

Alex R. Rovira
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, New York 10019
(212) 839-5300 (tel)
(212) 839-5599 (fax)

-and-

Jeffrey E. Bjork
Ariella Thal Simonds
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013
(213) 896-6000 (tel)
(213) 896-6600 (fax)

Counsel for Allscripts Healthcare, LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Chapter 11
)	
SOUND SHORE MEDICAL CENTER)	Case No. 13-22840 (RDD)
OF WESTCHESTER, <i>et al.</i> ,)	
)	(Jointly Administered)
Debtors.)	
_____)	

**ALLSCRIPTS' LIMITED OBJECTION AND RESERVATION OF RIGHTS WITH
RESPECT TO THE MOTION OF SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, ET AL., FOR ENTRY OF AN ORDER APPROVING THE PRIVATE
SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' REAL PROPERTY AND
DESIGNATED PERSONAL PROPERTY ASSETS**

Allscripts Healthcare, LLC ("Allscripts"), by and through its undersigned counsel, hereby submits this limited objection and reservation of rights (this "Limited Objection and Reservation of Rights") with respect to the *Motion of Sound Shore Medical Center of Westchester, et al., for Entry of an Order Approving the Private Sale of Substantially All of the Debtors' Real Property*

and Designated Personal Property Assets [Docket Nos. 17, 103] (the “Sale Motion”). In support of this Limited Objection and Reservation of Rights, Allscripts respectfully states as follows:

PRELIMINARY STATEMENT

1. Allscripts owns and licenses to Sound Shore Health System, Inc. (“SSHS”) the software that forms the basis for the Debtors’ electronic medical records and billing system. Although the licensed software is instrumental to the Debtors’ operations, the proposed Asset Purchase Agreement (the “Purchase Agreement”) between the Debtors and the proposed purchaser (“Montefiore”) does not address either the continued use of the licensed software or the transition to a different software system, either of which would have to be addressed prior to the closing of the sale. In fact, the Purchase Agreement purports to convey to Montefiore certain electronic health and accounting records that are currently stored in the licensed software and Intellectual Property (which is arguably defined in the Purchase Agreement to include the licensed software), yet those provisions potentially violate certain contractual limitations on the use of the software.

2. The list of executory contracts that the Debtors propose to assume and assign to Montefiore has not been filed and need not be, pursuant to this Court’s scheduling order, until 30 days prior to the closing of the sale. As such, Allscripts does not yet know whether SSHS intends to assume its agreement with Allscripts and assign it to Montefiore or whether it plans to reject the contract, leaving Montefiore to transition to another software provider. However, certain provisions of the Purchase Agreement and the practical challenges that would be involved in transitioning the Debtors’ various facilities to a new software system for medical records and accounting records (a process that very possibly cannot be accomplished prior to the anticipated closing of the sale) raise significant questions about how the sale process can be

accomplished without violating the provisions in Allscripts' contract with SSHS that restrict access to the licensed software by third parties.

3. Because Allscripts' agreement with SSHS contains strict limitations on the use of the licensed software by third parties, a smooth transition from the Debtors to Montefiore will likely require either assumption of the Allscripts contract or an alternative agreement with Allscripts. At present, Allscripts is engaged in ongoing discussions with Montefiore and the Debtors, in an attempt to reach an agreement on the assumption and assignment of the Allscripts contract or, alternatively, the execution of a new contract with Montefiore. Allscripts is hopeful that the parties can reach an agreement that will satisfy Montefiore's need for access to the electronic medical records and software, as well as Allscripts' contractual and statutory rights. However, as of the date of this filing, the parties have not yet agreed to final terms.

4. It is Allscripts' position that, in the event the Debtors elect to reject the Allscripts contract and no substitute agreement is reached between Allscripts and Montefiore, then Allscripts' existing contract with SSHS restricts the Debtors from giving Montefiore access to any of the Allscripts Software. In that event, Allscripts cannot be compelled to provide any services to Montefiore, other than perhaps (subject to the discussion below) providing Montefiore with the raw data currently held in the Allscripts software so that the Debtors' records can be accessed outside of the software system. All of this is somewhat premature at this point in time, because the Debtors and Montefiore are still determining which contracts to assume and reject and because Allscripts is currently engaged in ongoing conversations with the Debtors and Montefiore on this subject. Nonetheless, it is important for Allscripts to reserve all rights to which it is entitled under its contract with SSHS, the Bankruptcy Code and otherwise applicable law. Therefore, Allscripts respectfully requests that any order entered by the Court

approving the Sale Motion be entered without prejudice to Allscripts' right to enforce its contractual and statutory rights—including its right not to permit third parties to access the software—in the event its contract is rejected and an alternative agreement is not reached.

5. In addition, as discussed further below, Allscripts is concerned that one particular provision of the Purchase Agreement could potentially create liability for Allscripts and seeks clarifying language to protect Allscripts from any such liability.

**ALLSCRIPTS' RESERVATION OF RIGHTS WITH RESPECT TO THE DEBTORS'
LICENSED SOFTWARE**

6. On or about January 21, 2010, SSHS and Allscripts' predecessor, Eclipsys Corporation, entered into a Master Agreement¹ pursuant to which Allscripts licenses to the Debtors proprietary software that supports various critical hospital operations (the "Allscripts Software") and provides SSHS with support services in connection with the Allscripts Software.

7. The Master Agreement, places strict limitations on who may use the Allscripts Software and for what purposes. Pursuant to the Master Agreement, SSHS has only a "[REDACTED]
[REDACTED]" to use the Allscripts Software. Master Agmt. § 1.1. The Master Agreement limits use of the software to
[REDACTED]
[REDACTED]

[REDACTED] Id. The Master Agreement further restricts the use of the software
[REDACTED]

[REDACTED] Id. The Master Agreement defines "Facilities" as

¹ A copy of the Master Agreement is attached hereto as Exhibit A but has been redacted to preserve confidentiality, as have certain portions of this Limited Objection and Reservation of Rights that quote the provisions of the Master Agreement. An unredacted copy of this Limited Objection and Reservation of Rights, including Exhibit A, has been filed with the Court pursuant to an *ex parte* motion requesting authority to file under seal, and copies will be provided to the United States Trustee, the Debtors and the Committee for professional use only.

[REDACTED]

[REDACTED] Moreover, the Master Agreement provides:

[REDACTED]

8. The Master Agreement affirmatively prohibits SSHS from “[REDACTED]

[REDACTED]

[REDACTED].” Specifically, the Master Agreement provides in relevant part:

[REDACTED]

9. By virtue of the provisions cited above, the Master Agreement operates to prevent the Debtors from giving Montefiore access to the licensed software without Allscripts’ consent. This includes a restriction on the sale of computers and other hardware until the Allscripts software has been de-installed and even a restriction on conveying the Debtors’ historical medical and accounting records and data in any manner that requires access to the software itself. Certain provisions of the Purchase Agreement appear to violate these restrictions. See,

e.g., Purchase Agmt. §§ 2.1(e), (f) (purporting to sell to Montefiore (i) “all books, records, and data of the Sellers of every kind, whether in hard copy, electronic or digital format and however maintained or stored,” including accounting records and medical records for current in-patients and recent outpatients, and (ii) “[a]ll Intellectual Property of Sellers,” defined to include “any rights and interests that any Seller has in all . . . technical information and data, computer programs and program rights”).

10. The mechanics of transitioning the Debtors’ operations to Montefiore and consummating certain provisions of the Purchase Agreement without violating the terms of Allscripts’ contract will need to be addressed prior to the closing of the sale, given that the parties will either have to reach an agreement on the assumption of Allscripts’ contract, enter into a substitute contract or enter into a transition services agreement acceptable to Allscripts before Montefiore can have any access to the Allscripts Software. For now, Allscripts merely asks that the Court recognize the potential conflict and preserve Allscripts’ right to enforce its contractual and statutory rights at a later date in the event that becomes necessary.

ALLSCRIPTS’ LIMITED OBJECTION TO SECTION 2.1(f) OF THE PURCHASE AGREEMENT

11. In addition to the reservation of rights set forth above, Allscripts is concerned by Section 2.1(f) of the Purchase Agreement, which purports to convey to Montefiore “in electronic or digital format and however maintained or stored” only those medical records that relate to “(i) in-patients of SSMC, MVH and/or SECC as of the Closing Date, and (ii) outpatients undergoing an active course of treatment during the three (3) month period prior to the Closing Date.” Purchase Agmt. § 2.1(f). Allscripts objects to this provision to the extent it requires Allscripts to identify and segregate the portion of the Debtors’ medical records that constitute “Acquired Assets” from those that do not. Allscripts is not prepared to and shall not

be required or deemed to assume responsibility or be held liable for the accuracy of any such segregation of records. Allscripts can of course provide the Debtors with “raw data” versions of the Debtors’ records (separated from the proprietary software) from which the Debtors can select those records that are meant to be transferred to Montefiore pursuant to the Purchase Agreement. Alternatively, to the extent practicable in light of the method of storing and identifying the Debtors’ records, the Debtors may identify with specificity for Allscripts those electronically stored records that qualify under the Purchase Agreement as “Acquired Assets” and Allscripts would then create “raw data” versions of only those specified records. However, Allscripts is not prepared to make any independent judgment about which medical records should be conveyed to Montefiore under the terms of the Purchase Agreement. As such, Allscripts respectfully requests that the Court include in any order approving the Sale Motion language providing that the Debtors shall bear sole responsibility for determining which medical records constitute Acquired Assets under the terms of the Purchase Agreement and that Allscripts shall have no liability for following the Debtors’ instructions in that regard.

CONCLUSION

12. For the reasons set forth above, Allscripts respectfully requests that the Court include the following language in any order approving the Sale Motion:

This Order is without prejudice to the right of Allscripts Healthcare, LLC to bring a motion, file an objection or initiate a proceeding to enforce its legal and equitable rights under its contract with Sound Shore Health System, Inc., the Bankruptcy Code or otherwise applicable law. To the extent any provisions of the Purchase Agreement conflict with the foregoing rights, the approval of such provisions contained in this Order shall be conditioned upon Sound Shore Health System, Inc. assuming its contract with Allscripts pursuant to 11 U.S.C. § 365 or obtaining Allscripts’ consent or upon the further adjudication of Allscripts rights before this Court. With regard to Section 2.1(f) of the Purchase Agreement, the Debtors shall bear sole responsibility for

any determination regarding which medical records constitute Acquired Assets under the terms of the Purchase Agreement. [To the extent the Debtors require Allscripts to segregate such records from those not qualifying as Acquired Assets, the Debtors shall identify with specificity for Allscripts those records that constitute Acquired Assets], and Allscripts shall have no liability to the Debtors, their estates, Montefiore or any other party for following the Debtors' instructions as to the segregation and preparation for conveyance to Montefiore of such records.

Dated: New York, New York
July 29, 2013

Respectfully submitted,

SIDLEY AUSTIN LLP

By: /s/ Alex R. Rovira
Alex R. Rovira
787 Seventh Avenue
New York, NY 10019
(212) 839-5300 (tel)
(212) 839-5599 (fax)

-and-

Jeffrey E. Bjork
Ariella Thal Simonds
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013
(213) 896-6125 (tel)
(213) 896-6600 (fax)

Attorneys for Allscripts Healthcare, LLC

EXHIBIT A

MASTER AGREEMENT

UNDER SEAL