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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SOUTHERN DIVISION**
14

15 SECURITIES AND EXCHANGE
16 COMMISSION,

17 Plaintiff,

18 vs.

19 MEDICAL CAPITAL HOLDINGS,
20 INC.; MEDICAL CAPITAL
CORPORATION; MEDICAL
21 PROVIDER FUNDING
CORPORATION VI; SIDNEY M.
22 FIELD; and JOSEPH J.
LAMPARIELLO,
23

24 Defendants.
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CASE NO. 09CV-818 DOC (RNBx)

**OPPOSITION MEMORANDUM OF
POINTS AND AUTHORITIES
REGARDING RECEIVER'S MOTION
FOR ORDER APPROVING SALE OF
LOANS MADE TO INTEGRATED
HEALTHCARE HOLDINGS, INC.,
ETC.**

Date: March 22, 2010
Time: 8:30 a.m.
Judge: Hon. David O. Carter
Ctrm: 9D

1 **I. THE PROPOSED SALE IS IRRESPONSIBLE AND IS UNSUPPORTED BY**
2 **ANY COMPETENT EVIDENCE.**

3 As discussed below, the motion is an incredibly weak effort to justify the fire-sale
4 of the estate's most valuable asset.

5 The key reasons why the motion should be denied are as follows:

6 1. There is no appraisal or expert opinion (from a true expert in the health care
7 industry) of the fair market value of the loans, and there is no expert opinion that the
8 receiver's method is the most effective way to market these loans for sale.

9 2. There is no calculation presented of the total amount owing on the loans,
10 including interest and any applicable fees. It is unclear whether the amounts set forth in
11 the moving papers refer only to principal balance, or include interest, and if so, how the
12 interest was calculated.

13 3. There is no expert opinion that the interests of the estate are better served by
14 selling these loans at a large discount rather than holding the loans for collection from the
15 borrower, the collateral, and/or the guarantors. Because the receiver never calculates the
16 amount owed, he never quantifies the discount he is offering, but it appears to be at least
17 \$18 million, and could be much higher when interest is taken into account. The possible
18 threat of litigation and delay are not shown to justify such a large discount.

19 4. The motion asserts that KPC has the ability to provide a release from claims
20 on behalf of IHHI, but this assertion is not backed up by any evidence.

21 5. The previous efforts of the broker are so dissimilar to the present transaction
22 that they are completely irrelevant. The previous transaction included a repurchase of the
23 loans by Medical Capital, and was effectively an attempt to borrow money (i.e., not to
24 sell the loans) during late 2008 in the midst of the worst credit market since the Great
25 Depression of the 1930s.

26 6. The overbid procedure is patently insufficient, and is designed to chill
27 overbidding, in that it would require any potential overbidder to post cash or equivalent
28 of \$57 Million just to qualify to bid.

1 7. There is no such requirement for the proposed purchaser, KPC, which
2 posted only \$2 Million in escrow, and there is no evidence that KPC has sufficient funds
3 available to close the proposed transaction.

4 8. There is no evidence that the broker had any role in procuring KPC as a
5 potential purchaser so as to justify any commission if the loans are sold to KPC, and
6 there is no evidence to support a 10% commission on overbids.

7 **II. THERE IS NO EXPERT OPINION REGARDING THE VALUE OF THE**
8 **ASSET, THE METHOD OF SALE, OR WHETHER THE LOANS SHOULD**
9 **EVEN BE SOLD AT ALL.**

10 In moving to sell the most valuable asset in the entire receivership estate, the
11 receiver apparently never obtained any expert advice from any of the preeminent experts
12 on the healthcare industry, or indeed from any healthcare industry experts at all.

13 The only declarations in support of the motion are supplied: (i) by the receiver
14 himself, who does not purport to have expertise in the healthcare industry, (ii) by one of
15 his attorneys, limited to the issue of documentation of the assignment of the loans; and
16 (iii) by the “overbid broker,” Michael J. Meisenbach, who does not claim to be an expert
17 on valuations in the healthcare industry, and who did not, in any event, opine on the
18 value of the asset or the method of sale.

19 Without testimony from a true expert in similar loans that the proposed sale
20 represents fair value for the sale of the loans, the motion should be denied. Furthermore,
21 one would expect to see expert testimony regarding the best methodology to generate the
22 best sale for the estate, and indeed, whether the estate would be better off to hold the
23 IHHI loans rather than sell them at all. Without any expert testimony on these subjects,
24 there is no reasoned basis to approve this fire-sale of the asset.

25 **III. THE RECEIVER NEVER QUANTIFIES THE DISCOUNT IN A**
26 **MEANINGFUL WAY.**

27 The receiver never states his calculation of how much is owed under the loans he is
28 offering for sale. He says the “books and records” indicate that the amount owed as of

1 December 31, 2009, was “approximately \$81 million on the first and second credit
2 facilities,” and indicate a credit of “approximately \$7.35 million on the third credit
3 facility.” In various places throughout the papers, the receiver refers to these
4 “approximate” amounts as constituting the “principal” amount of the loans (see., e.g.,
5 Seaman Decl, ¶18, page 5, lines 11-12; Motion, page 3, lines 9-10). It is therefore
6 unclear whether the receiver is including any accrued interest or other charges in the
7 balance of the loans. This is no small matter since the receiver states that no payments
8 have been received since 2008 – the accrued interest charges could be over \$10 Million.

9 There is no excuse for the receiver’s uncertainty. The receiver has been in office
10 for over 6 months, and has had exclusive control of the books and records. He has had a
11 forensic accountant working on this matter, but there is no declaration from the
12 accountant as to any calculation of the amount owing on the IHHI loans, with reference
13 to specific sums of principal and interest, rather than mere approximations. One would
14 expect to see such an accounting on an \$80,000 loan, so it is rather surprising not to see
15 an accounting on the loans totaling more than \$80,000,000.¹

16 Because there is no calculation of the amount owed, there is also no quantification
17 of the amount of the discount offered to the purchaser of the loans. Using the receiver’s
18 approximations, the discount is over \$18,000,000. In reality, if interest is taken into
19 account, the discount could be \$30,000,000 or more.

20 There is no showing of why such a huge discount is warranted. The receiver
21 mentions the threat of litigation and delay, but there is no evidence that these issues
22 justify a discount of \$18,000,000, let alone a discount of \$30,000,000 or more.

23 **IV. THE RELEASE IS A RED HERRING.**

24 The motion recites that KPC can provide a release of claims if the IHHI loans are
25 sold to KPC, but there is no evidence that IHHI has ever approved the release. Dr.

26 _____
27 ¹ If IHHI disputes the calculation, then the dispute can be discussed as well, but the
28 existence of a potential dispute should not excuse the receiver from setting out his
calculation of the amount owed.

1 Chaudhuri is obviously an interested party, and no evidence has been provided to show
2 that the disinterested members of the IHHI board have approved the release.

3 Furthermore, there is no analysis of the monetary value of this release to the estate,
4 if the release is indeed forthcoming.

5 **V. THE PREVIOUS TRANSACTION BY THE BROKER HAS NO BEARING**
6 **ON THE PRESENT TRANSACTION.**

7 The broker, Meisenbach, states that he previously attempted to “sell” the \$45
8 million IHHI loan in September 2008. As admitted in the motion, however, that effort
9 was not to “sell” the loan outright, but rather was to sell the loan with a short-term
10 repurchase – in other words, it was an attempt to borrow money on a short-term basis,
11 with the IHHI loan to serve as collateral. This is set forth in the Motion and in
12 Meisenbach’s flyer, a copy of which is attached as Exhibit 1 to his declaration. [Motion,
13 p. 7, lines 19-20; Meisenbach Decl., Exh. 1].

14 Moreover, this attempt to borrow against the IHHI loan took place in a frozen
15 credit market in the aftermath of the collapse of Lehman Brothers in September 2008, the
16 single worst credit market since the 1930s.

17 There is no relevant information to be gleaned from the previous transaction. It is
18 “apples and oranges” from the present proposed transaction.

19 **VI. THE OVERBID PROCEDURE IS NOT WELL SUITED TO ENSURE**
20 **MAXIMUM VALUE.**

21 By requiring prospective overbidders to put up \$57,000,000 in cash or cash
22 equivalent for two weeks, the receiver is unnecessarily chilling the bidding. Ability to
23 perform can be demonstrated without actually posting \$57,000,000 in advance of the
24 hearing.

25 Ironically, because KPC was only required to post \$2,000,000, and was not
26 required otherwise to demonstrate its ability to close the transaction, we are left to guess
27 whether KPC has the means to pay \$55,000,000 to close the proposed transaction.

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1 **VII. THERE IS NO EVIDENCE TO SUPPORT THE AMOUNT OF**
2 **COMPENSATION FOR THE BROKER.**

3 There is no evidence why the broker should receive \$50,000 if there are no
4 overbids. As indicated in the motion, Dr. Chaudhuri owns a substantial share of IHHI,
5 and there is no indication that the broker had anything to do with procuring his company
6 as a potential purchaser, or otherwise performed any services justifying a commission on
7 a sale to KPC.

8 Furthermore, there is no evidence to justify the 10% commission on overbids.
9 While the papers indicate that Mr. Meisenbach has been engaged to generate overbids,
10 and has been working on it, there is no evidence provided to justify such out-size sums at
11 the expense of the estate.

12 **VIII. CONCLUSION.**

13 For the reasons set forth above, Defendants Field and Lampariello oppose the
14 receiver's motion, and respectfully request that the motion be denied in its entirety.

15 Dated: March 1, 2010

GREENBERG TRAURIG, LLP

16 By: /s/ Alan A. Greenberg

17 Michael A. Piazza

18 Alan A. Greenberg

19 Attorneys for Defendants Sidney M. Field and

20 Joseph J. Lampariello
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is **3161 Michelson Drive, Suite 1000, Irvine, CA 92612.**

On the below date, I electronically filed the **OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES REGARDING RECEIVER'S MOTION FOR ORDER APPROVING SALE OF LOANS MADE TO INTEGRATED HEALTHCARE HOLDINGS, INC., ETC.** with the Clerk of the United States District Court for the Central District of California, using the CM/ECF System. The Court's CM/ECF System will send an email notification of the foregoing filing to the following parties and counsel of record who are registered with the Court's CM/ECF System:

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(BY ELECTRONIC SERVICE VIA CM/ECF SYSTEM)
In accordance with the electronic filing procedures of this Court, service has been effected on the aforesaid party(s) above, whose counsel of record is a registered participant of CM/ECF, via electronic service through the CM/ECF system.

(FEDERAL) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed at the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 1, 2010, at Irvine, California.

/s/ Alan A. Greenberg
Alan A. Greenberg