
5 fees or \$44,001.00 and 100% of claimed costs, or \$2,341.10. As detailed below, TR&F requests that
6 the Court allow these fees and costs on an interim basis. For the Court's review and consideration, a
7 proposed Order is submitted contemporaneously herewith.

8 I. OVERVIEW

9 A. TR&F's Employment

10 In October 2009, the Receiver retained TR&F to investigate, research, and foreclose on any
11 liens Medical Capital may possess on property owned by Parkway Hospital Associates, including
12 mortgages held by Medical Provider Financial Corporation III in connection with real property
13 located at 70-35 113th Street, Forest Hills, New York 11375 (the "Foreclosure Matter").

14 TR&F represents sophisticated clients in business disputes and complex commercial litigation
15 matters. Lead counsel Leonard Rodes is a partner at TR&F. Mr. Rodes has been practicing law
16 primarily in New York for nearly thirty (30) years and has extensive experience in, among other
17 things, corporate law, contract law, business torts, commercial law, real estate, and securities. Mr.
18 Rodes earned his undergraduate degree from Princeton University in 1979 and his law degree from
19 Boston University in 1983. Mr. Rodes is admitted to practice before all New York State courts, the
20 U. S. District Courts for the Southern and Eastern Districts of New York, and the U. S. Court of
21 Appeals for the Third and Fourth Circuits. Associate counsel Stephen Arena is an associate at
22 TR&F. Mr. Arena has been practicing law for over six (6) years and has experience representing
23 clients in connection with complex commercial litigation, commercial transactions, structured finance
24 and mortgage loan securitization. Mr. Arena received a Bachelor of Science in Business
25 Administration from the State University of New York at Albany in 1998, and his J.D. *cum laude*
26 from Seton Hall University School of Law in 2005. Mr. Arena is admitted to practice in the state of
27 New York and the U.S. District Courts for the Southern and Eastern Districts of New York.

1 **B. Representation of Receivership Entity Medical Capital in the Foreclosure Matter**

2 TR&F was engaged by the Receiver to investigate, research, and foreclose on certain
3 mortgages owned and held by Medical Capital (through Medical Provider Financial Corporation III)
4 in connection with a hospital located at 70-35 113th Street, Forest Hills, New York 11375 (the
5 "Property"). TR&F's representation required its attorneys to review various lending agreements, sale
6 agreements, mortgage loan documentation and analytical records provided by Medical Capital.
7 TR&F also reviewed the loan file maintained by the mortgage servicer Wells Fargo.

8 TR&F analyzed issues regarding Medical Capital's actual possession and ownership of the
9 mortgages and initiated processes to cause Wells Fargo to assign an approximately \$8.5 million
10 revolving mortgage to Medical Capital.

11 TR&F has had significant contact with a title and mortgage abstract company, Inter-County
12 Abstract Corp., in connection with foreclosure searches, mortgage history reports and the assignment
13 of the revolving mortgage.

14 TR&F visited the Property to determine if the facility was functional and if the Property was
15 being rented to other businesses. TR&F met with staff and representatives of the Property
16 management company to discuss the Receiver's interests in the Property.

17 TR&F has been in contact with various New York State agencies for the purpose of obtaining
18 the proper authorizations for Medical Provider Financial Corporation III to bring a foreclosure action
19 in New York. On or about November 16, 2010, Medical Provider Financial Corporation III obtained
20 the necessary authorization.

21 TR&F has assisted the Receiver in performing research and obtaining information pertinent to
22 the analysis of the sale of the Receiver's interests in the Property to a third-party.

23 TR&F's work also included considerable research of foreclosure law in New York and the
24 drafting of pleadings and motion papers associated with foreclosure of the Property. TR&F identified
25 several potential issues affecting Property and requisitioned and reviewed litigation files associated
26 with borrower Parkway Hospital Associates' previous foreclosure and bankruptcy proceedings.

27 TR&F's work also required investigation of the status of numerous other apparent and/or potential
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1 liens on the Property. TR&F has assisted the Receiver in obtaining from other creditors of the
2 mortgagor documentation of their abandonment of lien interests.

3 By the end of 2010, TR&F was in a position to file the Receiver's foreclosure complaint (the
4 "Foreclosure Complaint"), and did so on January 6, 2011, in order to commence the foreclosure
5 action (the "Foreclosure Action"), which is pending in the Supreme Court of the State of New York,
6 in and for the County of Queens (the "Foreclosure Court"), under Index No. 489/11. TR&F arranged
7 for service of process on numerous defendants, all but four of whom defaulted. TR&F has received
8 and analyzed Answers to the Foreclosure Complaint served by three¹ defendants, including the owner
9 of the fee interest in the Property (i.e., Parkway Acquisition I, LLC f/k/a Parkway Hospital
10 Associates ("Parkway")), which also asserted counterclaims.

11 TR&F prepared and served a motion to dismiss the counterclaims and certain affirmative
12 defenses asserted by Parkway. On May 17, 2011, the Foreclosure Court granted the Receiver's
13 motion, dismissing Parkway's counterclaims and certain affirmative defenses.

14 At TR&F's request, the Foreclosure Court set an expedited discovery schedule. TR&F
15 prepared and served several discovery notices, including interrogatories, document requests, and a
16 deposition notice. TR&F reviewed documents produced by Parkway in response to discovery
17 demands prepared by TR&F. TR&F determined, in part based on Parkway's document production,
18 that it was not necessary to take several discovery depositions, including that of Mr. Aquino, thus
19 avoiding the significant expense that would have been generated thereby.

20 Parkway served document requests, and TR&F responded thereto with written objections and
21 a voluminous document production. In connection with that work, TR&F reviewed the documents
22 provided by Medical Capital for production in the Foreclosure Matter for relevance and privilege, and
23 otherwise prepared Medical Capital's documents for production. Further, Parkway also served
24 interrogatories, and TR&F has responded thereto. In connection with that work, among other things,
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26 ¹ Defendant Consolidated Edison Company of New York, Inc. served a "Notice of Appearance
27 and Waiver Foreclosure" providing for the waiver of service of all papers and of all notices of all proceedings
28 in the Foreclosure Action with the exception of notice of sale and notice of proceeding to obtain surplus
moneys.

1 TR&F worked with the Receiver to calculate the outstanding balance on mortgage loans to be
2 included in Medical Capital's interrogatory responses.

3 On or about June 28, 2011, TR&F appeared at a compliance conference in the Foreclosure
4 Court in connection with the Foreclosure Matter. On or about September 27, 2011, TR&F prepared
5 and submitted a "Note of Issue and Certificate of Readiness" at a certification conference at the
6 Foreclosure Court marking the end of the discovery period of the Foreclosure Action.

7 After the close of discovery, TR&F prepared Medical Capital's motion for summary
8 judgment, and in connection with that task (a) conducted a thorough review of the Foreclosure Action
9 office record, and the loan and production documents, (b) performed additional legal research on a
10 variety of issues raised by the defendants' purported defenses, and (c) drafted and compiled extensive
11 motion papers, including a notice of motion, affidavits of Thomas Seaman and Stephen Arena (with
12 numerous exhibits), and a summary judgment brief, which were served on or about October 21, 2011.

13 Parkway changed attorneys in the Foreclosure Action, and based on the change of counsel
14 obtained from the Foreclosure Court (over TR&F's objection) an extension of the briefing schedule
15 for Medical Capital's motion for summary judgment. The hearing date for the motion was ultimately
16 rescheduled to March 14, 2012.

17 During or about January 2012, defendants Parkway and T-Mobile, served papers in
18 opposition to Medical Capital's motion for summary judgment. Thereafter, TR&F reviewed
19 Parkway's and T-Mobile's opposition papers and performed legal research in connection therewith.
20 TR&F also obtained and reviewed various pieces of documentary evidence, including lender
21 correspondence and original loan documents, to further support Medical Capital's motion for
22 summary judgment. TR&F prepared reply papers rebutting Parkway's and T-Mobile's opposition
23 arguments.

24 On or about March 22, 2012, the Foreclosure Court issued a decision rejecting the arguments
25 of both Parkway and T-Mobile and granting Medical Capital's motion for summary judgment in its
26 entirety. A copy of that decision is annexed as Exhibit B to the Rodes Declaration.

1 In connection with the Foreclosure Court's decision granting Medical Capital's motion for
2 summary judgment, the Foreclosure Court ordered that Medical Capital "settle" an order reflecting its
3 decision. TR&F prepared a proposed order, and served notice of settlement of the order. Medical
4 Capital's proposed order was submitted to the Foreclosure Court on May 16, 2012.

5 In addition, TR&F investigated several issues in connection with physical condition of the
6 Property. During or about January 2012, the Receiver had concerns regarding certain potential
7 maintenance and security deficiencies at the Property. TR&F communicated with Parkway counsel
8 on many occasions and made several efforts to obtain information regarding the status of the Property
9 and to ultimately gain access to the Property. During or about February 2012, it became apparent that
10 Parkway would not cooperate or respond to the Receiver's inquiries in connection with the condition
11 of the Property. In view of that, TR&F performed research regarding the appointment of a receiver
12 for the Property. Thereafter, TR&F prepared motion papers and moved the Foreclosure Court for the
13 appointment of a receiver to the Property. On or about March 2, 2012, the Foreclosure Court granted
14 Medical Provider's motion for the appointment of a receiver to the Property. TR&F has worked with
15 the Foreclosure Court-appointed receiver in connection with the potential maintenance and security
16 deficiencies at the Property.

17 TR&F has also participated in various conferences with the Receiver's lead counsel, Allen
18 Matkins Leck Gamble Mallory & Natsis, LLP ("Allen Matkins"), as well as with the Receiver and his
19 staff in connection with the sale of the mortgage loan interests. At their request, TR&F performed
20 research and analysis in connection with various legal questions and issues that have arisen in
21 connection with the sale of the mortgage loan interest. TR&F negotiated, reviewed and commented
22 on various drafts of the loan sale documents. TR&F also participated in numerous calls with
23 potential loan buyers and lien interest holders.

24 The mortgage loan interests were sold to a third party buyer on or about May 8, 2012. The
25 transition of the foreclosure action to the third party buyer were simplified by Medical Capital
26 successfully obtaining summary judgment prior to the sale of the mortgage loan interests.

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1 In all of these efforts, TR&F has coordinated and corresponded closely with the Receiver's
2 lead counsel, Allen Matkins, as well as with the Receiver and his staff.

3 For further detail regarding TR&F's activities during the Fifth Application Period, see the
4 itemized descriptions set forth in the invoices attached as Exhibit A to the Declaration of Leonard A.
5 Rodes in Support of Fifth Interim Fee Application of Trachtenberg Rodes and Friedberg, Counsel for
6 Receivership Entity Medical Capital Corporation ("Rodes Declaration").

7 **II. FEE APPLICATION**

8 TR&F has collected its time during the Fifth Application Period in a computer database,
9 under a distinct client-matter number specifically created for its representation of the Receiver and
10 Medical Capital in connection with the Foreclosure Matter, as follows:

Name	Title	Rate	Hours	Fees
L. Rodes	Partner	\$450	4.9	\$2205.00
S. Arena	Associate	\$300	156.15	\$46,845.00
M. Kwasi	Paralegal	\$40	2	\$80.00
Credit for work performed on fee application preparation				(\$240.00)
Total				\$48,890.00

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19 TR&F also requests that the Court approve \$2,341.10 in costs in connection with the
20 Foreclosure Matter. These costs are detailed in the invoices attached as Exhibit A to the Rodes
21 Declaration.

22 **III. THE REQUESTED FEES ARE REASONABLE AND SHOULD BE ALLOWED**

23 **A. Efficient Staffing – Customary Rates**

24 TR&F has worked diligently in representing the interests of the Receiver and Medical Capital.
25 TR&F has staffed each task as efficiently as possible.

26 TR&F believes its request is fair and reasonable and that the fees and costs incurred are
27 necessary to accomplish the Receiver's goals in the Foreclosure Matter. TR&F's request for
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1 compensation reflects a 10% discount to its current customary billing rates charged in similar matters.
2 TR&F's customary billing rates are comparable to those charged in the New York metropolitan area
3 by similarly experienced and credentialed counsel on similarly complex commercial matters.

4 Finally, the invoices that are the subject of this fee application also reflect that TR&F has, at
5 the request of the Receiver, credited (i.e., written off) time spent on all fee applications to date.

6 **B. Costs**

7 The costs sought hereby are reasonable. All such costs were necessarily incurred by TR&F in
8 the performance of its work on the Foreclosure Matter. All such costs were disbursed to the
9 Receiver's account in the Foreclosure Matter in the manner that is customary for all of TR&F's
10 clients.

11 **C. Receiver's Approval**

12 All of the TR&F invoices that constitute Exhibit A to the Rodes Declaration have been
13 submitted to, and reviewed and approved by, the Receiver.

14 **D. Purchaser Reimbursement**

15 Finally, pursuant to the agreement between the Receiver and the purchaser of the Parkway
16 mortgage loans interests, the purchaser has already reimbursed the Receiver for the TR&F fees and
17 expenses relating to the Foreclosure Action that were generated between the date of the overbid
18 contract (February 24, 2012) and the closing date of sale pursuant to that contract (May 8, 2012), in
19 the amount of \$24,755.99 – almost all of which represents time charges and expenses that are
20 reflected on the TR&F Invoices that are the subject of this fee application.

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22 **IV. CONCLUSION**

23 TR&F has worked diligently to represent the Receiver and Medical Capital and has provided
24 a valuable service to the Receivership Estate in that regard. Therefore, TR&F respectfully requests
25 an order:


- 26 1. Approving and allowing fees totaling \$48,890.00 for the Fifth Application Period;
27 2. Approving and allowing reimbursement of costs totaling \$2,341.10 for the Fifth
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Application Period;

3. Authorizing the Receiver to pay 90% of the allowed amount of TR&F's fees, which amount is \$44,001.00 out of assets of the Receivership Estate;
4. Authorizing the Receiver to pay 100% of the allowed amount of TR&F's costs, which amount is \$2,341.10, out of assets of the Receivership Estate; and
5. Granting such other and further relief as is appropriate.

Dated: June 11, 2012

By: 
LEONARD A. RODES
Trachtenberg Rodes & Friedberg LLP
Counsel for Receivership Entity
Medical Capital Corporation and its
Affiliates and Subsidiaries