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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11 Case

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.,¹

Case No. 13- 22840 (RDD)

Debtors.

(Jointly Administered)

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**DEBTORS' OBJECTION TO MOTION OF MEDLINE INDUSTRIES, INC. FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM
UNDER 11 U.S.C. § 503(B)(9)**

Sound Shore Medical Center of Westchester, and the other above captioned debtors, as debtors-in-possession (each a "Debtor" and collectively, the "Debtors") in these chapter 11 cases, by and through their undersigned counsel, hereby file their objection ("Objection") to the motion of Medline Industries, Inc. for Allowance and Payment of Administrative Expense Claim Under 11 U.S.C. § 503(b)(9) [Docket No. 158] (the "Motion"), and respectfully represents as follows:

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: Sound Shore Health System, Inc. (1398), Sound Shore Medical Center of Westchester (0117), The Mount Vernon Hospital, Inc. (0115), Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center (0781), NRHMC Services Corporation (9137), The M.V.H. Corporation (1514) and New Rochelle Sound Shore Housing, LLC (0117). There are certain additional affiliates of the Debtors who are not debtors and have not sought relief under Chapter 11.

Preliminary Statement

1. By the Motion, Medline Industries, Inc. ("Medline") requests the allowance and immediate payment of approximately \$316,043.29 on account of goods purportedly sold to and received by the Debtors within the twenty days prior to the petition date. However, neither section 503(b)(9), nor any other section of the Bankruptcy Code, requires the immediate payment of 503(b)(9) administrative expense claims at the outset of a bankruptcy case. These cases are less than two months old and the Debtors have not yet engaged in a substantive analysis of claims. Instead, the Debtors have been primarily focusing their limited resources on, among other things: (a) maintaining their going concern healthcare operations; (b) adjusting to their obligations under the Bankruptcy Code and Bankruptcy Rules; (c) satisfying the conditions precedent for the sale of substantially all of their assets to the designees of Montefiore Medical Center; (d) analyzing executory contracts and unexpired leases in connection with their ongoing operational needs and in contemplation of the sale; (e) preparing and filing the schedules of assets and liabilities and statements of financial affairs; and (f) attending to various other demanding duties including, without limitation, the maintenance of vendor relationships, interfacing with the creditors committee and its professionals and addressing the needs and concerns of essential personnel who must confront the uncertainty of the Chapter 11 process and the prospective sale to Montefiore.

2. Moreover, the Debtors received goods from hundreds of suppliers prior to the petition date, creating numerous claims potentially entitled to administrative priority pursuant to § 503(b)(9) of the Bankruptcy Code. Requiring the Debtors to investigate claims such as Medline's at this time, and potentially requiring immediate payment on account of such claims, would present a significant drain on the Debtors limited resources, interfering with the Debtors'

efforts to effectively administer their health care operations and pursue a time sensitive sale process. The burden this and similar applications, which certainly would follow if immediate payment were ordered, is hardly in the best interest of the Debtors' estates and various creditor constituencies. Accordingly, Medline's request for immediate payment should be denied, determination as to the validity of Medline's claim should be deferred until the Debtors are better prepared to engage in the claims resolution process, and payment, if any, on Medline's claims should be made in accordance with a confirmed Chapter 11 plan or upon further order of this Court.

BACKGROUND

3. On May 29, 2013 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their businesses and manage their affairs as debtors-in-possession. No trustee or examiner has been appointed in these cases. On June 10, 2013, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors.

4. The factual background relating to the Debtors' commencement of these chapter 11 cases, including their business operations, their capital and debt structure, and the need to sell substantially all of their assets, is set forth in detail in the Affidavit of John Spicer Pursuant to Local Bankruptcy Rule 1007-2 and in Support of First Day Motions and Applications, [Docket No. 18] filed on the Petition Date and incorporated herein by reference.

THE DEBTORS' OBJECTION

5. The Debtors do not dispute that to the extent any valid pre-petition claim satisfies the requirements of section 503(b)(9) of the Bankruptcy Code, the holder of such claim should be entitled to administrative priority claim status. Payment of any such claims, however, is not required to be made, if at all, until later in these cases. Moreover, Medline has not asserted that it will in any way be prejudiced if it is not paid immediately on any valid 503(b)(9) claim it may have. Requiring the Debtors to address such claim at this time will, however, require the Debtors to expend scarce resources on this matter, which are better focused on more pressing issues which will benefit the Debtors' estates as a whole. Accordingly, the Debtors should not be required to incur at this time the expense associated with investigating and potentially litigating the extent and amount of any priority claims asserted by Medline.²

Payment of Section 503(b)(9) Claims is Premature

6. Bankruptcy Code section 503(b)(9) makes no mention of the timing by which any claim allowed thereunder must be paid. Indeed, there is nothing in the text of section 503(b)(9) that even suggests that a claimant has a right to immediate payment. See In re Bookbinders' Restaurant, Inc., No. 06-12303, 2006 WL 3858020, at *4 (Bankr. E.D. Pa. Dec. 28, 2006) (finding that "[t]he text of § 503(b)(9) neither states nor even implies that allowance of the expense encompasses an unqualified right to immediate payment... [n]or does the text of the provision suggest that an administrative expense allowed under § 503(b)(9) is to be treated in a more favorable manner than any other allowed § 503(b) administrative expense").

² The Debtors intend to analyze Medline's claim at the appropriate time to determine if it is entitled to administrative expense treatment under section 503(b)(9), i.e., to the extent of the cost of goods received by the Debtors in the ordinary course of business from Medline within twenty days prior the filing of these cases, and the Debtors expressly reserve the right to assert any and all defenses and counterclaims with respect to such claim.

7. Similarly, in In re Global Home Products, LLC, the court rejected a motion for immediate payment of a 503(b)(9) claim. In so doing, the court noted that “Section 503 does not specify a time for payment of [administrative] expenses but administrative expenses must be paid in full on the effective date of the plan” See In re Global Home Products, LLC, No. 06-10340, 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006). The court went on to provide that, therefore, “[t]o qualify for exceptional immediate payment, a creditor must show that ‘there is a necessity to pay and not merely that the Debtor has the ability to pay.’ ” Id. (internal citations omitted); see also Sweet Traditions, LLC, Case No. 07-45787, Docket Entry No. 90 (Bankr. E.D. Mo. Dec. 10, 2007) (denying the application for immediate payment of the 503(b)(9) claim and holding such claim would be payable upon the confirmation of a plan in the case or subsequent order of the court).

8. Accordingly, consistent with the Bankruptcy Code and other recent cases addressing section 503(b)(9), Medline’s request for immediate payment, to the extent allowable, should be denied and a determination made on Medline’s ultimate request for allowance and payment of its claim should be deferred until such time that all such claims may be addressed in a uniform manner pursuant to a confirmed Chapter 11 plan.

9. Moreover, requiring the Debtors to address all 503(b)(9) claims in a piecemeal manner after “notice and a hearing,” would create an undue administrative burden for the Debtors - whereas payment at the end of these cases will not only ensure that the Debtors receive the breathing spell intended by the Bankruptcy Code, it will also ensure that creditors will receive equality of treatment with respect to their ultimate recovery. For the foregoing reasons, the Debtors believe that deferring the relief requested in the Motion is appropriate and in the best interests of the Debtors and all creditors.

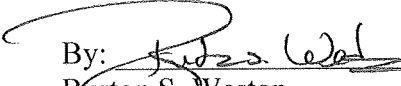
NOTICE

10. In accordance with the Administrative Order Establishing Case Management and Scheduling Procedures (the "Case Management Order"), entered on June 4, 2013, notice of this Objection has been given to: (a) counsel to Medline and (b) the parties identified on the General Service List and the Master Service List (as such terms are identified in the Case Management Order). The Debtors submit that no other or further notice need be provided.

WHEREFORE, the Debtors respectfully request that this Court deny Medline's request for immediate payment for their 503(b)(9) claim and defer ruling on the other relief set forth in the Motion, i.e., the request for allowance and ultimate payment of Medline's claim, until such time as all 503(b) administrative expense claims against the estates may be addressed in a uniform manner.

Dated: July 26, 2013
Great Neck, New York

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