

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

LONG BEACH MEDICAL CENTER, et al.¹

Chapter 11

Case Nos.: 14-70593-ast

14-70597-ast

(Jointly Administered)

Debtors.

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**ORDER PURSUANT TO 11 U.S.C. §§ 105(A) AND 331
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION
AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

Upon consideration of the motion (the “**Motion**”)² of Long Beach Medical Center (“**L BMC**”) and Long Beach Memorial Nursing Home, Inc. d/b/a The Komanoff Center for Geriatric and Rehabilitative Medicine (“**Komanoff**”) (each a “**Debtor**” and collectively the “**Debtors**”) dated February 19, 2014, seeking entry of an Order, pursuant to sections 105(a) and 331 of title 11 of the United States Code (as amended, the “**Bankruptcy Code**”), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), establishing procedures for monthly compensation and reimbursement of expenses of professionals retained by order of this Court; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157; and it appearing that proper and adequate notice of the Motion having been provided and it appearing that no other or further notice of the Motion need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors and all parties

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number include: Long Beach Medical Center (5084) and Long Beach Memorial Nursing Home, Inc. dba The Komanoff Center for Geriatric and Rehabilitative Medicine (3422).

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

in interest; and the Court having reviewed the Motion, the Melzer Affidavit; and upon the record of the hearing before the Court held on March 10, 2014 (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion, the Melzer Affidavit, and at the Hearing establish just cause for the relief granted herein; and upon all of the prior proceedings had before the Court; and upon the representation of the Debtors that the estates are administratively solvent and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED, that the Motion is granted to the extent set forth herein; and it is further

ORDERED, that except as otherwise may be provided in Court orders authorizing the retention of specific professionals, all professionals in these cases may seek monthly compensation in accordance with the following procedure:

(a) On or before the twentieth (20th) day of each month following the month for which compensation is sought, each Professional seeking compensation under this Order will serve a monthly statement (the “**Monthly Fee Statement**”) for professional services rendered and reimbursement of expenses incurred during the relevant compensation period, by hand or overnight delivery, on the following service parties (the “**Service Parties**”):

- (1) Debtors: Long Beach Medical Center, 455 E. Bay Drive, Long Beach, NY 11561, Attn: Douglas Melzer;
- (2) Counsel to the Debtors: Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, New York 11021; Attn: Burton S. Weston, Esq., Afsheen A. Shah, Esq., and Adam T. Berkowitz, Esq.;
- (3) Counsel to the Committee: Klestadt & Winters, LLP, 570 Seventh Avenue, 17th Floor, New York, NY 10018, Attn: Sean Southard, Esq.;

- (4) Counsel to South Nassau, Proskauer Rose, LLP, Eleven Times Square, New York, New York 10003, Attn: Richard J. Zall, Esq. and Togut, Segal & Segal, One Penn Plaza, New York, New York 10119, Attn: Frank Oswald, Esq. and Scott Griffin, Esq.; and
 - (5) Office of the United States Trustee for the Eastern District of New York, Alfonse D'Amato Federal Courthouse, 560 Federal Plaza, Central Islip, New York 11722-4456, Attn: Alfred M. Dimino, Esq., Assistant U.S. Trustee;
- (b) The monthly statement need not be filed with the Court and a courtesy copy need not be delivered to the presiding judge's chambers, because this Order is not intended to alter the fee application requirements outlined in §§ 330 and 331 of the Code and because professional are still required to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Code, the Federal Rules of Bankruptcy Procedures and the Local Rules for the United States Bankruptcy Court, Eastern District of New York;
- (c) Each Monthly Fee Statement must contain a list of the individuals and their respective titles (e.g. attorney, accountant or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, a reasonably detailed breakdown of the disbursements incurred (no Professional should seek reimbursement of an expense which would otherwise not be allowed pursuant to the U.S. Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, issued May 17, 1996 as amended from time to time) and contemporaneously maintained time entries for each individual in increments of tenths (1/10) of an hour;

- (d) Each person receiving a statement will have at least fifteen (15) days after its receipt to review it and, in the event he or she has an objection to the compensation or reimbursement sought in a particular Monthly Fee Statement, such party shall, by no later than the thirty fifth (35th) day following the month for which compensation is sought, serve upon the professional whose statement is objected to, and the other persons designated to receive statements in paragraph (a), a written “Notice of Objection to Fee Statement” setting forth the nature of the objection with particularity and the amount of fees or expenses at issue;
- (e) At the expiration of the thirty five (35) day period, the Debtors shall promptly pay eighty percent (80%) of the fees and one hundred percent (100%) of the expenses identified in each Monthly Fee Statement to which no objection has been served in accordance with paragraph (d) above;
- (f) If the Debtors receive an objection to a particular fee statement, they shall withhold payment of that portion of the fee statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in paragraph (e);
- (g) If the parties to an objection are able to resolve their dispute following the service of a Notice of Objection to Fee Statement, and if the party whose Monthly Fee Statement was objected to serves and files on all of the parties listed in paragraph (a), a statement indicating that the objection has been withdrawn and describing in detail the terms of the resolution, then the Debtors shall promptly pay, in

accordance with paragraph (e), that portion of the Monthly Fee Statement which is no longer subject to an objection;

- (h) All objections that are not resolved by the parties shall be preserved and presented to the Court at the next interim or final fee application hearing to be held by the Court. See paragraph (j) below;
- (i) The service of an objection in accordance with paragraph (d) shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground, whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Fee Statement shall not be a waiver of, or constitute prejudice to, that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code;
- (j) Approximately every 120 days, but no less frequently than 150 days, each of the Professionals shall serve and file with the Court an application for interim or final Court approval and allowance, pursuant to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested;
- (k) Any Professional who fails to file an application seeking approval of compensation and expenses previously paid under this Order within the time frame set forth in subparagraph (j) above shall (1) be ineligible to receive further monthly payments of fees or expenses as provided herein until further order of the Court and (2) may be required to disgorge any fees paid since retention or the last

fee application (or if no fee application has been filed by such professional, since retention);

- (l) The pendency of an application or a Court order that payment of compensation or reimbursement of expenses was improper shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court;
- (m) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein, shall have any effect on the Court's interim and final allowance of compensation and reimbursement of any Professional;
- (n) Counsel to each official Committee may, in accordance with the foregoing Compensation Procedures, collect and submit statements of expenses, with supporting vouchers, from members of the applicable Committee he or she represents; and it is further

ORDERED, that each professional may seek, in its first request for compensation and reimbursement of expenses pursuant to this Order, compensation for work performed and reimbursement for expenses incurred during the period beginning on the petition date and ending on the date that is no less than 120 days thereafter; and it is further

ORDERED, that the amount of fees and disbursements sought be set out in U.S. dollars (if the fees and disbursements are to be paid in foreign currency, the amount shall be set out in

U.S. dollars and the conversion amount in the foreign currency, calculated at the time of the submission of the application); and it is further

ORDERED, that the Debtors shall include all payments to professionals on their monthly operating reports, detailed so as to state the amount paid to each of the professionals; and it is further

ORDERED, that any party in interest may file a motion seeking modification or suspension of monthly payment to professionals pursuant to this order on any applicable grounds, including that the Debtors have not timely filed monthly operating reports or remained current with their administrative expenses and 28 U.S.C. § 1930 fees, and in such event no further payments shall be made pursuant to this Order until such motion is resolved; and it is further

ORDERED, that monthly payments to professionals pursuant to this Order may be suspended by the Court *sua sponte*; and it is further

ORDERED, that all time periods set forth in this Order shall be calculated in accordance with Federal Rule of Bankruptcy Procedure 9006(a); and it is further

ORDERED, that the Debtors shall serve a copy of this Order on all entities specified in paragraph (a) hereof, and any and all other and further notice of the relief requested in the Motion shall be, and hereby is, dispensed with and waived.

Dated: March 19, 2014
Central Islip, New York





Alan S. Trust
United States Bankruptcy Judge