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

16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 v.

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

24 Defendants.

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

**RECEIVER'S REPLY TO
OPPOSITION OF DEFENDANTS
FIELD AND LAMPARIELLO TO
MOTION FOR APPROVAL OF SALE
OF LOANS MADE TO
INTEGRATED HEALTHCARE
HOLDINGS, INC., AND RELATED
RELIEF**

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

1 Thomas Seaman ("Receiver"), Court-appointed permanent receiver for
2 Medical Capital Holdings, Inc., Medical Capital Corporation, and Medical Provider
3 Funding Corporation VI, and their subsidiaries and affiliates ("Receivership
4 Entities"), hereby replies to the opposition ("Opposition") of Defendants Sidney M.
5 Field and Joseph J. Lampariello ("Defendants") to the Receiver's motion for order
6 approving sale of loans ("Loans") made to Integrated Healthcare Holdings, Inc.
7 ("IHHI") to KPC Resolution Company, LLC ("Purchaser"), and related relief ("Sale
8 Motion").

9 **I. INTRODUCTION**

10 Defendants fail to present any evidence in support of their opposition.
11 Accordingly, the evidence supporting the Sale Motion, in the form of the
12 Declarations of Thomas Seaman ("Seaman Declaration"), Michael Meisenbach and
13 Alex Choi, is uncontroverted. Defendants, who originated the Loans and whose
14 actions contributed to their current distressed status, make several speculative and
15 sometimes contradictory arguments in the Opposition, but fail to set forth any
16 reasonable basis for denying the relief requested in the Sale Motion. Rather than
17 adopt Defendants' "modus operandi" of free spending of investors' money and
18 pursuit of high risk strategies, the Receiver has carefully and efficiently analyzed the
19 options for disposition of the Loans and chosen the course of action most likely to
20 return the highest amount of money to the estate. The undisputed evidence shows
21 that the proposed sale is in the best interests of the receivership estate and the Sale
22 Motion should be granted.

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II. ARGUMENT

A. A Third Party Expert Opinion Is Not Warranted Under the Circumstances.

Defendants complain that the Sale Motion is not supported by healthcare industry expert opinions on the value of the Loans and how they should be sold.¹ As discussed in the Sale Motion and Seaman Declaration, the substantial expense of obtaining such opinions is not warranted.

To begin with, any appraisal is simply a projection of what hypothetical buyers might pay for an asset. As an indicator of market value, an appraisal is inherently less reliable than offers from actual buyers obtained by broadly and intelligently marketing the asset. For this reason, 28 U.S.C. § 2001 requires appraisals for private sales, but not for public sales that include an overbid and auction process, such as the sale here. Furthermore, appraising loans is inherently more speculative than appraising real estate. In appraising real estate, there are readily available indicators of value such as comparable sales, price per square foot and available inventory in the geographic area that are used to project sale price. In appraising loans, one has to independently assess the borrower's ability to pay, potential lender liability and litigation relating thereto, foreclosure costs and the value of real estate and other collateral.

Here, the ordinary challenges in accurately appraising loans are increased dramatically by the circumstances surrounding the Loans to IHHI. As discussed in the Seaman Declaration (¶¶ 17-21), IHHI has asserted claims against the Receivership Entities for the return of amounts allegedly over-swept, compensatory and punitive damages, prejudgment interest and attorney fees. As with all litigation, it is impossible to predict the outcome of this potential litigation with any certainty.

¹ It should be noted that the Receivership Entities' files pertaining to the Loans do not contain an appraisal of the senior Loan performed at any time. Defendants make no mention of such an appraisal in their Opposition. Defendants attempted to sell the senior Loan in 2008.

1 Further, the history of the Loans, including forbearances, credit expansions
2 and refinancing, indicates that IHHI may not be able to repay them. IHHI has not
3 made any loan payments to the Receivership Entities since October 2008. Financial
4 statements recently filed with the SEC by IHHI indicate that IHHI had a loss of
5 \$1.52 million for the nine-month period ending December 31, 2009. Based on his
6 experience as a receiver involving similar disputes between lenders and borrowers,
7 the Receiver believes that a bankruptcy filing by IHHI is likely if the Receiver
8 commences foreclosure proceedings rather than sell the Loans.

9 Litigation with IHHI and/or a bankruptcy filing not only has the potential to
10 substantially reduce the amount due on the Loans, but would also likely cause
11 considerable delay and expense in collection, and could negatively impact the value
12 of the primary collateral – the hospital properties – which is directly linked to the
13 continued existence of operating hospitals. The delay resulting from litigation
14 and/or bankruptcy adds to the uncertainty regarding collection through foreclosure,
15 which would be affected by the Orange County commercial real estate market and
16 the availability of credit in this price range at the time the foreclosure is completed.

17 The uncertainty surrounding (a) the amount due on the Loans, (b) IHHI's
18 ability to repay them, (c) the timing of completing a foreclosure on the hospital
19 properties, (d) the potential reduction in value of the collateral due to litigation
20 and/or bankruptcy, and (e) the market conditions when a hypothetical buyer of the
21 Loans would eventually be able to sell the hospital properties makes any appraisal
22 of the Loans extremely speculative. Seaman Declaration ¶ 21. Accordingly, the
23 substantial expense associated with obtaining an outside appraisal is not warranted.

24 Furthermore, even if an accurate appraisal of the Loans were possible, the
25 most qualified person to render such an opinion would be a federal and state court
26 receiver or bankruptcy trustee with experience and expertise in disposing of
27 distressed assets. The Receiver has 21 years of experience in the insolvency
28 industry, including as a federal and state court receiver, and a financial analyst for a

1 chapter 11 bankruptcy trustee and examiner. Seaman Declaration ¶ 3. The Receiver
2 has extensive experience in disposing of distressed assets, including loans and assets
3 in the healthcare industry. Accordingly, the Receiver is qualified to render an expert
4 opinion on whether the proposed sale reflects fair market value for the Loans. His
5 testimony supporting the proposed sale is uncontroverted. The overbid process
6 provides further assurance that the Loans are not being sold under market value.

7 For the same reasons, the Receiver and Michael Meisenbach of Lee &
8 Associates, a licensed, experienced broker ("Broker"), have the necessary
9 qualifications and expertise to determine the best, most cost-effective methods for
10 marketing the Loans. Defendants cannot articulate a single way in which the
11 Receiver's marketing of the Loans is insufficient.

12 **B. The Receiver Has Properly Calculated the Loan Balances**

13 Defendants complain that the amounts stated as being due on the Loans are
14 not in precise numbers and it is not clear whether they include interest and
15 applicable fees. As discussed in the Sale Motion, IHHI has alleged that the
16 Receivership Entities over-swept approximately \$12.1 million from the relevant
17 lockbox account. There is a related credit in the amount of approximately
18 \$7.35 million showing on the Receivership Entities' books and records. IHHI has
19 stated that it has suffered compensatory damages of \$13.3 million, and has
20 demanded an unspecified amount of punitive damages, interest and attorney fees.
21 Of course, the amount due on the Loans, alleged over-sweeping, offsets and
22 damages are disputed and are the subject of potential litigation with IHHI. The facts
23 necessary to resolve these issues would have to be determined through discovery
24 and trial. With such large amounts unresolved, calculating amounts due on the
25 Loans down to the dollar is not feasible.

26 However, assuming that the amounts over-swept are permitted to be offset
27 and that it is determined that IHHI is not in default under the Loans, as of
28 December 31, 2009, the following amounts would have been due:

Loan	Amount Due
First Credit Facility \$45 million term loan	\$45,000,000.00
First Credit Facility \$35 million non-revolving LOC	\$30,031,371.55
Second Credit Facility \$10.7 million term loan	\$5,968,268.02
Third Credit Facility \$50 million revolving LOC	(\$7,353,287.29)
Total	\$73,646,352.31

With respect to interest and fees, if an offset is permitted for interest payments from the amounts allegedly over-swept, then as of December 31, 2009, the Loans were current (i.e. no interest or fees due).

C. The Sale Price Is Appropriate Under the Circumstances

With respect to the proposed sale price, Defendants say only that there is no showing that a sale with a significant discount is warranted rather than "holding the loans for collection." Opposition, p. 1. To the contrary, the Seaman Declaration discusses at considerable length the claims asserted by IHHI, and the risks, delay and reduction in collateral value associated with litigation and a potential bankruptcy filing by IHHI. The Receiver's analysis supports the proposed sale as a superior option to holding the Loans.

As of December 31, 2009, the remaining credit showing on the books and records of the Receivership Entities that relates to the alleged over-sweeping was approximately \$7.35 million. If this amount is permitted to be offset against the principal balance, the amount due on the Loans would be reduced from approximately \$81 million to approximately \$73.6 million. Furthermore, IHHI has stated that it has suffered compensatory damages of approximately \$13.3 million, and has demanded an unspecified amount of punitive damages, interest and attorney fees. IHHI will likely assert that any and all damages, interest and fees awarded to IHHI should be offset against (or recouped from) the amount due on the Loans, and

1 therefore would reduce the amount due dollar for dollar. The receivership estate
2 would also incur significant attorney fees and costs in connection with this
3 litigation. Therefore, if IHHI prevailed in any such litigation, the net loss to the
4 receivership estate could easily exceed \$20 million.

5 The Loans mature in October 2010.² Therefore, once the litigation is
6 resolved, and assuming a judicial determination is made regarding the amount
7 owing on the Loans, that amount would be due in full. IHHI would have to obtain
8 new financing to pay off the Loans in an extremely tight credit market after
9 reporting an operating loss of \$1.52 million for the nine month period ending
10 December 31, 2009. If IHHI were unable to obtain such financing, the Receiver
11 would have to foreclose, including, if IHHI is in bankruptcy, obtaining relief from
12 the automatic stay in order to do so. Similar to a bankruptcy filing, a foreclosure
13 action by the Receiver would substantially damage the value of the primary
14 collateral – the hospital properties – which is directly linked to the continued
15 existence of operating hospitals. It is also possible that the Receiver would be
16 forced to operate the hospitals at great expense until they could be sold.
17 Accordingly, it is very possible that foreclosure and subsequent sale of the hospital
18 properties by the Receiver would generate a recovery far short of the current amount
19 owed on the Loans.

20 The proposed sale provides an immediate, all cash recovery of \$55 million
21 and a release by IHHI. The risks, interest earned on \$55 million that would be lost
22 during the delay,³ and litigation costs more than justify the discount. Defendants
23 present no evidence to the contrary. As noted above, the overbid process provides
24 assurance that the Loans are not being sold under market value.

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26 ² IHHI has the option to extend the maturity of the first credit facility for one year
27 if the second and third credit facilities are fully paid off as of October 2010.
28 ³ The current interest rate for a three-year, fixed rate certificate of deposit is
approximately \$1.8%. Applying this rate, and assuming a three year delay in
collection due to litigation and/or bankruptcy, the lost interest on \$55 million
would be approximately \$3 million.

1 **D. The Release From IHHI Has Significant Value**

2 Without any support or explanation, Defendants question the value of the
3 release by IHHI and whether Purchaser will be able produce the release. As stated
4 in the Sale Motion, Dr. Chaudhuri (the owner of Purchaser) holds a substantial
5 interest in IHHI. Purchaser has represented that it has the ability to produce the
6 required release from IHHI and has deposited \$2 million into escrow that is non-
7 refundable if it fails to do so. Moreover, the sale is conditioned on Purchaser
8 producing the release; if Purchaser fails to do so, the receivership estate will retain
9 the \$2 million deposit, the sale to KPC will not close, and the Receiver will
10 negotiate sale terms with other interested parties.

11 **E. Defendants' Pre-Receiverhip Marketing Efforts Are Relevant**

12 Defendants argue that their pre-receivership efforts to sell the senior
13 \$45 million Loan for \$35 million (77% of the amount owed) are not an indicator of
14 market value because they intended to retain a right to repurchase the Loan. This
15 argument lacks merit. With any sale, there is risk that the buyer will become
16 insolvent or otherwise unable to perform its promise to sell the Loan back.
17 Defendants would not have offered the senior Loan for sale at substantially under
18 market value simply because they intended to retain a right to repurchase it. If the
19 actual value was \$45 million, then why wouldn't Defendants sell the loan for
20 \$45 million and buy it back for \$47 million? No explanation is provided.
21 Furthermore, the Receiver was contacted by a number of times after his appointment
22 by parties interested in buying the \$45 million senior Loan. The purchase prices
23 informally discussed were all in the same price range as the pre-receivership offers.
24 Seaman Declaration ¶ 18.

25 The Receiver did not use the 77% figure in calculating the value of the Loans
26 reflected by pre-receivership marketing efforts, but a more conservative 85% figure.
27 85% of the approximately \$81 million due on the Loans as of December 31, 2009 is
28 approximately \$68.85 million. This calculation represents a conservative, high

1 estimate of value as the junior Loans have inherently less value than the senior
2 Loan. This estimate would be reduced by approximately \$7.35 million to
3 approximately \$61.5 million if amounts allegedly over-swept are permitted to be
4 offset. The value of the Loans is reduced further by the costs, delay and risk
5 associated with litigation, a potential bankruptcy filing by IHHL, and deterioration in
6 the value of the collateral that a buyer of the Loans would necessarily assume.
7 Again, the overbid process ensures that the Loans are not being sold under market
8 value.

9 **F. The Overbid Procedures Are Reasonable**

10 The overbid procedures were approved by order entered on February 11,
11 2010, a full week after the Receiver's Ex Parte Application for approval of them was
12 filed. Defendants did not file opposition to the Ex Parte Application. They should
13 not be permitted to contest the overbid procedures after the fact.

14 Even if Defendants had timely opposed the overbid procedures, their
15 argument that the Receiver has required too little proof of ability to close from
16 Purchaser and too much proof from potential overbidders lacks merit.

17 On January 15, 2010, Purchaser deposited \$2 million into escrow, which
18 amount is non-refundable if the sale is approved and it fails to close. This
19 substantial, non-refundable deposit is a strong indication of Purchaser's ability to
20 close. In contrast to the very short period during which potential overbidders are
21 required to post the full minimum overbid amount (discussed below), Purchaser has
22 been required to deposit \$2 million for at least 65 days. Additionally, Purchaser was
23 required to produce financial statements for the Receiver's review.

24 The overbid procedures require that overbidders post the required \$57 million
25 minimum overbid for a very short period of time – from 5:00 p.m. on Wednesday,
26 March 17th until the sale hearing at 8:30 a.m. on Monday, March 22nd, roughly two
27 business days. Further, a successful overbidder would have to provide the full
28 purchase price, in cash, just a few days after the hearing to close the transaction.

1 These very short periods should not deter any legitimately interested party capable
2 of making an overbid from doing so. Accordingly, the argument that the overbid
3 procedures favor Purchaser over potential overbidders lacks merit. Moreover, there
4 are sound business reasons for requiring a cashier's check, cash deposit or
5 irrevocable letter of credit rather than a statement from a financial institution. With
6 the first three, the cash must remain immediately available until the highest and best
7 bid is determined by the Court. This adds certainty and finality to the sale process.

8 **G. Broker's Proposed Compensation is Reasonable**

9 After complaining that the Receiver has not spent enough of the investors'
10 money on opinions of the value of the Loans and how to market them, Defendants
11 argue that the Receiver proposes to pay Broker too much. As discussed above, the
12 best indicators of market value are actual offers from actual potential buyers.
13 Accordingly, broadly publicizing the opportunity and promoting overbids is a more
14 productive use of receivership resources than expensive, speculative projections of
15 what a hypothetical buyer might pay for an unstable asset, such as these hospital
16 properties.

17 Broker has devoted substantial resources to publicizing the opportunity,
18 responding to inquiries and attempting to generate qualified overbids. This is not a
19 simple transaction. The alleged over-sweeping and potential litigation add
20 substantial complexity and uncertainty to the deal. As a result, as interested parties
21 try to better understand the relevant facts and risks, they have more questions and
22 demand more of Broker's time than would typically be required. Under these
23 circumstances, a flat fee of \$50,000 is appropriate in the event that the sale to
24 Purchaser is approved and closes. With respect to the proposed 10% commission if
25 any overbid is approved by the Court, the Defendants present no evidence indicating
26 that this amount is inconsistent with what similarly qualified brokers would charge.
27 Accordingly, the Receiver's testimony in support of the commission is
28 uncontroverted and the commission should be approved.

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III. CONCLUSION

For the foregoing reasons, the Sale Motion should be granted and the proposed sale approved.

Dated: March 8, 2010

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates
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