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Hearing Date: September 13, 2013 at 10:00 a.m. Objection Deadline: August 7, 2013 at 4:00 p.m.

Susan F. Balaschak, Esq. (SFB 1901) Eric Olson, Esq. AKERMAN SENTERFITT LLP 666 Fifth Avenue, 20th Floor New York, New York 10103

Counsel to Children's and Women's Physicians of Westchester, L.L.P.

UNITED STATES BANKRU SOUTHERN DISTRICT OF 1	NEW YORK	
In re		Chapter 11
SOUND SHORE MEDICAL OF WESTCHESTER, et al.,	CENTER	Case No. 13-22840-RDD
	Debtor.	
		

CHILDREN'S & WOMEN'S PHYSICIANS OF WESTCHESTER, L.L.P.'S MOTION FOR ENTRY OF AN ORDER: (I) DEEMING EXECUTORY CONTRACT REJECTED; OR ALTERNATIVELY(II) COMPELLING DEBTOR TO ASSUME OR REJECT THE EXECUTORY CONTRACT

Children's & Women's Physicians of Westchester, L.L.P ("CWPW"), by and through its undersigned counsel and pursuant to 11 U.S.C. § 365, hereby requests this Court enter an Order deeming the Contract (as defined herein) rejected, or, alternatively, compelling Sound Shore Medical Center of Westchester, one of the Debtors herein (the "Debtor") to assume or reject the Contract (the "Motion").¹

This motion is without prejudice to CWPW's rights to file a motion to lift the stay to allow CWPW to terminate the Contract on any and all applicable grounds and to seek an emergency hearing on an expedited basis.

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JURISDICTION AND VENUE

This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

SUMMARY

The Debtor may not assume or assign the Contract (as defined herein), unless CWPW consents to such assumption or assignment. CWPW has no intention of consenting to any assumption or assignment of the Contract; nor is CWPW required to consent. Section 365 of the Bankruptcy Code and case law in this Circuit provides that CWPW is excused from accepting performance from or rendering performance to, an entity other than the Debtor, as the Contract between the Debtor and CWPW relied upon both the personal services and the skill of the individual physicians named in the Contract, as well as the high level of personal trust and confidence by and between CWPW and the Debtor. As a result of this high level of personal trust and confidence, the Debtor and CWPW have performed under a Contract that lacks detailed terms of the performance to be provided by both and have simply performed, as each have requested from time to time. It would be manifestly unfair to compel CWPW, a nondebtor third party, to accept performance from or render performance to anyone other than the Debtor, absent CWPW's consent. To do so would require CWPW to provide services to a third party with whom it has no relationship under a Contract lacking material provisions protecting CWPW's interests.

Alternatively, under the circumstances the Debtor has had sufficient time and professional support to determine whether to assume or reject the Contract. Simply put, in order for the Debtor to maintain a Level Three Neonatal Clinic status, CWPW's Contract must be assumed so that the Debtor has the highly specialized and skilled physicians and tools such status

requires. The Debtor must know by now whether a sale of its assets that includes a Level Three Neonatal Clinic status will add value or diminish the value of its assets. For many months prior to the Petition Date, the Debtor marketed its assets and was in serious discussion with, at least one other potential buyer. In addition, its discussions with Montefiore, the current prospective buyer were well under way before the Petition Date. Absent an immediate decision by the Debtor as to whether it intends to assume or reject the Contract, a substantial number of the physicians employed by CWPW to provide highly specialized services to the Debtor will no longer be available. A number of these physicians have told CWPW that they are looking for employment elsewhere because of the uncertainty created by the Debtor's delay in making the decision. They are loyal, highly trained specialist who are willing to stay with CWPC, if the Contract is assumed and the buyer is able to provide adequate assurance of future performance. They are not prepared to stay not knowing if, and for how long they will be employed. Once the physicians terminate their relationship with CWPW, it will be extremely difficult and costly - if not impossible to replace these physicians and thus, CWPW will not be able to perform under the Contract. Clearly, an untenable situation. If the Contract is assume quickly, before physicians leave, CWPW will be able to perform. If it is rejected, CWPW will be free to try to contract with another party to allow for its physicians to continue to be employed or free, given it will no under the Contract, to allow the physicians to leave. What is longer be obligated to perform untenable is the harm that CWPW faces, harm which is far in excess of any risk the Debtor faces from having to make this decision sooner rather than later. Most notable, CWPW faces the loss of exceptionally skilled and well trained neonatal clinicians to (potentially) CWPW's competitors, the reputational harms, and the potential malpractice issues arising from possible coverage issues. Thus, if this Court does not grant the relief requested herein, CWPW faces the risk of substantial harm, far beyond the compensation available under the Bankruptcy Code.²

BACKGROUND FACTS

- 1. On May 28, 2013 (the "Petition Date") the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code.
- 2. Prior to the Petition Date, CWPW and the Debtor entered into an ongoing clinical arrangement, beginning as early as June 27, 2008 and continuing through the present. *See* Declaration of Edmund LaGamma attached hereto as **Exhibit "A"** ("<u>LaGamma Dec.</u>") at ¶ 6-9.
- 3. CWPW, a New York limited liability partnership, is a private medical services group that currently employs over 250 physicians, plus other professionals and administrative staff. CWPW provides comprehensive inpatient and outpatient care to infants, children, and adolescents throughout the greater New York metropolitan area, extending from New York City through the Hudson Valley, and into parts of Connecticut and New Jersey. CWPW's physicians care for low and high risk newborns, as well as mildly to seriously ill children, with a broad range of medical conditions. *See* LaGamma Dec. at ¶ 3.
- 4. One of CWPW's specialties is neonatology, also known as newborn or neonatal-perinatal medicine. CWPW operates a network of neonatal intensive care programs at nine hospitals, and coordinates the largest high risk neonatal follow-up program in New York State, with four outpatient locations. See LaGamma Dec. at ¶ 4.
- 5. CWPW's regional neonatology section currently consists of 26 full-time and four part-time physicians (not counting affiliated faculty and staff). See LaGamma Dec. at ¶ 4.

² It is CWPW's understanding that Montefiore Hospital, the potential purchaser has its own neonatal service providers and will not need the services of CWPW's neonatal clinicians.

- 6. The Debtor is a 252-bed, community-based teaching hospital offering primary, acute, emergency and long-term health care to the residents of southern Westchester county. The Debtor is a major teaching affiliate of New York Medical College and member of the Sound Shore Health System, and is one of only two southern Westchester County medical centers designated by New York State as a perinatal hospital with a Level Three Neonatal Intensive Care Unit.
- 7. In June of 2007, CWPW and the Debtor entered into a letter agreement dated June 27, 2008 (the "2008 Letter Agreement") confirming ongoing clinical arrangement between CWPW and the Debtor. CWPW provides the clinical services necessary for the Debtor to operate as a Level Three Neonatal Intensive Care Unit. See LaGamma Dec. at ¶ 6.
- 8. The 2008 Letter Agreement provided that the Debtor monthly pay CWPW \$49,178.28 (the "Monthly Payment") for certain enumerated neonatology clinical services (the "Clinical Services"), which included the placement of select physicians with the Debtor. See LaGamma Dec. at ¶ 7.
- 9. On October 11, 2011, CWPW and the Debtor agreed, in exchange for enhanced Clinical Services, including the addition of a full time board certified neonatologist, to increase the Monthly Payment to \$69,178.28 effective upon September 1, 2011. This agreement was confirmed by CWPW's letter to the Debtor dated October 18, 2011. See LaGamma Dec. at ¶ 8.
- 10. A true and correct copy of the existing contract by and between the Debtor and CWPW (the "Contract") comprised solely of the two letter agreements dated, respectively, June 27, 2008 and October 11, 2011 is attached hereto and incorporated herein as **Exhibit** "B."
- 11. The Contract contains few material terms and conditions. In fact, the Contract, in essence, references with specificity only the identities of the physicians selected to perform

CWPW's onsite clinical services to the Debtor as well as the monthly and yearly cost for same. *See* LaGamma Dec. at ¶ 10.

- 12. CWPW, in turn, has contracts with select neonatal clinicians who provide the medical services necessary for the Debtor to operate as a Level Three Neonatal Intensive Care Unit. See LaGamma Dec. at ¶ 12.
- 13. Prior to the Petition Date, the Debtor defaulted under its Contract with CWPW by failing to make its Monthly Payments for Clinical Services rendered by CWPW to the Debtor. See LaGamma Dec. at ¶ 13.
- 14. As of May 28, 2013, the Debtor owes CWPW approximately \$692,868.00. See LaGamma Dec. at ¶ 13.
- 15. It is CWPW's understanding that the Debtor intends to sell substantially all of its assets to Montefiore Hospital. Montefiore Hospital has its own neonatal service providers and may not require the services of CWPW's neonatal clinicians. *See* LaGamma Dec. at ¶ 14.
- 16. Frustrated by the uncertainty of their continued employment, CWPW's neonatal clinicians are starting to seek employment opportunities elsewhere. *See* LaGamma Dec. at ¶ 15 21.

MOTION AND INCORPORATED MEMORANDUM OF LAW

CWPW seeks entry of an Order from this Court deeming the Contract rejected as the Contract is a personal services contract incapable of being assumed and assigned by the Debtor. Alternatively, the Debtor seeks entry of an Order by this Court compelling the Debtor to assume or reject the Contract.

I. THE CONTRACT IS AN EXECUTORY CONTRACT THAT THE DEBTORS MAY NOT ASSUME OR ASSIGN

- 1. Section 365 of the Bankruptcy Code allows a debtor to assume or reject executory contracts, subject to court approval. *See* 11 U.S.C. § 365(a). While the Bankruptcy Code does not define "executory," the legislative history of section 365 indicates that the term "generally includes contracts on which performance remains due to some extent on both sides." H.R. Rep. No. 95-595, at 347 (1977), reprinted in 1978 U.S.C.A.A.N. 5963, 6303.
- 2. To determine whether a contract is executory, most courts in this jurisdiction follow the "Countryman" definition, which defines an executory contract as "one that is not so fully performed that a breach by either side would constitute a material breach of the contract." See, e.g., In re Helm, 335 B.R. 528, 534 (Bankr. S.D.N.Y. 2006); In re Teligent, Inc., 268 B.R. 723, 730 (Bankr. S.D.N.Y. 2001).
- 3. "In addition to the Countryman definition, [some] courts have articulated the 'some performance due' test, as well as the 'functional approach' to executoriness. *See generally In re Riodizio*, 204 B.R. 417 (Bankr. S.D.N.Y. 1997). The Countryman definition is generally accepted as the most stringent test, *see Teligent*, 268 B.R. at 732, and thus, if a contract is executory under that standard, the contract is necessarily executory under the other two approaches. *Id.*" *Helm*, 335 B.R. at 535 (footnotes omitted).
- 4. Since the Contract satisfies the Countryman definition, it is unnecessary to address any other test. The Contract is unquestionably an executory contract within the meaning of section 365 of the Bankruptcy Code. Significant performance remains due from both CWPW and the Debtor such that either party's failure to perform would constitute a material breach.
- 5. Section 365(a) of the Bankruptcy Code provides that the Debtor, subject to the Court's approval, may assume or reject any executory contract. 11 U.S.C. § 365(a).

- 6. Section 365(f) of the Bankruptcy Code provides that an executory contract is assignable unless it falls under the narrow exception provided in Section 365(c) of the Bankruptcy Code. 11 U.S.C. § 365(f).
- 7. Certain contracts are incapable of assumption and/or assignment under Section 365. Specifically, pursuant to Section 365(c)(1) of the Bankruptcy Code, those contracts to which applicable law excuses the nondebtor party from accepting performance from, or rendering performance to, an entity other than the debtor or the debtor in possession, cannot be assumed or assigned unless the nondebtor party consents. 11 U.S.C. § 365(c)(1).
- 8. The prototypical example of the kind of contract that may not be assumed or assigned if applicable law would excuse a party from rendering performance is the so-called personal service contract, which is a contract entered into on the basis of the character, reputation, taste, skill, or discretion of the party that is to render performance. *In re Catron*, 158 B.R. 624 (Bankr. E.D. Va. 1992), *judgment aff'd*, 158 B.R. 629 (E.D. Va. 1993), *aff'd*, 25 F.3d 1038 (4th Cir. 1994).

A. THE CONTRACT IS A PERSONAL SERVICES CONTRACT, THUS, PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE, CWPW CANNOT BE FORCED TO ACCEPT PERFORMANCE FROM, OR RENDER PERFORMANCE TO, AN ENTITY OTHER THAN THE DEBTOR

- 1. The non-assignability of personal service contracts is firmly established under New York law. *In re Compass Van & Stor. Corp.*, 65 BR 1007, 1010 (Bankr E.D.N.Y. 1986). The general rule has been extended to encompass contracts with corporations as well as individuals. *Id.*
- 2. Under New York law, a personal service contract is a contract under which the parties' respective duties are "so unique" that the obligee under the contract has a "substantial

interest" in having the original obligor perform, rendering the contract non-delegable. *Id.* at 1011.

- 3. In other words, personal service contracts (including those that are based on a relationship of personal confidence and trust) are contracts under which the parties rely on "qualities such as the character, reputation, skill, or discretion of the party that is to render" performance. See Metro. Airports Comm'n. v. N.W. Airlines, Inc. (In re Midway Airlines, Inc.), 6 F.3d 492, 495 (7th Cir. 1993) ("The paradignatic example of [a personal service contract is] a contract entered into on the basis of 'the character, reputation, taste, skill or discretion of the party that is to render [performance].""); Farnsworth, Contracts § 11.10 at 744 (3d ed. 1999) (stating "personal" contracts are those which "the recipient must rely on qualities such as the character, reputation, taste, skill, or discretion of the party that is to render [performance]).
- 4. In this instant matter, the Contract at issue is nothing more than a compilation of letters memorializing a seemingly fluid agreement by and between CWPW and the Debtor. The nature, scope, and material terms governing the clinical services agreement are absent from the Contract. In fact, the <u>only</u> information made clear in the Contract is the identity of the physicians providing the Debtor with onsite neonatal clinical care and the monthly and yearly cost of same. See LaGamma Dec. at ¶ 10.
- 5. The Contract is akin to a personal service contract relying upon the personal services and skill of the individual physicians named, as well as the high level of personal trust and confidence by and between CWPW and the Debtor as the original contracting parties to the ContractIt is a result of the high level of personal trust and confidence between CWPW and the Debtor that allows for them "fill in" the material terms of the Contract as required during the course of their performance and as the circumstances require. See LaGamma Dec. at ¶ 11.

- 6. Courts have characterized an agreement to render professional services as a physician as personal service contracts. *See Roeder v. Ferrell-Duncan Clinic, Inc.*, 155 S.W.3d 76 (Mo. Ct. App. S.D. 2004; *In re Compass Van & Stor. Corp.*, 65 BR 1007, 1011 (Bankr. E.D.N.Y. 1986). Moreover, CWPW, in entering into such sparsely worded personal services contract, clearly relied upon the reputation of and its close relationship with the Debtor.
- 7. Finally, it is patently unfair in such a case to require CWPW, a nondebtor third party, to accept performance from, or render performance to anyone other than the Debtor, absent CWPW's consent. To do so would require CWPW to compel select physicians to provide specialized services to a third party, whether they want to or not, under the auspices of a Contract without any material provisions whatsoever protecting CWPW.
- 8. Such a result violates the premise of the statutory exception to the general rule of assignability of debtor's contracts, as the exception is designed to "protect nondebtor third parties whose rights may be prejudiced by having contract performed by entity other than the one with which parties originally contracted." *In re Grove Rich Realty Corp.*, 200 B.R. 502 (Bankr. E.D.N.Y. 1996). This instant matter is one of "those relatively rare cases where the realization of their [executory contracts] value gives rise to material prejudice to the contract counterparty." *In re Adelphia Communications Corp.*, 359 BR 65, 73 (Bankr S.D.N.Y. 2007).

B. SECTION 365(c)(1) APPLIES AS THE DEBTOR INTENDS TO SELL SUBSTANTIALLY ALL OF ITS ASSETS AND NOT ASSUME THE CONTRACT WITH CWPW FOR ITS OWN BENEFIT

- 1. Once a contract is found to be within the scope of Section 365(c)(1) of the Bankruptcy Code, a second issue arises as to whether Section 365(c)(1) prevents a debtor from assuming the contract for the benefit of the estate and the reorganized debtor.
- 2. Courts utilize two different approaches with respect to this issue under Section 365(c)(1) of the Bankruptcy Code. Under the "hypothetical test," Section 365(c)(1) prohibits the

assumption of any executory contract when applicable law prohibits the assignment of the particular contract, even if no such assignment is actually contemplated.³ Thus, under the "hypothetical test" the assumption of CWPW's Contract is precluded as New York state law prohibits the assignment of the Contract, regardless of whether or not the Debtor intends to assign the Contract.

3. In contrast, under the "actual test," Section 365(c)(1) applies only if the Debtor actually seeks to assign an executory contract that cannot be assigned under applicable non-bankruptcy law.⁴ Thus, under the "actual test" the assumption of CWPW's Contract is barred only if the Debtor is actually seeking to assign CWPW's Contract. The Debtor intends to sell itself as a going concern to Montefiore Hospital, an outside third party purchaser or to a higher or better bidder; clearly it does not intend to assume the Contract for its own benefit. The Debtor would only assume the Contract if it intended to assign the contract to a third party. While there

See RCI Tech. Corp. v. Sunterra Corp. (In re Sunterra Corp.), 361 F.3d 257, 271 (4th Cir. 2004) ("Without RCI's consent, Sunterra was precluded from assuming the Agreement."); In re O'Connor, 258 F.3d 392, 402 (5th Cir. 2001) ("Under Louisiana law, a partner cannot make a third person a member of the partnership without his partners' consent Appellees did not consent to substituting the Trustee for the Debtor. Accordingly, the district court correctly held the agreement was not assumable under § 365(c)(1)."): Cinicola v. Scharffenberger, 248 F.3d 110, 126 n.19 (3d Cir. 2001) ("In West, we held § 365(c)(1) created a 'hypothetical test' whereby an assignment of an executory contract was invalid if precluded by applicable law."); Perlman v. Catapult Entm't, Inc. (In re Catapult Entm't, Inc.), 165 F.3d 747, 754-55 (9th Cir. 1999) ("[W]e hold that, where applicable nonbankruptcy law makes an executory contract nonassignable because the identity of the nondebtor party is material, a debtor in possession may not assume the contract absent consent of the nondebtor party."); City of Jamestown v. James Cable Partners, L.P. (In re James Cable Partners, L.P.), 27 F.3d 534, 537 (11th Cir. 1994) ("The first condition presents a hypothetical question: Whether under applicable law the City is excused from accepting performance from a third party, that is a party other than James Cable as debtor or debtor in possession."); In re Grove Rich Realty Corp., 200 B.R. 502, 510 (Bankr. E.D.N.Y. 1996) ("It is well settled that when an executory contract is of such a nature as to be based upon personal services or skills, or upon personal trust or confidence, the debtor-in-possession or trustee is unable to assume or assign the rights of the bankrupt in such contract.").

See *Institut Pasteur v. Cambridge Biotech Corp.*, 104 F.3d 489, 493 (1st Cir. 1997) ("We rejected the proposed hypothetical test in Leroux, holding instead that subsection 365(c) and (e) contemplate a case-by-case inquiry into whether the nondebtor party ... actually was being 'forced to accept performance under its executory contract from someone other than the debtor party with whom it originally contracted."); *Summit Inv. & Dev. Corp. v. Leroux*, 69 F.3d 608, 613 (1st Cir. 1995) ("[S]ection 365(c)(1) presents no bar to [the] assumption of the Agreement."); *In re James Cable Partners, L.P.*, 154 B.R. at 815, affd, 27 F.3d 534 (11th Cir. 1994) ("This court agrees with the bankruptcy court and these courts and rejects the hypothetical test."); *In re Ontario Locomotive & Indus. Ry. Supplies, (U.S.) Inc.*, 126 B.R. 146, 148 (Bankr. W.D.N.Y. 1991) ("[T]his Court concludes ... that Congress did not intend to bar assumption of any contract as long as it will be performed by the debtor or debtor in possession.").

is no controlling Second Circuit authority, the Southern District of New York appears to favor the "actual test." *See In re Adelphia Communications Corp.*, 359 BR 65, 72 (Bankr. S.D.N.Y. 2007); *In re Footstar, Inc.*, 323 B.R. 566, 573 – 74 (Bankr. S.D.N.Y. 2005) as reiterated in *In re Footstar, Inc.*, 337 B.R. 785, 788 (Bankr. S.D.N.Y. 2005).

- 4. Such a distinction is moot, however, as the Debtor cannot assume CWPW's Contract under either the "hypothetical test", as the Contract is a personal services contract incapable of assumption, or the "actual test", as the Debtor will only assume the Contract if intends to assign the Contract.
- 5. Therefore, CWPW's Contract is neither assumable or assignable by the Debtor.

 As such, CWPW respectfully requests entry of an Order deeming its Contract rejected.

II. ALTERNATIVELY, THE COURT SHOULD COMPEL THE DEBTOR TO ASSUME OR REJECT THE CONTRACT

- 1. Alternatively, CWPW respectfully requests entry of an Order Compelling the Debtor to accept or reject the Contract.
- 2. Section 365(d)(2) of the Bankruptcy Code authorizes courts to compel debtors to assume or reject executory contracts within a specified time period. It provides:

In a case under chapter 9, 11, 12, or 13 of this title, the [debtor in possession] may assume or reject an executory contract ... of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract ..., may order the [debtor in possession] to determine within a specified period of time whether to assume or reject such contract....

- 11 U.S.C. § 365(d)(2). See also 11 U.S.C. § 105(d)(2)(A) (authorizing courts to issue orders setting dates by which debtors in possession must assume or reject executory contracts).
- 3. Congress's purpose in crafting this section was to "prevent parties in contractual ... relationships from being left in doubt concerning their status vis-à-vis the estate." H.R. Rep.

No. 95-595, at 348 (quoted in *In re Univ. Med. Ctr.*, 973 F.2d 1065, 1078–79 (3d Cir. 1992); *In re Beker Indus. Corp.*, 64 B.R. 890, 898 (Bankr. S.D.N.Y. 1986)).

- 4. While the general policy of section 365 of the Bankruptcy Code is to provide debtors with "breathing space" to determine which executory contracts to assume or reject, that "breathing space ... is not without limits." *In re Enron Corp.*, 279 B.R. 695, 702 (Bankr. S.D.N.Y. 2002) (quoted in *In re Adelphia Commc'ns Corp.*, 291 B.R. 283, 292 (Bankr. S.D.N.Y. 2003)). Indeed, "in certain circumstances, the rights of the nondebtor party ... outweigh the need of the debtor in possession for unlimited flexibility and breathing space." *NLRB v. Bildisco* & *Bildisco*, 465 U.S. 513, 551–52 (1984).
- 5. Instead, the settled rule is that debtors have only a reasonable time in which to assume or reject executory contracts. *See Theatre Holding Corp. v. Mauro*, 681 F.2d 102, 105 (2d Cir. 1982). What constitutes a reasonable time is left to the bankruptcy court's discretion "in the light of the circumstances of each case." *Id.*
- 6. Here CWPW respectfully submits that, under the circumstances a "reasonable time" has passed. In exercising this discretion, courts in this jurisdiction have considered a variety of factors that have been expressed differently in different contexts. *See Adelphia*, 291 B.R. at 292–93 (gathering authority and amalgamating a comprehensive list of factors).
- 7. These factors include: (1) the nature of the interests at stake; (2) the balance of hurt to the litigants; (3) the good to be achieved; (4) the safeguards afforded to the litigants; (5) whether the action to be taken is so in derogation of Congress's scheme as to be arbitrary; (6) the debtor's ability to satisfy postpetition obligations; (7) the damage the non-debtor will suffer beyond the compensation available under the Bankruptcy Code; (8) the contract's importance to the debtor's business and reorganization; (9) whether the debtor has had sufficient time to appraise its financial situation and the potential value of its assets; (10) whether the court needs

to determine if the contract is executory; (11) whether exclusivity has ended; and (12) above all, the purpose of Chapter 11 and the determination's effect on the debtor's ability to reorganize. *Id*.

8. CWPW respectfully submits that the *Adelphia* factors discussed below clearly favor a prompt decision compelling assumption or rejection of the Contract.

The nature of the interests at stake.

The nature of the interests at stake, i.e. the availability of and the assurance of the quality of medical services provided to critically ill infants, implicated by whether or not the Debtor will continue to operate as a Level Three Neonatal Clinic favor compelling the prompt assumption or rejection of the Contract.

The balance of hurt to the litigants.

- 1. The harms CWPW faces are far in excess of any risk the Debtor faces from having to make this decision sooner rather than later. See LaGamma Dec. at ¶ 20-26.
- 2. If the Debtor assumes the Contract, the Debtor will have to pay the cure amount, approximately \$692,868.00. and bear the risk of the obligation for the remainder of the Contract. If the Debtor rejects the Contract, it has the capability of continuing to operate as a Level One Neonatal Clinic at no additional expense or cost to the Debtor. *See* LaGamma Dec. at ¶24. Alternatively, should it seek to maintain its Level Three Neonatal status, the Debtor will have to obtain Level Three Neonatal clinical services from a different source, potentially at a higher price on more restrictive terms. Any such increases will be offset in part, however, by the unsecured treatment to which the pre-petition amount owed to CWPW under the Contract will be subjected.
- 3. The hundreds of thousands of dollars in breach of contract damages, the loss of exceptionally skilled and well trained neonatal clinicians to (potentially) CWPW's competitors, the reputational harms, and the potential malpractice issues arising from possible coverage

issues, CWPW faces far outweighs unlikelihood that the Debtor will prematurely assume the Contract and incur the costs of the cure amount.. See LaGamma Dec. at ¶ 22. By now the Debtor knows whether Montefiore Hospital will assume the Contract.

The nature and import of the critical services provided by CWPW's neonatal clinicians evidence the good to be achieved.

The good to be achieved by forcing the Debtor to assume or reject the Contract sooner rather than later, is best evidenced by examining the nature and import of the services provided by CWPW's neonatal clinicians.

The Debtor's ability to satisfy postpetition obligations is only temporary.

So far, the Debtor has been able to satisfy its postpetition obligations under the Contract. However, upon information and belief, the Debtor's liquidity is severely limited and if it does not close the sale of substantially all of its assets soon, it will run out of cash. *See* LaGamma Dec. at ¶ 25.

CWPW will suffer damages well beyond the compensation available under the Bankruptcy Code if the Debtor is permitted to continue to delay its decision whether to assume or reject the Contract

If this Court does not grant the relief requested herein, CWPW faces the risk of substantial harm, far beyond the compensation available under the Bankruptcy Code. CWPW is contractually obligated to both its neonatal clinical staff and the Debtor. The time and the financial impact of continuing to provide coverage and satisfactory clinical services in the absence of contractually available staff will be substantial and not remediated by payment from the bankruptcy estate. Moreover, no form of remuneration available from the Court will replace the three neonatal clinicians CWPW stands to lose absent a timely decision from the Debtor regarding its Contract with CWPW. See LaGamma Dec. at ¶ 23.

The Contract is not important to the Debtor's business and reorganization.

- 1. CWPW's Contract is not required for the Debtor to operate as a Level One Neonatal Intensive Care Unit. Instead, the clinical services provided by CWPW allow the Debtor to operate as a Level Three Neonatal Intensive Care Unit. See LaGamma Dec. at ¶ 24.
- 2. CWPW is facing the increasing risk of losing its highly specialized staff because of the uncertainty arising from the Debtor's continued failure to assume or reject the Contract. To maintain the current status quo between the Debtor and CWPW insures that CWPW will continue to struggle to maintain staffing sufficient to allow the Debtor to operate as a Level Three Neonatal Intensive Care Unit. See LaGamma Dec. at ¶ 26.
- 3. Nor is CWPW's Contract a requirement for the Debtor's future plans. It is CWPW's understanding that the Debtor intends to sell substantially all of its assets to Montefiore Hospital. As Montefiore Hospital has its own neonatal service providers, it may not require the services of CWPW's neonatal clinicians. Thus, at such a time, CWPW's Contract with the Debtor may become redundant. *See* LaGamma Dec. at ¶ 14.

The Debtor has had sufficient time to appraise its financial situation and the <u>potential</u> value of its assets.

1. By the time of the hearing on this Motion, the Debtor will have had more than ample time to evaluate its financial situation and reach a decision concerning assumption or rejection of the Contract. This bankruptcy was not filed yesterday; it has been pending for almost two months. The beginning phases of the bankruptcy cases, such as obtaining debtor-in-possession financing, are over. Furthermore, the Debtor has employed advisors and professionals to assist it through the bankruptcy process. *Cf. Adelphia*, 291 B.R. at 299 (this factor militated against setting a short deadline because, unlike the *Lyondell* case, the debtors had only just put

new management in place). These advisors, along with the Debtor's own staff, are well placed to reach a quick decision concerning the Contract.

- 2. Moreover, while the dollar amounts at issue under the Contract are significant, the financial issues involved in the question of assumption or rejection present to the Debtor are relatively straightforward. The Debtor is no doubt aware of what its neonatal care needs are and those of Montefiore Hospital. The other variables in this decision are the cost and availability of such services from sources other than the Contract. The Debtor's employees and advisors have the experience and ability to gather and evaluate information concerning these variables quickly and reach a prompt decision. Accordingly, CWPW submits that the Debtor has sufficient time, under the circumstances to evaluate whether to assume or reject the Contract.
- 3. In particular, CWPW submits that this Court should establish five (5) days post entry of an Order granting this Motion as the deadline for assumption or rejection of the Contract pursuant to Section 365(d)(2). As discussed above, CWPW is being subjected to the impossible task of continuing to provide Level Three neonatal clinical services to the Debtor, absent assurances sufficient to retain CWPW's staff, and without knowing the Debtor's true intentions with respect to the Contract. CWPW should not have to make these decisions and take the risks described above when the Debtor is entirely capable of making its decision before that time.

WHEREFORE, the undersigned respectfully requests that this Court enter an Order: (i) deeming the contract rejected; (ii) or, alternatively, setting five (5) days post entry of an Order granting this Motion as the deadline for the Debtor to assume or reject the Contract; and (iii) for such other and further relief as is just and proper.

Dated: July 23, 2013 New York, New York

/s/ Susan F. Balaschak

Susan F. Balaschak, Esq. (SB 1901) Eric W. Olson, Esq. AKERMAN SENTERFITT LLP 666 Fifth Avenue, 20th Floor New York, NY 10103

Tel.: (212) 880-3800 Fax: (212) 880-8965

susan.balaschak@akerman.com eric.olson@akerman.com

Attorneys for Children's & Women's Physicians of Westchester, L.L.P.

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK	-X
In re	Chapter 11
SOUND SHORE MEDICAL CENTER OF WESTCHESTER, et al.,	Case No. 13-22840-rdd
Debtor.	-X

DECLARATION OF EDMUND F. LAGAMMA, M.D.

Pursuant to 28 U.S.C. section 1746, I, Edmund F. LaGamma, M.D. hereby declare:

- 1. I submit this declaration in support of CWPW's Motion For Entry of an Order: (I)

 Deeming Executory Contract Rejected; or Alternatively (II) Compelling Debtor to Assume or

 Reject the Executory Contract (the "Motion"). I have personal knowledge of the facts stated herein.
- 2. I am the Chief of Neonatology at Children's & Women's Physicians of Westchester, L.L.P. ("CWPW") as well as its Treasurer.
- 3. CWPW, a New York limited liability partnership, is a private medical services group that currently employs over 250 physicians, plus other professionals and administrative staff. CWPW provides comprehensive inpatient and outpatient care to infants, children, and adolescents throughout the greater New York metropolitan area, extending from New York City through the Hudson Valley, and into parts of Connecticut and New Jersey. CWPW's physicians care for low and high risk newborns, as well as mildly to seriously ill children, with a broad range of medical conditions.
- 4. One of CWPW's specialties is neonatology, also known as newborn or neonatalperinatal medicine. CWPW operates a network of neonatal intensive care programs at nine

hospitals, and coordinates the largest high risk neonatal follow-up program in New York State, with six outpatient locations.

- 5. In addition to my practice and duties at CWPW, I am and have been, since 1999, Director of the Division of Newborn Medicine at The Regional Perinatal Center of Westchester Medical Center-New York Medical College, and a Professor of Pediatrics, Biochemistry and Molecular Biology at that institution. My biographical sketch as published on the website of New York Medical College (available at http://www.nymc.edu/neonatology/docindex.htm) is attached hereto and incorporated herein as **Exhibit "A."** That document accurately summarizes my education and training, academic appointments, honors, a selected list of my peer reviewed publications, chapters in books, recent financed research projects, and patents.
- 6. In June of 2007, CWPW and Sound Shore Medical Center of Westchester (the "Debtor") entered into a letter agreement dated June 27, 2008 (the "2008 Letter Agreement") confirming ongoing clinical arrangement between CWPW and the Debtor. CWPW provides the clinical services necessary for the Debtor, a 252-bed, community-based teaching hospital designated by New York State as a perinatal hospital with a Level Three Neonatal Intensive Care Unit, to continue to operate as a Level Three Neonatal Intensive Care Unit.
- 7. The 2008 Letter Agreement provided that the Debtor monthly pay CWPW \$49,178.28 (the "Monthly Payment") for certain enumerated neonatology clinical services (the "Clinical Services"), which included the placement of select physicians with the Debtor.
- 8. On October 11, 2011, CWPW and the Debtor agreed, in exchange for enhanced Clinical Services, including the addition of a full time board certified neonatologist, to increase the Monthly Payment to \$69,178.28 effective upon September 1, 2011. This agreement was confirmed by CWPW's letter to the Debtor dated October 18, 2011.

- 9. A true and correct copy of the existing contract by and between the Debtor and CWPW (the "Contract") comprised solely of the two letter agreements dated, respectively, June 27, 2008 and October 11, 2011 is attached as Exhibit "A" to the Motion.
- 10. The Contract contains few material terms and conditions. In fact, the Contract, in essence, references with specificity only the identities of the physicians selected to perform CWPW's onsite clinical services to the Debtor as well as the monthly and yearly cost for same.
- 11. The Contract is, in effect, a personal service contract relying upon the personal services and skill of the individual physicians named, as well as the high level of personal trust and confidence by and between CWPW and the Debtor as the original contracting parties to the Contract. The Contract is a result of the high level of personal trust and confidence between CWPW and the Debtor that allows for us "fill in" the material terms of the Contract as requested by each of us during the course of our performance and as the circumstances require.
- 12. CWPW, in turn, has contracts with select neonatal clinicians who provide the medical services necessary for the Debtor to operate as a Level Three Neonatal Intensive Care Unit. CWPW is thus contractually obligated to both its neonatal clinical staff as well as the Debtor.
- 13. Prior to the Petition Date, the Debtor defaulted under its Contract with CWPW by failing to make its Monthly Payments for Clinical Services rendered by CWPW to the Debtor.

 As of May 28, 2013, the Debtor owes CWPW approximately \$692,868.00.
- 14. Moreover, it is CWPW's understanding that the Debtor intends to sell substantially all of its assets to Montefiore Hospital. Montefiore Hospital has its own neonatal service providers and may not require the services of CWPW's neonatal clinicians.

- 15. As a result of the uncertainty surrounding the Debtor's continued operation as a Level Three Neonatal Intensive Care Unit, CWPW is facing ever increasing internal pressures from our physicians placed at the Debtor.
- 16. One such physician is Yogangi Malhotra, M.D., Assistant Professor of Pediatrics at New York Medical College and an Attending Neonatologist for the Debtor. Educated at the University of Michigan's medical school, Dr. Malhotra completed her residency in 2005 at the University of Rochester and her fellowship in 2011 at the Yale New Haven Medical Center
- 17. I have personal knowledge that Dr. Malhotra, frustrated by the uncertainty of continued employment, is now actively seeking employment elsewhere. A true and correct copy of the Declaration of Yogangi Malhotra, M.D is attached hereto and incorporated herein as Exhibit "C."
- 18. I have received e-mails and correspondence requesting that I confirm Dr. Malhotra's professional skills from the placement company OnSite and for New Jersey Licensure.
- 19. I have also received correspondence from Deb Campbell, Chief of the Montefiore Hotel, Regional Perinatal Center (RPC) indicating that she had spoken with our attending physicians and two of three said they are seriously considering moving; the third Dr. Piazza, failed to respond.
- 20. The time and the financial impact to CWPW of continuing to provide coverage and satisfactory clinical services in the absence of contractually available staff will be substantial and not remediated by payment from the bankruptcy estate.
- 21. It has been close to two (2) months and the Debtor has yet to accept or reject the Contract with CWPW.

22. CWPW faces hundreds of thousands of dollars in breach of contract damages, the loss of exceptionally skilled and well trained neonatal clinicians to (potentially) CWPW's competitors, the reputational harms, and the potential malpractice issues arising from possible coverage issues absent an immediate acception or rejection of the Contract by the Debtor.

23. Moreover, no form of remuneration available from the Court will replace the three neonatal clinicians CWPW stands to lose absent a timely decision from the Debtor regarding its Contract with CWPW.

24. Upon information and belief, if the Debtor rejects the Contract, it has the capability of continuing to operate as a Level One Neonatal Clinic at no additional expense or cost to the Debtor. CWPW's Contract is not required for the Debtor to operate as a Level One Neonatal Intensive Care Unit. Instead, the clinical services provided allow the Debtor to operate as a Level Three Neonatal Intensive Care Unit.

25. Upon information and belief, the Debtor's liquidity is severely limited and if it does not close the sale of substantially all of its assets soon, it will run out of cash.

26. Given the potential issues with clinical staff retention facing CWPW arising from the Debtor's continued failure to assume or reject the Contract, maintaining the current status quo between the Debtor and CWPW practically insures that CWPW will struggle to maintain staffing sufficient to allow the Debtor to operate as a Level Three Neonatal Intensive Care Unit.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

New York, New York

July 23, 2013

EDMUND F. LAGAMMA, M.D.

EXHIBIT "A" TO LAGAMMA DECLARATION

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Principal Investigator/Program Director (Last, first, middle):_LaGamma, Edmund F

BIOGRAPHICAL SKETCH

Provide the following information for the key personnel in the order listed for Form Page 2. Follow the sample format for each person. **DO NOT EXCEED FOUR PAGES.**

NAME LaGamma, Edmund F	POSITION TITLE Professor of Pediatrics, Biochemistry & Molec Biology		
EDUCATION/TRAINING (Begin with baccalaurear include postdoctoral training.)		fessional educatio	on, such as nursing, and
INSTITUTION AND LOCATION	DEGREE (if applicable)	YEAR(s)	FIELD OF STUDY
City College of New York, NY New York Medical College, NY NY Hospital-Cornell Medical Center NY Hospital-Cornell Medical Center Cardiovascular Research Inst., USCF Cold Spring Harbor Labs., NY	BS MD House Officer Fellowship Res Scholar Not Applicable	1973 1976 1978 1980 1981 1984	Chem/Physical Chem Medicine General Pediatrics Neonatal-Perinatal Fetal Cardiovas Physiol Molec.Biol.Nerv.Sys
A-Positions and honors 1976-1978 Categorical Intern:(PL1) to Asst Pediatric 1978-1980 Neonatal-Perinatal Fellow: Perinatology (1980-1981 Post-Doctoral Scholar, Pediatric Cardiology) Academic appointments: Asst. to Assoc Professor, Dept. of Pediatrics, New York Honorical Cardiology (1980-1981).	cian, New York Hospita Center, New York Hosp egy, Cardiovascular Res ospital-Cornell Medical	oital-Cornell Medic earch Institute, UC Center (M.I. New)	eal Center (P.A.M.Auld) SF (A. M. Rudolph)

Asst. Professor, Dept. of Neurology, New York Hospital-Cornell Medical Center (F. Plum)

Assoc. Professor, Dept. of Neurology, New York Hospital-Cornell Medical Center (F. Plum)

Assoc. Professor, Dept. of Obstetrics & Gynecology, New York Hospital-Cornell Medical Ctr (W. Ledger)

1985-1986

Assoc. Professor, Depts of Pediatrics and Neurobiology & Behavior, SUNY (J. Partin/ L.Mendel)

1986-1994

Assoc. Professor, Cell & Developmental Biology Program, SUNY at Stony Brook (H. Lyman/W. Lennarz)

1987-1994

Professor of Pediatrics and Neurobiology, Depts of Pediatrics and Neurobiology, SUNY (R. Fine/ L.Mendell)

1994-1999

Professor of Pediatrics, Biochem & Molec Bio, Depts of Pediatrics & Biochemistry, NYMC (L.Newman/E. Lee)

Director, Division of Newborn Medicine, Department of Pediatrics, SUNY at Stony Brook

Director, Division of Newborn Medicine, The Regional Neonatal Center, Westchester Med Ctr-NY Med College

<u>Honors:</u> Cum Laude, 1973; Marks Neidle Memorial Award in Physical Chemistry, 1973; Baskerville Chemistry Society Gold Medal, 1973; Cor et Manus, NYMC, 1976; Young Investigator Award, American Academy of Pediatrics, 1985; Basil O'Connor Award, March of Dimes Birth Defects Foundation, 1985; Young Investigators Award, Perinatal Section, American Academy of Pediatrics, 1985; Certificate of Merit, Excellence in Teaching SUNY Stony Brook Pediatric House Staff, 1991, 1996; 2002 Alpha Omega Alpha, New York Iota Chapter

B- Publications (selected from 74 peer reviewed clinical and basic reports)

- La Gamma, EF, Drusin LM, Machalek, S, Auld PAM: Neonatal Infections: An important Determinant of Late NICU Mortality in Infants Less than 1000g at Birth. <u>Am. J. Dis. Child.</u> 137: 838-841 (1983).
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Principal Investigator/Program Director (Last, first, middle): LaGamma, Edmund F

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- 11. Weisinger, G, DeCristofaro, JD, La Gamma, EF: Multiple Preproenkephalin Transcriptional Start Sites are Induced by Stress and Cholinergic Pathways, J. Biol. Chem., 265:17389-17392, 1990.
- 12. La Gamma, EF, DeCristofaro, J, Weisinger G: Cholingergic Agonist-Induced Binding of Adrenomedullary Nuclear Proteins to the Rat Preproenkephalin Promoter, Molec. Cell Neurosci, 2:517-525, 1991.
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Principal Investigator/Program Director (Last, first, middle):_LaGamma, Edmund F

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- DeCastro, M, La Gamma, EF: The Role of Corticosteroids in Neonatal Epithelial Cell Adaptation and Endothelial Cell-Mediated Injury in <u>Principles of Corticosteroid Therapy</u>, eds., pp 398-409, Lin and Paget, Arnold Publishers, London, 2002

C- Research Support: Research Projects Ongoing or Completed During the Last 3 Years:

 Postnatal Induction of Neutrophil Number, Fc and Complement Receptor Density, Oxidative Burst and Phagocytic Function in Preterm, Neutropenic, Steroid Treated, or SGA Neonates in the First 2 months After Birth.

Source: Amgen Corporation, \$29,500

Period: 1996 to present PI: EF La Gamma

Subject: Evaluates effects of GCSF on sick vs well human newborns using flow cytometry microtechniques.

2. Multicenter Trial for GCSF Treatment of Late Onset Sepsis;

Source: Amgen Corporation, \$500,000

Period: 1996 to 1999

PI: EF La Gamma; 23 centers, national trial, FDA approved, blinded, placebo controlled.

Subject: Interventional trial determining effect of GCSF on survival and reoccurrence of infection.

3. Multicenter Trial for GCSF Prophylaxis of Preeclampsia-Induced Neonatal Neutropenia;

Source: Amgen Corporation; \$100,000

Period: 1998 to present

PI: EF La Gamma; 21 centers, currently active international trial, web-based data collection, FDA approved IND #5616 blinded, placebo controlled

Subject: Clinical trial determining whether GCSF prophylaxis will lower the incidence of bacteremia during NICU hospitalization in very low birth weight neonates

The Role of Gut-Derived Short Chain Fatty Acids at Birth in Neurotransmitter Gene Regulation: A Hypothesis on the Evolution of Two Kingdoms

13-22840-rdd Doc 191-1 Filed 07/23/13 Entered 07/23/13 19:00:09 Exhibit A Pg 11 of 14

Principal Investigator/Program Director (Last, first, middle): LaGamma, Edmund F

Source: Divisional and NYMC Institutional Research Grant; \$35,000

Period: Open term PI: EF La Gamma

Subject: Promoter deletion analysis and footprinting of butyrate sensitive upstream regulatory element interacting with downstream cAMP DNA binding site on catecholamine-related and enkephalin transmitter genes. Effect is dependent on acquisition of gut flora and their fermentation of enteral carbohydrates.

5. Effects of Antenatal and Postnatal Steroids on Maturation of Lung and Kidney Function in ELBW Preterm Neonates

Source: Division's Clinical Fellowship Research Fund, \$10,000

Period: Open term PI: EF La Gamma

Subject: Ongoing Fellowship Training projects evaluating effects of steroid use on epithelial cell function of the kidney and lung in the context of multiorgan failure syndrome in premature newborns.

6. Phase I Study of Thyroid Hormone in Prematures - Multicenter, International Trial; 1 RO1 NS45109-01

Source: NINDS 2002, Funded: \$1,800,000

Period: 2003-2007 PI: EF La Gamma

Subject: Replacement of T4 hormone in euthyroid sick syndrome in ELBW neonates and long term outcome.

7. Optimal FRC Management of RDS and Volutrauma-Cytokine Mediated Lung Injury

Source: Forest Laboratories; \$8,000

Period: 2002-2004 PI: EF La Gamma

Subject: Uses low pressure strategy ad permissive hypercapnia to minimize lung injury.

8. Low Epinephrine Synthesis Causes Hypoglycemia Unawareness

Source: NIH; \$622,000

Period: 2003-2004, Status Pending

PI: EF La Gamma

Subject: Examines transcriptional control of catecholamine synthesis by butyrate responsive element we identified.

9. Multisystem Effects of Glucorticoids on Prematures

Source: NIH; \$1,488,622

Period: 2003-2006, Status Pending

PI: EF La Gamma

Subject: Examines effects of postnatal steroids on brain development and metabolism by MRS as well as lung function and

postnatal growth.

D. Consulting Arrangements:

1995-present

Medical Consultant to Cephalon, Inc., West Chester, PA

1996-present

Amgen Corporation, Thousand Oaks, California

1998

University Health System Consortium

Patents:

1) Astrocytes For Gene Therapy: Inventors: E.F. La Gamma, G. Weisinger, R.E. Strecker, N.J. Lenn, Granted

2000 - U.S patent #6,106,827

2) GCSF Therapy for Neonatal Sepsis & neutropenia, Granted 2000 US Patent #6, 162, 426. Inventor:

É.F.LaGamma

EXHIBIT "B" TO LAGAMMA DECLARATION

UNITED STATES BANKRUPTCY COUR SOUTHERN DISTRICT OF NEW YORK	
In re	Chapter 11
SOUND SHORE MEDICAL CENTER OF WESTCHESTER, et al.,	Case No. 13-22840-rdd
Debtor.	<u></u>

DECLARATION OF YOGANGI MALHOTRA, MD

Pursuant to 28 U.S.C. section 1746, I, Yogangi Malhotra, MD, hereby declare:

- 1. I submit this declaration in support of CWPW's Motion For Entry of an Order:

 (I) Deeming Executory Contract Rejected; or Alternatively (II) Compelling Debtor to Assume or Reject the Executory Contract. I have personal knowledge of the facts stated herein.
- 2. I am an Assistant Professor of Pediatrics at New York Medical College and an Attending Neonatologist for the Sound Shore Medical Center of Westchester (the "Debtor") a 252-bed, community-based teaching hospital designated by New York State as a perinatal hospital with a Level 3 Neonatal Intensive Care Unit.
- 3. I attended medical school at the University of Michigan, completed my residency in 2005 at the University of Rochester, and completed a fellowship in 2011 at the Yale New Haven Medical Center.
- 4. I was placed at the Debtor by my employer, Children's & Women's Physicians of Westchester, L.L.P. ("CWPW").
- 5. CWPW, a New York limited liability partnership, is a private medical services group that currently employs over 250 physicians, plus other professionals and administrative

1

staff. One of CWPW's specialties is neonatology, also known as newborn or neonatal-perinatal medicine. CWPW operates a network of neonatal intensive care programs at nine hospitals, and coordinates the largest high risk neonatal follow-up program in New York State, with four outpatient locations.

- 6. I am aware of the Debtor's bankruptcy filing, and the Debtor's purported plan to sell itself to a third-party, Montefiore Hospital who may or may not require the services of CWPW.
- 7. Disturbed by the uncertainty of my continued employment at the Debtor and no other long term alternatives available as a CWPW employee, I am forced to explore other opportunities of employment.
- 8. My fellow CWPW clinicians placed at the Debtor have voiced similar concerns over their future employment with CWPW and the Debtor and likewise have expressed to me desires to go elsewhere if the uncertainty with the Debtor is not resolved quickly.
- 9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: July 20, 2013

New York, New York

Yogangi Malhotra, MD

EXHIBIT "B"



Children's & Women's Physicians of Westchester, LLP

Munger Pavilion Suite 123 Valhatla, New York 10595 (914) 594-4280/(914) 493-7581 Fax (914) 594-3693

ADMINISTRATION

June 27, 2008

Mr. John Spicer President and CEO Sound Shore Medical Center 16 Guion Place New Rochelle, N.Y. 10802

Dear Mr. Spicer:

This letter is to confirm the ongoing clinical arrangement between Sound Shore Medical Center and Children's and Women's Physicians of Westchester, LLP for the year July 1, 2008 – June 30, 2009. During this interval, the position of "Hospitalist" has been eliminated. Dr. Alicia Romano has been added effective July 1, 2008 to cover the new Diabetes Center.

The costs are as follows:

<u>Position</u>	Yearly	Monthly
-PL 3	63,564.00	5,297.00
-PL1	53,424.00	4,452.00
- Subspecialty	41,224.92	3,435.41
Neonatology	343,380.00	28,615.00
✓ Administrative Fee	14,162.52	1,180.21
 Dr. Katzenberg 	19,523.88	1,626.99
Dr. Hertzberg	(60,139.92)	(5,011.66)
Diabetes Center	114,999.96	9,583.33
TOTAL DUE	\$590 139 36	\$49 178 28

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cc: Doug Landy

Leonard J. Meyanan, M.D.

President



July 9, 2008

Leonard J. Newman, M.D., President Children's & Women's Physicians of Westchester, LLP Munger Pavilion, suite 123 Valhalla, New York 10595

Dear Len:

Enclosed for your records is a signed copy of the ongoing arrangement between Sound Shore and Children's and Women's Physicians for the period July 1, 2008 – June 30, 2009.

Sincerely,

Douglas Landy

Executive Vice President/COO

enclosure

Children's & Women's Physicians of Westchester, LLP



Munger Pavilion Suite 123 Valhalfa, New York 10595 (914) 594-4280/(914) 493-7581 Fax (914) 594-3693

ADMINISTRATION

May 20, 2011

Mr. John Spicer President and CEO Sound Shore Medical Center 16 Guion Place New Rochelle, NY 10802

Dear Mr. Spicer:

Thank you for taking the time to meet with us this past Wednesday afternoon in your offices. As discussed, we have enjoyed a long and successful partnership in your Neonatal ICU. Due to recent events, and in light of the additional, full time, board certified neonatologist, Dr. Soheir Haram, that we added to the service last July, we are seeking an enhancement to the compensation afforded us in our agreement. As we also discussed, other changes in the staffing of the unit will necessitate us to provide additional moonlighting shifts to cover nights going forward. These changes and enhancements will add well in excess of \$300,000 in expense to the CWPW's cost of providing services at Sound Shore. In light of the strategic importance of our relationship, and as per our meeting, we are requesting an increase in compensation equivalent to our cost associated with Dr. Haram, which is \$240,000, annually. We are requesting that this increase be put into place effective June 1, 2011. We will, of course, work with your legal counsel to prepare the appropriate contract amendment required.

We appreciate the opportunity to continue to work with you and the Sound Shore family. I am confident that through our continued partnership, we will provide the very best of care to the children we are both committed to serve.

Please do not hesitate to contact me to discuss any questions you may have and or next steps. You can reach me at (914) 594-3312.

Sincerely,

Leonard J. Newman, MD

President

Gerard M. Villucci, FACHE Chief Executive Officer

cc: Michael Gewitz, MD, Vice President, CWPW

Edmund LaGamma, MD, Chief of Neonatology & Newborn Medicine, CWPW

John Mamangakis, Vice President of Operations, SSMC

Children's & Women's Physicians of Westchester, LLP

Munger Pavilion Suite 123 Valhalla, New York 10595 (914) 594-3312/(914) 594-4827 Fax (914) 594-3518

Administration

October 18, 2011

Mr. John Spicer President and CEO Sound Shore Medical Center 16 Guion Place New Rochelle, NY 10802

Dear Mr. Spicer,

Thank you for taking the time to meet with Dr. Newman and I last Tuesday afternoon in your offices. As discussed, in light of the additional, full time, board certified neonatologist, Dr. Soheir Haram added to the service as of July 2010, we are seeking a financial enhancement to our agreement.

This letter memorializes the in crease of \$240,000, per annum, agreed to at our October 11, 2011 meeting, retroactive to September 1, 2011.

We appreciate the opportunity to continue to work with you and the Sound Shore family. I am confident that through our continued partnership, we will provide the very best of care to the children we are both committed to serve.

Sincerely,

Gerard M. Villucci, FACHE

Chief Executive Officer

CC: Leonard J. Newman, MD, President

Michael Gewitz, MD, Vice President, CWPW

Edmund LaGamma, MD, Chief of Neonatology & Newborn Medicine, CWPW

John Mamangakis, Vice President of Operations, SSMC