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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.,<sup>1</sup>

Case No. 13- 22840 (RDD)

Debtors.

(Jointly Administered)

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**OBJECTION TO APPLICATION OF PLAINTIFF BEENA JOHN FOR AN ORDER  
LIFTING THE AUTOMATIC STAY AS TO NON-DEBTOR DEFENDANTS**

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 Application of Beena John (“Movant”) for an Order Lifting the Automatic Stay as to Non-Debtor Defendants [Docket No. 9]<sup>2</sup> (the “Application”), and respectfully represents as follows:

<sup>1</sup> 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.

<sup>2</sup> The Application was filed under Case No. 13-22841. Pursuant to the *Order Directing Joint Administration of the Debtors’ Cases* [Docket No. 30, the Debtors objection is being filed under the main case, *In re Sound Shore Medical Center of Westchester*, Case No. 13-22840 (RDD).

### **PRELIMINARY STATEMENT**

1. The Movant has requested that, among other things, the automatic stay imposed by 11 U.S.C. §362 (the “Automatic Stay”) be lifted to allow the Movant to proceed with medical malpractice and other claims against Dr. Francois Tellus, Dr. Zoran Svorcan, and Dr. Parvesh Sharma, each individually and as employees or agents of The Mount Vernon Hospital, in a state court action that also names The Mount Vernon Hospital, a Debtor herein, as a Defendant. Movant has not carried its burden in demonstrating any cause as to why the Automatic Stay should be lifted. Accordingly, the Application should be denied.

### **BACKGROUND**

2. 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 (the “Committee”).

3. 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.

4. The Debtors' Chapter 11 cases are still in their preliminary stages. The Debtors are 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; (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, maintaining vendor relationships, responding to the inquiries and investigations of the Committee and addressing the needs and concerns of essential personnel who are facing the uncertainty of the sale. More importantly, the Debtors are just beginning a wholesale analysis of all medical malpractice cases, the extent of coverage or exposure and developing protocols to present to the bankruptcy court to facilitate resolution of all such claims.

5. Accordingly, at this time it is premature for the Court to grant modifications of the Automatic Stay with respect to any action in which the Debtors are defendants. The Debtors submit that it is in the best interest of their estates and creditors that they be given time to evaluate the claims asserted against their estates in the aggregate after passage of the bar date, rather than having to litigate such claims piecemeal prior thereto.

### **ARGUMENT**

#### **The Movant Has Not Shown Cause to Lift the Automatic Stay**

6. Section 362(a) of the Bankruptcy Code provides that the filing of a petition operates as a stay, applicable to all entities, of "any act to obtain possession of property

of the estate or of property from the estate or to exercise control over property of the estate” and “any act to collect, assess, or recover a claim against the debtor that arose before the commencement” of the Chapter 11 case. 11 U.S.C. § 362(a)(3), (6). The automatic stay is “one of the fundamental debtor protections provided by the bankruptcy laws.” Midatlantic Natl’l Bank v. New Jersey Dep’t of Env’tl. Prot., 474 U.S. 494, 503 (1986). It provides a debtor with a “‘breathing spell’ from the collection process.” See, e.g., Eastern Refractories Co. Inc. v. Forty Eight Insulations Inc., 157 F.3d 169, 172 (2d Cir. 1998). “The principal purpose of the automatic stay of acts against property of the estate ... is to preserve that property for distribution or use in reorganization of the debtor.” Official Creditors’ Comm. of Unsecured Creditors v. PSS S.S. Co., Inc. (In re Prudential Lines, Inc.), 114 B.R. 27, 29 (Bankr. S.D.N.Y. 1989). The automatic stay “is necessary to exclude any interference by the acts of others or by proceedings in other courts where such activities or proceedings tend to hinder the process of reorganization.” Fidelity Mortgage Inv. v. Camelia Builders, Inc., 550 F.2d 47, 53 (2d Cir. 1976).

7. Section 362(d) of the Bankruptcy Code provides that a party may be entitled to relief from the automatic stay only under certain circumstances. 11 U.S.C. § 362(d). Movant seeks relief from the automatic stay pursuant to section 362(d)(1) of the Bankruptcy Code, which provides, in relevant part, that upon a request of a party in interest and after notice and a hearing, the Court shall grant relief from the automatic stay “for cause, including the lack of adequate protection of an interest in property of such party in interest.” 11 U.S.C. § 362(d)(1). Because section 362(d) does not define “cause,” courts determine what constitutes such cause based on the totality of the circumstances. In re Wilson, 116 F.3d 87, 90 (3d Cir. 1997).

8. The Second Circuit catalogued twelve factors that may be relevant when deciding whether the automatic stay should be lifted. Sonnax Indus., Inc. v. Tri-Component

Prods. Corp. (In re Sonmax Indus., Inc.), 907 F.2d 1280, 1286 (2d Cir. 1990). The factors are as follows: (1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms. Courts in the Second Circuit regularly employ these factors when considering a request to modify or lift the Automatic Stay such as that made by the Movants. See, e.g., Case v. United States, 2009 U.S. Dist. LEXIS 87136 (N.D.N.Y. Sept. 22, 2009); Carrera v. Bally Total Fitness (In re Bally Total Fitness of Greater N.Y., Inc.), 411 B.R. 142 (S.D.N.Y. 2009).

9. Although the decision to lift or modify the automatic stay is committed to the discretion of the Court, the Movant bears the initial burden to show cause why the automatic stay should be lifted. See In re Sonmax Indus., Inc., 907 F.2d at 1285, 1286. The Second Circuit has pronounced that "[i]f the movant fails to make an initial showing of cause ... the court should deny relief without requiring any showing from the debtor that it is entitled to continued protection." Id. at 1285.

10. Movant has not addressed the Sonnax factors nor met its burden to show cause as to why the Automatic Stay should be lifted. Without showing cause as to why the Automatic Stay should be lifted, there is no basis for the Court to grant the Motion. In any event, the relevant Sonnax factors weigh against the Movant, namely (i) whether granting the Motion would lead to partial or complete resolution of the Movant's claims, (ii) interference with the Debtors' bankruptcy cases, (iii) whether the Debtors' insurer will take full responsibility for defending the claims (iv) whether the claims primarily involve third parties, and (v) whether lifting the stay could prejudice other creditors.

11. While lifting of the stay would ultimately lead to the fixing of Movant's claims against the non-debtor defendants, it is not at all clear that this would occur faster or with less cost than any method or procedures for resolution the Debtors may propose. Instead, the Debtors are concerned that if the Automatic Stay is lifted in an action to which a Debtor is a defendant, there may be a prejudicial effect on the Debtors' interests. For example, if one of the Debtors' co-defendants is found to be liable on a claim, they may have a contractual claim against the Debtors for indemnification. In such a situation, the Debtors would be subjected to liability without having any opportunity to be involved in the defense of the underlying claim. Here, the co-defendants are doctors on staff at, and employed by, the hospital, potentially creating the very *special circumstances* that Movant refers to in the Application, and which militates against lifting the stay. Moreover, the Debtors are concerned that a judgment against one of the Debtors' co-defendants may be res judicata with respect to any potential defenses the Debtors would ultimately present, again subjecting these estates to potential liability without an opportunity to defend themselves. The alternative, appearing in the State Court Action, would

be highly disruptive at a time when the Debtors have a multitude of immediate concerns related to the ongoing provision of medical care as well as the upcoming sale to Montefiore.

12. Another factor which weighs heavily against lifting the stay is the apparent lack of third party insurance applicable to the underlying action, since the Mount Vernon Hospital is self insured. Accordingly, there is no third party insurance available to satisfy judgments against the Debtors or to pay defense costs. The Debtors are therefore responsible for all the costs associated with defending or otherwise appearing in the action.

13. In addition, the interests of all creditors and parties in interest in the Debtors' Chapter 11 cases are best served by the Debtors being given adequate time after the bar date to evaluate claims such as Movant's and consider their options with respect thereto. One option the Debtors will consider is to seek approval of mediation procedures similar to those employed in other recent hospital bankruptcy cases, which would establish a framework for the resolution of medical malpractice actions. If the Automatic Stay were lifted to allow Movant to proceed with its claim in State Court, it would serve as a precedent for other similarly situated claimants to seek similar relief, forcing the Debtors to participate in a multitude of litigations before the Debtors have had adequate time to review such claims in the aggregate and consider their options with respect thereto. The inconvenience (if any) suffered by the Movant from the imposition of the Automatic Stay is no different than that of any number of plaintiff's whose actions are stayed by a bankruptcy filing and, in any event, are far outweighed by the need to conduct the Debtors' Chapter 11 cases and resolve claims against the Debtors in the most cost-effective manner available. Similarly, the interests of judicial economy would not be well-served by piecemeal liftings of the Automatic Stay and time-consuming litigation.

14. Accordingly, because the Movant has given the Court no basis to lift the Automatic Stay, and because such modification could prejudice the interests of the Debtors, the Debtors submit that consideration of the Sonnax factors requires denial of the relief sought by the Movants.

**CONCLUSION**

15. For the foregoing reasons, the Debtors request that the Court deny the relief requested in the Motion.

Dated: July 26, 2013  
Great Neck, New York

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