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12 Attorneys for Receiver Thomas A. Seaman

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 SOUTHERN DIVISION

16 SECURITIES AND EXCHANGE  
COMMISSION,

17 Plaintiff,

18 v.

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

23 Defendants.  
24

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

**DECLARATION OF THOMAS A.  
SEAMAN IN SUPPORT OF MOTION  
FOR ORDER TO SHOW CAUSE RE  
CONTEMPT AND SANCTIONS FOR  
FAILURE OF EDWARD K.  
BLODNICK TO TURN OVER  
PROPERTY OF THE  
RECEIVERSHIP ESTATE**

Date: July 19, 2010  
Time: 8:30 a.m.  
Ctrm: 9D  
Judge: Hon. David O. Carter

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I, Thomas A. Seaman, declare as follows:

1. I am the Court-appointed permanent receiver for Medical Capital Holdings, Inc., Medical Capital Corporation, and Medical Provider Funding Corporation VI, and their subsidiaries and affiliates (collectively, "Medical Capital" or the "Receivership Entities"). The following facts are within my knowledge and if called as a witness I would testify to them under oath.

2. Starting in 1999, Medical Capital made loans to Dr. Robert Schepp and his medical practices, Deajess Medical Imaging, P.C., Boston Post Road Medical Imaging, P.C., and Preferred Medical Imaging, P.C. (collectively, "Schepp"), and the management companies he contracted with, MRI Global Imaging Services, Inc. ("MRI Global") and Forum Medical Management, Inc. ("Forum"). The loans were secured by Schepp's rights to payment from insurance carriers. Under the loan and security agreements, all insurance payments were required to go directly to Medical Capital lock box accounts. If Schepp, MRI Global or Forum received any insurance payments, they were required to immediately forward such payments to the applicable Medical Capital lock box account.

3. Starting in 2005, the manner in which Schepp's medical practices were operated and financed became the subject of substantial litigation in New York between various insurance carriers and Schepp (the "Schepp Litigation"). Schepp was represented by Edward K. Blodnick of Edward K. Blodnick & Associates, P.C., formerly known as Blodnick & Baum, P.C. ("Blodnick") in the Schepp Litigation.

4. Schepp was not only unable to repay the loans from Medical Capital, he was also unable to pay Blodnick's legal bills. Accordingly, in order to collect on the insurance claim receivables that were its collateral, Medical Capital made additional loans to Schepp in the form of direct payments to Blodnick. Between September 2005 and February 2009, Medical Capital paid \$5,208,602.11 directly to Blodnick.

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5. In September 2008, Medical Capital agreed to pay Blodnick a flat fee of \$30,000 per week, \$25,000 for ongoing fees and \$5,000 for prior bills. This arrangement was later modified via a letter from Blodnick that was countersigned by defendant Lampariello. The letter agreement gives Blodnick the right to twenty (20%) percent of all settlements in addition to the weekly flat fee of \$25,000. Additionally, Medical Capital agreed to loan Schepp another \$5,000 per month as long as he continued to participate in the litigation.

6. Medical Capital apparently made some of the weekly payments to Blodnick, but not others. Accordingly, when settlements with insurance carriers were executed and settlement checks were received by Blodnick, he deducted and paid himself not only his twenty (20%) percent contingency fee, but also the weekly payments not made by Medical Capital.

7. On September 18, 2009, Blodnick sent me a proposal to engage him to do additional legal work relating to Parkway Hospital. The fee estimates stated in the proposal were unreasonably high. Accordingly, I retained other counsel in New York to work on the Parkway Hospital matter.

8. In November 2009, I was informed by Mr. Henry that one of the insurance carriers, State Farm, had agreed to the terms of a settlement. Unlike most of the insurance carriers, State Farm had named the Medical Capital entities in its action. The proposed State Farm settlement, therefore, includes releases in favor of State Farm from me on behalf of Medical Capital. With the assistance of Mr. Henry, I attempted to compile information necessary to evaluate the proposed State Farm settlement.

9. In early January 2010, having not received any communications from Blodnick since the September discussion regarding Parkway Hospital, I received a check together with a breakdown of fees from Blodnick ("January Fee Breakdown"). The January Fee Breakdown is attached hereto as Exhibit A.

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10 I promptly arranged a call with Blodnick, requested information about the fees Blodnick deducted and advised Blodnick that the fees and deducting them from the settlements was improper. This call took place on January 13, 2010. During the call, and by letter dated January 15, 2010, I requested information and documentation from Blodnick about the settlements, fee arrangements, fees deducted, and fees paid to other attorneys. Blodnick stated that it would take time to produce the information.

11 11. In early February, the Receiver received a second check and Fee Breakdown from Blodnick ("February Fee Breakdown"). The February Fee Breakdown is attached hereto as Exhibit B. Including the fees reported on the January Fee Breakdown, Blodnick deducted and paid himself a total of \$1,573,940.09 after my appointment.

12 12. On February 9, 2010, per Judge Block's order, Blodnick responded to my request for information. For the first time, Blodnick produced the pre-receivership fee agreement with Medical Capital, in the form of an email from Blodnick's assistant to Thomas Fazio, former general counsel of Medical Capital, and subsequent letter countersigned by Joseph Lampariello. The February 9, 2010 letter from Blodnick, together with the email and letter evidencing the pre-receivership fee arrangement, are attached hereto as Exhibit C.

13 13. I evaluated and ultimately agreed to execute the State Farm settlement, subject to Court approval. In light of the dispute over post-receivership fees and Blodnick unilaterally deducting them from settlements, Blodnick, Mr. Henry and I agreed that the proceeds of the State Farm settlement would be deposited into Mr. Henry's trust account, pending resolution of the dispute.

14 14. Under the loan agreements with Schepp, all payments from insurance carriers on the relevant insurance claims, the collateral for the loans, went directly to Medical Capital lock box accounts. Schepp has never had, nor claimed to have any

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3 right to these payments vis-à-vis Medical Capital. The payments, once received,  
4 were always treated as Medical Capital property.

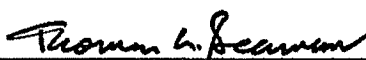
5 15. The same is true with respect to the settlement proceeds, which are  
6 essentially lump sum payments on all outstanding insurance claims against the  
7 relevant insurance carriers. Schepp has never had, nor claimed to have any right to  
8 these settlement proceeds. The proceeds, at least as they pertain to insurance claims  
9 financed by Medical Capital, were always treated as Medical Capital property.

10 16. Blodnick's pre-receivership fee arrangement with Medical Capital was  
11 neither disclosed to nor approved by me. I certainly would not have agreed to pay  
12 Blodnick \$25,000 per week in addition to twenty (20%) percent of all settlements.

13 17. The settlement with State Farm has been negotiated and documented  
14 since November 2009. At the last minute, once it was clear that I would pursue fees  
15 deducted by Blodnick, Blodnick announced for the first time that Schepp was  
16 unwilling to sign. Ultimately, Schepp signed the settlement only after I agreed that  
17 the dispute with Blodnick, as it pertains to the \$38,400 portion of the State Farm  
18 settlement that Blodnick claims to be entitled to, if not resolved by agreement,  
19 would be resolved by a New York court. Schepp gains nothing as a result of my  
20 agreeing to this term; the fee dispute pertains only to Blodnick. At a status  
21 conference held on April 15, 2010, while recognizing that he could not force Schepp  
22 to sign the settlement, Judge Block warned that he would sanction Blodnick if he  
23 held up the settlement approval process beyond May 10, 2010.

24  
25 I declare under penalty of perjury that the foregoing is true and correct.

26 Executed on June 10, 2010, at Irvine, California.

27   
28 Thomas A. Seaman

# **EXHIBIT A**



Per e-mail letter dated September 5, 2008  
 Start September 11, 2008 wired every Thursday  
 to be applied as follows: 25,000 flat fee and 5,000 to reduce arrears

	<u>Due EKB</u>	<u>Balance Due</u>
7/3,7/10,7/17,7/24,7/31	125,000.	125,000.
8/7,8/14,8/21,8/28	100,000.	100,000.
9/4,9/11,9/18,9/25	100,000.	100,000.
10/2,10/9,10/16,10/23,10/30	125,000.	125,000.
<u>11/4,11/11,11/18,11/25</u>	<u>100,000.</u>	<u>100,000.</u>
		<u>550,000.</u>
	+Disbursement	<u>453.91</u>
Assuming no additional payments		550,453.91

	<u>Settlements</u>	<u>Settlements due to others not financed by MCC</u>	<u>Due to Schepp</u>	<u>Due to EKB (20%)</u>
MVAIC	14,175.00			
NY Central	210,000.00			
GEICO	619,500.00			
CTRYWIDE	76,548.50			
HEREFORD	12,142.68			
CHUBB	6,174.00			
RESPONSE	30,000.00			
METLIFE	51,500.00			
EVERREADY	69,482.57			
PROGRESSIVE	300,000.00			
KEMPER	<u>110,000.00</u>			
	2,011,522.75	<u>198,338.00</u>	<u>1,450,547.29</u>	<u>362,636.82</u>

<u>Paid to Others by EKB</u>					
Fuld	K.Henry	Schepp	Krakow	Schirmer	FazioRynsky
<u>48000.00</u>	<u>25000.00</u>	<u>5000.00</u>	<u>2070.00</u>	<u>8140.00</u>	<u>10000.00</u>

<u>Due to EKB 11/30/09</u>		<u>Gross # Due Schepp</u>	1,450,547.29
Billed Balance @ 6/30/09	261,068.00	Less Payments to	
Per Agreement 9/5/08	<u>550,453.91</u>	others on behalf	
	811,521.91	of Schepp	98,210.00
		Less Due EKB	<u>811,521.91</u>
		<b>Due Schepp</b>	<b>540,815.30</b>
		<b>Pay to MCC</b>	

# **EXHIBIT B**



Per e-mail letter dated September 5, 2008  
 Start September 11, 2008 wired every Thursday  
 to be applied as follows: 25,000 flat fee and 5,000 to reduce arrears

	<u>Due EKB</u>	<u>Balance Due</u>		
12/3, 12/10, 12/17, 12/24, 12/31	125,000	125,000		
<u>1/7, 1/14, 1/21, 1/28</u>	<u>100,000</u>	<u>100,000</u>		
		225,000		
			Settlements due to others not financed by MCC	
	<u>Settlements</u>		<u>Due to Schepp</u>	<u>Due to EKB (20%)</u>
UTICA	42,500.00		34,000.00	8,500.00
AUTO ONE	455,013.54		316,689.44	79,172.36
CITIWIDE	4,195.94		1,594.44	398.61
LANCER	22,513.00		18,010.40	4,502.60
STATEWIDE	73,500.00		58,800.00	14,700.00
CTRYWIDE	73,729.00		54,559.48	13,639.87
HUDSON	32,264.61		25,811.68	6,452.92
HARTFORD	2,500.00		20,000.00	5,000.00
CLARENDON	119,000.00		95,200.00	23,800.00
GEICO	<u>109,500.00</u>		<u>74,460.00</u>	<u>18,615.00</u>
	957,216.09		83,309.29	699,125.44
				174,781.36

Paid to Others by EKB

Fuld	Levine & Blit
<u>25,000.00</u>	<u>434.43</u>

<u>Due to EKB</u>		<u>Gross # Due Schepp</u>	699,125.44
Per Agreement 9/5/08	225,000.00	Less Payments to others on behalf of Schepp	25,434.43
		Less Due EKB	<u>225,000.00</u>
		<b>Due Schepp</b>	<b>448,691.01</b>
		<b>Pay to MCC</b>	

# **EXHIBIT C**

**EDWARD K. BLODNICK & ASSOCIATES, P.C.**

*Attorneys and Counselors at Law*

**1205 Franklin Avenue, Suite 110  
Garden City, New York 11530  
(516) 248-0022  
(516) 248-6555 Facsimile\*  
(\*Not for Service of Litigation Papers)**

*Edward K. Blodnick*

*Paul A. Lanni*

*Jeffrey I. Baum, of Counsel*

*Deborah J. Mazzola, Office Administrator*

February 9, 2010

Via Electronic Mail and UPS

Ted Fates, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
501 West Broadway, 15<sup>th</sup> Floor  
San Diego, California 92101-1158

Re: SEC v. Medical Capital Holdings, et al.; Collections on Dr. Schepp  
Claims Against Insurance Carriers

Dear Mr. Fates:

In further response to your letter of January 15, 2010, the requested information and documentation is herein produced. For convenience of reference your letter of inquiry dated January 15, 2010 and my preliminary response dated January 20, 2010 are also enclosed.

1. Communications regarding legal fee payments: Enclosed please find:
  - a. Email dated September 5, 2008
  - b. Letter agreement of December 11, 2008
  - c. Retainer agreement dated March 13, 2009 (Parkway Hospital)
2. Deductions from settlement proceeds: Enclosed please find four memos itemizing same and our bill for services in Parkway.
3. List of all settlements: Enclosed is the requested list labeled "Settlements". Please note that each settlement amount contained therein is confidential per the confidentiality clause contained in the respective settlements agreements and is being furnished to you per the directive of Judge Block, with the understanding that you will maintain its confidentiality. In addition, enclosed is a list marked "Breakdown by Insurance Company of Payments Received: Percentages Between the Schepp PCs and New Preferred/Other Entities" which provides the break out by percentage of settlement funds that were attributed to entities that were not financed by the MCC entities.
4. List of amounts demanded by insurance carriers: Enclosed is the requested list labeled "Summary of Actions and Relief Sought by Insurers Against MCC Entities".

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5. Amounts paid from settlement proceeds to Dr. Schepp or his entities.

- a. Dr. Schepp \$10,000.00
- b. Aviva Medical Imaging, PC \$1,500.00
- c. Preferred Medical Imaging, PC \$175,640.50 Note that the payments to Preferred were for settled claims of services rendered after January 1, 2005 when the MCC entities were no longer providing financing. Attached is a copy of the Subordination Agreement regarding same. We do not have an executed copy of the agreement as we were not involved in its negotiation or execution but we do have this unsigned version in our files. We are informed that it was executed.

Please refer to the list provided at # 3 herein marked "Breakdown by Insurance Company of Payments Received: Percentages Between the Schepp PCs and New Preferred/Other Entities"

6. Amounts paid from settlement proceeds to attorneys and/or third parties:

Moshe Fuld, Esq.	\$ 81,525.00
Schrimer and Stathopoulos	8,140.00
Levine & Blitt	434.43
Kenneth C. Henry, Jr., Esq.	41,875.00
Robert Krakow, Esq.	2,070.00
Fazio, Rynsky & Associates, LLP	10,000.00

7. Billing records for work performed for MCC entities.

This office did not represent the MCC entities in the matters that settled but instead represented the Schepp Parties. MCC was represented by Kenneth C. Henry, Jr., Esq. This office did represent MCC in an unrelated action regarding Parkway Hospital. A copy of our bills as previously rendered are attached.

I trust that the information provided is sufficient for the court appointed permanent receiver of the MCC entities to sign the negotiated settlement agreement with State Farm Insurance Company which will result in the discontinuance of the two remaining pending New York actions against the MCC entities. Thank you for your attention to this matter.

Very truly yours,



Edward K. Blodnick

EKB:san  
Enclosures



**dmazzola@blodnickpc.com**

---

**From:** dmazzola@blodnickpc.com  
**Sent:** Friday, September 05, 2008 4:04 PM  
**To:** Tom Fazio (tfazio@fazio-rynsky.com)  
**Subject:** Billing

Hi Tom:

Ed wanted me to write you a confirmation of your discussions with him in reference to our open invoices as well as payments going forward. Beginning with Thursday, September 11, 2008, you will have wired to us the sum of \$30,000.00 which shall be applied as follows: \$25,000.00 towards flat fee billing and \$5,000.00 to be applied to reduce arrears. This will continue every Thursday. Billing through and including 8/31/08 bill dated 9/5/08 shows a balance due and owing us of \$456,373.61. We will also defer billing for disbursements until January 1st, 2009, unless the costs in any one month exceed \$1,500.00. In that event we would bill same and expect to be reimbursed the following month.

**Wire Information:**

State Bank of Long Island  
222 Old Country Road  
Mineola, New York 11501  
ABA # 021401617

Blodnick & Baum P.C.  
1205 Franklin Avenue, Suite 110  
Garden City, New York 11530

Account # 1117008207

Any questions or concerns you can send me an e-mail or give Ed a call at your convenience. Have a nice weekend.

Debbie Mazzola  
Case Manager/Office Administrator  
Edward K. Blodnick & Associates, P.C.  
1205 Franklin Avenue, Suite 110  
Garden City, New York 11530  
516-248-0022 - Phone  
516-248-6555 - Fax (not for service of litigation papers)

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9/5/2008

**BLODNICK & BAUM, P.C.**

*Attorneys and Counselors at Law*

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Alexander Levine*

*Shawn M. Malone, of Counsel*

*Deborah J. Mazzola, Office Administrator*

December 11, 2008

Medical Capital Corporation  
15101 Red Hill Avenue  
Tustin, CA 92780

Re: Robert Scott Schepp, M.D., et al

Dear Joey:

Apparently due to the obvious economic downturn, cash flows have been impacted by both Medical Capital Corporation and Blodnick & Baum, P.C. Therefore, I am enclosing a proposal which will modify and reduce MCC's cash flow obligations. This will enable us to continue defending and prosecuting the cases and attempt to get MCC and the subsidiaries removed as defendants in the various cases. If we complete the Traveler's settlement this will end one of three cases. The other two cases are being brought by the Progressive Insurance companies and State Farm. I am hopeful that I may be able to resolve one of the two remaining cases in the near future.

We believe we have achieved verbal settlements with Nationwide in the sum of \$100,000.00; Travelers in the sum of \$200,000.00 and approximately \$6,800.00 with Amex. We also are in settlement discussions with Liberty, Prudential, AIG, New Hampshire and American Home. The following is a proposal which I believe will be beneficial to both sides.

MCC shall wire us the sum of \$30,000.00 on December 12, 2008, and \$15,000.00 a week thereafter commencing on December 19, 2008, which \$15,000.00 shall be applied to the \$30,000.00 weekly payments previously agreed to. With regard to the anticipated settlements, ~~we propose the following distribution of proceeds: that twenty (20%) percent be applied as~~ additional legal fees beyond the \$30,000.00 weekly legal fees previously agreed to. In addition, we shall receive \$30,000.00 to be applied towards the December 5<sup>th</sup> payment and \$15,000.00 for each week MCC wires us \$15,000.00 and \$30,000.00 for each week you are unable to wire us



***BLODNICK & BAUM, P.C.***

December 11, 2008

Page 2

\$15,000.00; plus our out-of-pocket disbursements shall be reimbursed and the balance of the proceeds shall be forwarded to MCC.

If we fail to collect \$200,000.00 by December 21, 2008, we shall have the right to terminate this agreement and cease representation of Dr. Schepp and the Schepp parties.

From the next \$200,000.00 collected we shall receive 20% as collected plus such monies Blodnick & Baum is owed based on \$30,000.00 a week through the end of January 2009 together with all unpaid disbursements. The balance of the proceeds shall be forwarded to MCC.

If we fail to collect \$400,000.00 by January 31, 2009, we shall have the right to terminate this agreement and cease representation of Dr. Schepp and the Schepp parties forthwith.

From the next \$200,000.00 collected we shall receive 20% as collected plus such monies Blodnick & Baum is owed based on \$30,000.00 a week through the end of February 2009 together with all unpaid disbursements. The balance of the proceeds shall be forwarded to MCC.

If we fail to collect \$600,000.00 by February 28, 2009, we shall have the right to terminate this agreement and cease representation of Dr. Schepp and the Schepp parties forthwith.

From the next \$200,000.00 collected we shall receive 20% as collected plus such monies Blodnick & Baum is owed based on \$30,000.00 a week through the end of March 2009 together with all unpaid disbursements. The balance of the proceeds shall be forwarded to MCC.

If we fail to collect \$800,000.00 by March 31, 2009, we shall have the right to terminate this agreement and cease representation of Dr. Schepp and the Schepp parties forthwith.

From the next \$200,000.00 collected we shall receive 20% as collected plus such monies Blodnick & Baum is owed based on \$30,000.00 a week through the end of April 2009 together with all unpaid disbursements. The balance of the proceeds shall be forwarded to MCC.

If we fail to collect \$1,000,000.00 by April 30, 2009, we shall have the right to terminate this agreement and cease representation of Dr. Schepp and the Schepp parties forthwith.

---

From the next \$200,000.00 collected we shall receive 20% as collected plus such monies Blodnick & Baum is owed based on \$30,000.00 a week through the end of May 2009 together with all unpaid disbursements. The balance of the proceeds shall be forwarded to MCC.

**BLODNICK & BAUM, P.C.**

December 11, 2008

Page 3

If we fail to collect \$1,200,000.00 by May 31, 2009, we shall have the right to terminate this agreement and cease representation of Dr. Schepp and the Schepp parties forthwith.

We agree to review this arrangement prior to May 31, 2009. Absent any change agreed upon, this arrangement shall continue with the \$1,200,000.00 increasing in increments of \$200,000.00 per month. Our legal fee of \$30,000.00 per week plus disbursements and 20% of any settlement shall continue.

In order to effectuate this arrangement, you authorize us to sign all checks and deposit them into our attorney escrow account and disburse same in accordance with this agreement.

If this proposal meets with your approval, kindly acknowledge same by signing where indicated and return a copy to our office.

Sincerely,

BLODNICK & BAUM, P.C.

BY: 

Edward K Blodnick, President

AGREED & ACCEPTED:  
MEDICAL CAPITAL CORPORATION

BY: 

Joseph Lampariello, President

EKB:dm