

Presentment Date and Time:
August 13, 2013 at 12:00 noon

Mark I. Fishman (MF3487)
Neubert, Pepe & Monteith, P.C.
195 Church Street, 13th Floor
New Haven, Connecticut 06510
Telephone 203.821.2000
Proposed Counsel to Patient Care Ombudsman

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**NOTICE OF PRESENTMENT OF ORDER AUTHORIZING
THE EMPLOYMENT AND RETENTION OF NEUBERT,
PEPE & MONTEITH, P.C. AS COUNSEL FOR THE PATIENT
CARE OMBUDSMAN, NUNC PRO TUNC TO JUNE 21, 2013**

PLEASE TAKE NOTICE THAT upon the attached Application of Patient Care Ombudsman for Entry of an Order Authorizing the Retention and Employment of Neubert, Pepe & Monteith, P.C. as Counsel, nunc pro tunc to June 21, 2013, filed and served on June 28, 2013 (Doc. 140), Daniel T. McMurray, Patient Care Ombudsman, will present the attached proposed order, pursuant to Local Bankruptcy Rule 9074-1, to the Honorable Robert D. Drain, United States Bankruptcy Judge, for signature on August 13, 2013 at 12:00 noon.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the proposed order must be made in writing and received by the chambers of the Honorable Robert D. Drain, United States Bankruptcy Court, 300 Quarropas Street, White Plains, New York

10601, and by the undersigned **not later than August 13, 2013**, at 12:00 noon. Unless objections are received by that time, the proposed order may be signed.

Dated: New Haven, Connecticut
August 8, 2013

NEUBERT, PEPE & MONTEITH, P.C.


By: 
Mark I. Fishman (MF 3487)
195 Church Street, 13th Floor
New Haven, Connecticut 06510
Tel. 203-821-2000
Email: mfishman@npmlaw.com
Proposed Counsel to Patient Care
Ombudsman

EXHIBIT A

Mark I. Fishman (MF3487)
Neubert, Pepe & Monteith, P.C.
195 Church Street, 13th Floor
New Haven, Connecticut 06510
Tel. 203.821.2000
Proposed Counsel to Patient Care Ombudsman

UNITED STATES BANKRUPTCY COURT
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In re:	:	Chapter 11
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	:	Case No. 13-22840 (RDD)
SOUND SHORE MEDICAL CENTER OF	:	
WESTCHESTER, et al.,	:	(Jointly Administered)
	:	
Debtors.	:	
	X	

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION
OF NEUBERT, PEPE & MONTEITH, P.C. AS COUNSEL FOR THE
PATIENT CARE OMBUDSMAN, *NUNC PRO TUNC* TO JUNE 21, 2013**

Upon the application (the “Application”)¹ of Daniel T. McMurray, the Patient Care Ombudsman (the “Ombudsman”) appointed in these Chapter 11 cases, for entry of an Order, pursuant to Sections 105, 330 and 333 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the retention and employment of the law firm of Neubert, Pepe & Monteith, P.C. (“Neubert Pepe”), as counsel for the Ombudsman, *nunc pro tunc* to June 21, 2013; and upon reviewing and considering the Affidavit of Mark I. Fishman (the “Fishman Affidavit”) and the Application; and it appearing that the Court has jurisdiction over the Application pursuant to 28 U.S.C. § 157(b)(2); and due and adequate notice of the Application having been given; and it appearing that no other or further notice need be given; and this Court having determined that, based upon the representations in the Application and the Fishman

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.

Affidavit, Neubert Pepe represents no interest adverse to the Debtors' estates or their creditors with respect to the matters upon which they are to be engaged, Neubert Pepe is a disinterested person as that term is defined under Section 101(14) of the Bankruptcy Code, and Neubert Pepe's employment is in the best interests of the estates and creditors; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Application is granted.
2. The Ombudsman is authorized to retain Neubert Pepe as his counsel in these cases, *nunc pro tunc* to June 21, 2013, to perform the services set forth in the Application.
3. Neubert Pepe shall be compensated in accordance with Sections 330 and 331 of the Bankruptcy Code, any applicable Bankruptcy Rules, U.S. Trustee Guidelines and orders of this Court and shall be compensated with at least the same frequency as the attorneys for the Debtors and the Creditors Committee.
4. Neubert Pepe shall be permitted within 10 days after entry of this Order to submit invoices, and thereafter to be paid upon such invoices, in accordance with any order of this Court establishing procedures for interim compensation and reimbursement of expenses of professionals (the "Procedures Order"), to the extent that such invoices were previously due for submission pursuant to the Procedures Order.
5. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

EXHIBIT B

NEUBERT, PEPE & MONTEITH, P.C.
195 Church Street, 13th Floor
New Haven, Connecticut 06510
Tel. 203.821.2000
Proposed Counsel to Patient Care Ombudsman
Mark I. Fishman (MF 3487)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**APPLICATION OF PATIENT CARE OMBUDSMAN FOR ENTRY OF AN
ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF
NEUBERT, PEPE & MONTEITH, P.C. AS COUNSEL, *NUNC PRO TUNC* TO
JUNE 21, 2013**

Daniel T. McMurray, the patient care ombudsman appointed in these jointly administered Chapter 11 cases, submits this application for entry of an Order, pursuant to sections 105, 330 and 333 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "**Bankruptcy Code**") and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), authorizing the retention and employment of the law firm of Neubert, Pepe & Monteith, P.C. ("**Neubert Pepe**"), as counsel for the Ombudsman, *nunc pro tunc* to June 21, 2013. The facts and circumstances supporting this application (the "**Application**") are as set forth herein and in the Affidavit of Mark I. Fishman (the "**Fishman Affidavit**"). In further support of this Application, the Ombudsman respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§

157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief sought herein are sections 105, 330 and 333 of the Bankruptcy Code and Bankruptcy Rule 2014.

BACKGROUND

3. On or about May 29, 2013, the debtors filed petitions for relief under Chapter 11 of the Bankruptcy Code. In the petitions, the Debtors were designated as “health care businesses.”

4. On June 21, 2013, this Court entered an order directing the appointment of a patient care ombudsman in these cases under Section 333 of the Bankruptcy Code (Docket No. 98) (the “Appointment Order”).

5. In accordance with the Appointment Order, on June 21, 2013, the Office of the United States Trustee filed a notice appointing the Ombudsman (Docket No. 100).

6. The Ombudsman is a Managing Director of Focus Management Group, which specializes, inter alia, in the management and turnaround of distressed health care businesses. Although the Ombudsman has vast experience in the health care field, the Ombudsman is not an attorney and requires the assistance of bankruptcy counsel.

RELIEF REQUESTED

7. The Ombudsman desires to retain and employ Neubert Pepe as his counsel in these jointly administered cases. The Ombudsman has determined that Neubert Pepe has the resources and experience necessary to represent him, as described hereinafter. Neubert Pepe’s attorneys have substantial experience with complex

reorganization cases and health care cases, including prior representation of the Ombudsman in such capacity. Given the nature of these cases, including the specific duties required under section 333 of the Bankruptcy Code, as discussed hereinafter, the Ombudsman believes that retention of Neubert Pepe is appropriate and necessary.

8. By this Application, the Ombudsman respectfully requests that this Court enter an Order authorizing him to employ and retain Neubert Pepe as his attorneys, pursuant to sections 105, 330 and 333 of the Bankruptcy Code, *nunc pro tunc* to the date of the Ombudsman's appointment on June 21, 2013, which was also the date on which Neubert, Pepe began performing services for the Ombudsman.

SCOPE OF EMPLOYMENT

9. The professional services that the Ombudsman expects that Neubert Pepe will be called upon to render include, but shall not be limited to, the following:

- (a) Representing the Ombudsman in any proceeding or hearing in this Court and in any action in other courts where the rights of the patients generally may be litigated or affected as a result of these cases;
- (b) Representing and advising the Ombudsman in connection with gaining access to patient records in accordance with Section 333 of the Bankruptcy Code and other relevant law to the extent applicable.
- (c) Advising the Ombudsman concerning the requirements of the Bankruptcy Code and Bankruptcy Rules and the requirements of the Office of the United States Trustee relating to the discharge of his duties under Section 333 of the Bankruptcy Code;
- (d) Advising and representing the Ombudsman concerning the effect on patients of a potential reorganization, sale of the debtors' assets or closing of the debtors' programs or facilities; and
- (e) Performing such other legal services as may be required under

the circumstances of these cases in accordance with the Ombudsman's powers and duties as set forth in the Bankruptcy Code.

10. Subject to this Court's approval of this Application, Neubert Pepe has indicated that it is willing to serve as the Ombudsman's counsel to perform the services described above. Because of the exigencies of these cases and the Ombudsman's needs, Neubert Pepe commenced performing services immediately upon the Ombudsman's appointment on June 21, 2013.

**NEUBERT PEPE DOES NOT HOLD OR REPRESENT ANY ADVERSE
INTEREST AND IS EMINENTLY QUALIFIED TO REPRESENT THE
OMBUDSMAN**

11. As set forth in greater detail in the Fishman Affidavit, Neubert Pepe has completed a conflicts check and has disclosed in the Fishman Affidavit its known connections, if any, with the other parties in these cases.

12. To the best of the Ombudsman's knowledge, based upon the Fishman Affidavit, Neubert Pepe (a) does not hold or represent any interest adverse to the debtors or their Chapter 11 estates, their creditors, or any other party in interest and (b) is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code. Because Neubert Pepe has substantial practices in the areas of, inter alia, bankruptcy and health law, the Ombudsman is aware that Neubert Pepe may represent, or may have represented, certain creditors of the debtors or other parties-in-interest in matters unrelated to the debtors or these cases.

13. Neubert Pepe and its lead partner, Mark I. Fishman, are eminently qualified to represent the Ombudsman. Mr. Fishman is a graduate of Harvard Law School and practiced law for more than six years with the law firm of Sullivan &

Cromwell in New York City. He has served as the Chapter 11 Trustee of Cuisinarts, Inc. in the District of Connecticut, Northeastern Conference Nursing Home, Inc. in the Southern District of New York and Highgate LTC Management, LLC, owner of four nursing homes, in the Northern District of New York. Neubert Pepe has represented the Ombudsman in his capacity as patient care ombudsman of, inter alia, Saint Vincents Catholic Medical Centers of New York (SDNY 10-11963), Our Lady of Mercy Medical Center (SDNY 07-10609), DeWitt Rehabilitation and Nursing Center, Inc., (SDNY 11-10253), Brooklyn Psychiatric Centers, Inc. and Caritas Health Care, Inc., in this Court and St. Mary's Hospital, Passaic, N.J. and Hudson Healthcare, Inc., d/b/a Hoboken University Medical Center, in the District of New Jersey and represents numerous medical providers as well as medical and dental societies. It also represented a secured bank creditor in the nursing home case of Marathon Healthcare in the District of Connecticut and in the case of Johnson Memorial Hospital in the same district. More information about both Neubert Pepe and Mr. Fishman can be found at www.NPMLAW.com.

COMPENSATION AND REIMBURSEMENT OF EXPENSES

14. Subject to this Court's approval and in accordance with Sections 105, 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the U.S. Trustee Guidelines, orders of this Court and the rules and other procedures that may be fixed by this Court, the Ombudsman requests that Neubert Pepe be compensated on an hourly basis, plus reimbursement of the actual and necessary expenses that Neubert Pepe incurs, in accordance with the ordinary and customary rates which are in effect on the date the services are rendered, including, but not limited to, photocopies, word

processing, courier service, computer assisted research, docket and court filing fees, telecommunications, travel, court reporting charges, and any other incidental costs advanced by Neubert Pepe specifically for these matters, at the rates commonly charged for such costs to other Neubert Pepe clients.

15. Neubert Pepe has advised the Ombudsman that, because of its favorable cost structure and its location outside of New York City, the current hourly rate applicable to Mr. Fishman for non-Connecticut matters is \$425.00. Other attorneys and paralegals will render services to the Ombudsman as needed. Generally, Neubert Pepe's hourly rates for persons other than Mr. Fishman are equal to or less than \$400.00.

16. The Ombudsman understands that the hourly rates set forth above are subject to periodic adjustments to reflect economic and other conditions.

17. Other than as set forth above, there is no proposed arrangement to compensate Neubert Pepe in connection with its representation of the Ombudsman. Neubert Pepe has received no compensation in these cases to date.

BASIS FOR RELIEF

18. The retention of counsel is essential to a patient care ombudsman's proper discharge of his duties. The debtors may be in a period of transition. While the debtors intend to effect a sale, it remains possible that some of the debtors' programs or facilities could be closed, especially if the proposed sale is delayed or encounters impediments. The debtors also, upon information and belief, have encountered financial difficulties. Generally speaking, whenever financial conditions dictate that a debtor seek reorganization or cease doing business, there is concern whether ongoing

patient care is being compromised. Should any such decline become apparent, then it would be necessary for the Ombudsman to report to the Court and possibly to engage in motion practice. Pre-existing retention of counsel is necessary for the Ombudsman to discharge these responsibilities in a full and timely matter.

19. Retention of counsel is also necessary where the Ombudsman seeks to gain access to patient records. Section 333 of the Bankruptcy Code and Rule 2015.1(b) have created a legally complicated process for obtaining access to patient records. They not only require a court order and an attendant imposition of restrictions by the Court but also impose notice or service requirements which are impractical to satisfy, thereby requiring the use of counsel in many cases to navigate through such requirements and to devise and obtain approval for alternative modes of service. While the Appointment Order, on its face, grants access to patient records, it is necessary for counsel to advise the Ombudsman regarding the interplay of the Appointment Order with the applicable rules and statute and, most likely, to negotiate a Business Associates Agreement with the debtors in any event.

20. Counsel also has an important role to play in connection with a patient care ombudsman's periodic reports. Review by counsel of drafts of the reports can assure that the patient care ombudsman does not violate patient privacy, especially in an ombudsman's discussion in the report of his review of patient records. Counsel is also necessary in order properly to meet the technical requirements for 14-day notice of issuance of the report, as mandated by Rule 2015.1(a), to comply with the requirements of the Appointment Order and to assure the accuracy of references to legal matters and court proceedings in the reports.

21. Experienced bankruptcy counsel is necessary in order to monitor these cases so that the Ombudsman will be apprised of developments that can either directly affect patient care (for example, a stay relief or reclamation motion seeking leave to repossess essential medical equipment) or can indirectly affect patient care (for example, developments that impact upon the debtors' financial condition and/or cash position and the debtors' consequent ability to provide adequate care).

22. Courts, including this Court, have approved the engagement of professionals by patient care ombudsmen pursuant to sections 105, 330 and/or 333 of the Bankruptcy Code. *See, for example, In re Peninsula Hospital Center, Chapter 11 Case No. 11-47056 (ESS)(Bankr. E.D.N.Y., November 28, 2011); In re American Medical Utilization Management Corporation, Chapter 11 Case No. 11-43573 (CEC)(Bankr. E.D.N.Y., June 30, 2011); In re Saint Vincents Catholic Medical Centers of New York, Chapter 11 Case 10-11963 (CGM) (Bankr. S.D.N.Y., May 27, 2010, Doc. 387); In re DeWitt Rehabilitation and Nursing Center, Chapter 11 Case No. 11-10253 (ALG) (Bankr. S.D.N.Y., May 4, 2011); In re Brooklyn Psychiatric Centers, Inc., Chapter 11 Case No. 08-42658 (JF) (Bankr. E.D.N.Y., August 6, 2008); In re Caritas Health Systems, Inc., Chapter 11 Case No. 09-40901 (CEC) (Bankr. E.D.N.Y., May 5, 2009); In re Our Lady of Mercy Medical Center, Chapter 11 Case No. 07-10609 (REG) (Bankr. S.D.N.Y., April 24 and May 3, 2007); New York Westchester Square Medical Center, Chapter 11 Case No. 06-13050 (SMB) (Bankr. S.D.N.Y., February 26, 2007); Atlantic Health Services, Inc., Chapter 11 Case No. 06-10356 (PM) (Bankr. D. Md., March 11, 2006); In re Upland Surgical Institute, Chapter 11 Case No. 06-11298 (Bankr. S.D. Cal. September 29, 2006); In re St. Mary's Hospital,*

Passaic, N.J., Case No. 09-15619 (MS) (Bankr. D.N.J., July 14, 2009). For amplification, the Court may refer to the discussion in *In re Synergy Hematology-Oncology Medical Associates, Inc.*, 2010 WL 28537 (Bankr. C.D. Cal. 2010).

23. Other authority exists to grant this Application and to approve counsel for the Ombudsman. The appointment of a patient care ombudsman is in some ways analogous to the appointment of an examiner, and, in many cases, courts, pursuant to section 105, have routinely authorized examiners to employ professionals notwithstanding the absence of express authorization in the Bankruptcy Code for such employment. *See, e.g., In re Enron*, Case No. 01-16034 (Bankr. S.D.N.Y. 2001) (allowed examiner to retain professionals); *In re Southmark Corp.*, 113 B.R. 280, 283 (Bankr. N.D. Tex 1990) (allowing examiner to retain professionals where appropriate to carry out subjective provisions of the Code); *In re Tighe Mercantile, Inc.*, 62 B.R. 995, 1000 (Bankr. S.D. Cal. 1986) ("This Court holds that in appropriate circumstances, a bankruptcy court may rely on § 105(a) to authorize examiners to employ professional persons.). *See Synergy, supra*, authorizing counsel for an ombudsman following a discussion of the cases cited in this paragraph.

**REQUEST FOR APPROVAL OF RETENTION OF
NEUBERT PEPE, NUNC PRO TUNC TO JUNE 21, 2013**

24. The Ombudsman requests that Neubert Pepe's retention be made *nunc pro tunc* as of June 21, 2013, the date the Ombudsman was appointed, in order to allow Neubert Pepe to be compensated for the work it has performed for the Ombudsman since his appointment but prior to the Court's consideration of this Application. The Ombudsman submits that, under the circumstances, retroactive approval is warranted. *See e.g., F/S Airlease II, Inc. v. Simon (In re F/S Airlease II,*

Inc.), 844 F.2d 99, 103 (3rd Cir. 1988); *Indian River Homes, Inc. v. Sussex Trust Co.*, 108 B.R. 46, 51 (D. Del. 1989).

25. Because of the exigencies of these cases and the Ombudsman's needs, Neubert Pepe began almost immediately exploring the Ombudsman's options and advising the Ombudsman. It is appropriate that Neubert Pepe be compensated for these services.

NO PRIOR REQUEST

26. No previous motion or application for the relief sought herein has been made to this or any other court.

WHEREFORE, based upon the foregoing, the Ombudsman respectfully requests that the Court enter an order substantially in the form annexed hereto (a) granting this Application, (b) authorizing the Ombudsman to retain and employ Neubert Pepe as his counsel in these cases, effective as of June 21, 2013, (c) providing that Neubert Pepe be paid with at least the same frequency as counsel for the debtors and the Creditors Committee, (d) authorizing Neubert Pepe to submit an invoice or invoices pursuant to any monthly compensation order if this Application is granted near or after the deadline for such submission; and (e) granting such other and further relief as this Court may deem just and proper.

Dated: June 28, 2013

**DANIEL T. MCMURRAY,
AS PATIENT CARE OMBUDSMAN**

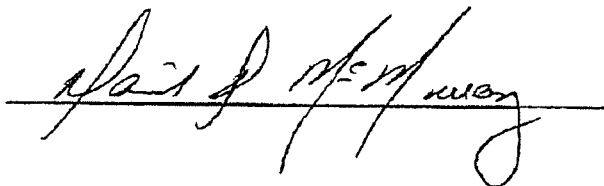
A handwritten signature in black ink, appearing to read "Daniel T. McMurray", is written over a horizontal line.

EXHIBIT C

1. I am a principal of the law firm of Neubert, Pepe & Monteith, P.C. (“Neubert Pepe”), which maintains offices at 195 Church Street, New Haven, CT 06510, as well as in Fairfield, Connecticut. I am a member of the Bars of the States of New York and Connecticut and the Commonwealth of Massachusetts and of numerous federal courts, including the Southern District of New York. I submit this affidavit (the “Affidavit”) on behalf of Neubert Pepe in

support of the application (the “Application”)¹ of Daniel T. McMurray as Patient Care Ombudsman (the “Ombudsman”) appointed in this jointly administered Chapter 11 case (the “Case”) of Sound Shore Medical Center of Westchester, et al. (the “Debtors”), for entry of an Order, pursuant to Sections 105, 330 and 333 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”), and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the retention and employment of Neubert Pepe as counsel for the Ombudsman, *nunc pro tunc*, as of June 21, 2013.

NEUBERT PEPE’S DISINTERESTEDNESS

2. To the best of my knowledge and information after due inquiry, Neubert Pepe has no connections with the Debtors, their creditors, any other party-in-interest herein or their respective attorneys or professionals and does not hold or represent any entity having an adverse interest in connection with the Case, except as disclosed herein.

3. Neubert Pepe maintains a computer database (the “Database”) containing, *inter alia*, the names of all of Neubert Pepe’s current and former clients. In connection with preparing this Affidavit, I caused to be submitted to, and checked against, the Database, *inter alia*, all of the following names: (a) the Debtors; (b) the Debtors’ 30 largest unsecured creditors; (c) Montefiore Medical Center (“Montefiore”), which is the contract purchaser of the Debtors’ assets; (d) the Debtors’ bankruptcy counsel, crisis manager and CEO; (e) the Debtors’ secured creditors, as described in the first-day affidavit of the Debtors’ CEO (collectively, the “Potentially Interested Parties”). None of the relationships between Potentially Interested Parties, on the one hand, and Neubert Pepe, on the other, involved either the Debtors or the Case. In addition, Neubert Pepe neither represents nor has represented any other party in connection with the Case.

4. Neubert Pepe and I disclose on Exhibit A hereto several relationships, none of

¹ Capitalized terms used herein but not otherwise defined shall have those meanings set forth in the Application.

which are related to the Debtors or the Case. None of the relationships disclosed will affect in any way Neubert Pepe's exercise of its professional judgment in the Case.

5. As expected, with substantial practices in, *inter alia*, bankruptcy and the healthcare industry, Neubert Pepe or certain of its attorneys, in addition to the connections disclosed in Exhibit A, may have in the past represented, may currently represent, and may in the future represent parties-in-interest in connection with matters unrelated to the Debtors or the Case. No such connection will interfere with Neubert Pepe's exercise of its professional judgment. Those connections which have been discovered in the Database or otherwise have been disclosed in Exhibit A. In addition, Neubert Pepe appears in many cases, proceedings, and transactions involving different attorneys, financial consultants, investment bankers and other professionals, some of whom may now or in the future represent the Potentially Interested Parties or other parties-in-interest in the Case and some of whom represent creditors committee members in cases in which Neubert Pepe represents or has represented the creditors committee, the Ombudsman, or other parties or in which the undersigned serves or has served as trustee. In the event that the undersigned discovers any material connections, Neubert Pepe will disclose such information to the Court on notice to the United States Trustee

6. Based on the foregoing, Neubert Pepe, insofar as I have been able to ascertain based on the information currently available to me, does not represent any interest adverse to the Debtors or their estates in the matters upon which Neubert Pepe is to be engaged. To the best of my knowledge, information and belief, Neubert Pepe is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code in that Neubert Pepe:

- a. is not a creditor, equity security holder or insider of the Debtors;
- b. is not and was not, within two years before the date of the filing of the

Debtors' Chapter 11 petitions, a director, officer, or employee of the Debtors; and

- c. does not have an interest materially adverse to the interest of the estates or any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors or for any other reason.

COMPENSATION AND REIMBURSEMENT OF EXPENSES

7. Neubert Pepe intends periodically to apply for compensation for professional services rendered in connection with the Case subject to the approval of the Court and in compliance with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, U.S. Trustee Guidelines and Orders of this Court, on an hourly basis, plus reimbursement of actual, necessary expenses and other charges incurred by Neubert Pepe.

8. Neubert Pepe's current hourly rates for non-Connecticut matters commenced in 2013 are \$425.00 for the undersigned, between \$160.00 and \$400.00 for other attorneys, and \$120.00 to \$130.00 for paralegals.

9. The hourly rates set forth above are subject to periodic adjustments to reflect economic and other conditions.

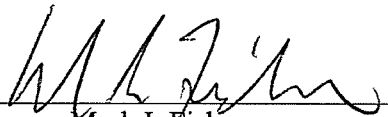
10. It is Neubert Pepe's practice to charge its clients in all areas of practice for direct expenses incurred in connection with the client's case. The expenses charged to clients may include, among other things, telephone and facsimile charges, mail and express mail charges, special or hand delivery charges, document processing, photocopying charges, travel expenses, expenses for "working meals," computerized research, and transcription costs, as well as non-ordinary overhead expenses such as overtime for secretarial personnel and other staff. Neubert

Pepe will charge the Debtors' estates for these expenses in a manner and at rates consistent with the Local Rules and U.S. Trustee Guidelines.

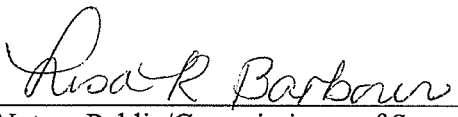
11. Other than as set forth herein, there is no proposed arrangement to compensate Neubert Pepe. Neubert Pepe has not shared, nor agreed to share (a) any compensation it has received or may receive with any other party or person, other than attorneys within Neubert Pepe, or (b) any compensation which another party or person has received or may receive.

CONCLUSION

12. By reason of the foregoing, I believe that Neubert Pepe is eligible for employment and retention by the Ombudsman pursuant to Sections 105, 330, 333 of the Bankruptcy Code and the applicable Bankruptcy Rules.


Mark I. Fishman

Sworn to and subscribed before me this
28th day of June, 2013


Notary Public/~~Commissioner of Superior Court~~

LISA R. BARBOUR
NOTARY PUBLIC
MY COMMISSION EXPIRES SEP. 30, 2015

EXHIBIT A

- a) Neubert Pepe has represented the Ombudsman in his capacity as Patient Care Ombudsman in various other cases, both in this Court and in other courts. The Ombudsman and Neubert Pepe have made joint presentations about the role of an ombudsman and have jointly met with the United States Trustee on that subject.
- b) An 1199- related entity is one of the Debtors' largest unsecured creditors. It may also be a secured creditor. While Neubert Pepe does not represent them, one or more 1199- related entities or similarly named entities (collectively, "1199") is or was a member of creditors committees in cases in the District of Connecticut in which Neubert Pepe serves or has served as counsel or co-counsel to creditors committees. A representative of 1199 was also the Chair of the creditors committee of Highgate LTC Management, LLC ("Highgate") in the Northern District of New York, in which Mark I. Fishman, Neubert Pepe's lead attorney in the Case, has served as Chapter 11 trustee. Presumably, 1199 is also a committee member or other party in other health care cases in which Neubert Pepe represents parties.
- c) Similarly, Medline Industries, Inc. ("Medline"), which is one of the Debtors' 30 largest creditors, was a member of the Creditors Committee in Highgate and, presumably, is a Committee member or other party in other cases in which Neubert Pepe is involved. Neubert Pepe does not represent Medline Industries, Inc., although it or certain of its clients utilize Medline's products or services.
- d) An affiliate of McKesson Information Solutions (collectively, "McKesson"), which is one of the Debtors' 30 largest unsecured creditors, was a member of the Creditors

Committee in at least one case in which Neubert Pepe represented the Creditors

Committee. Neubert Pepe does not represent McKesson.

- e) Andrew Lubin, a principal at Neubert Pepe, is a second cousin of Eric J. Small, who is employed in the Office of the United States Trustee in Albany and Poughkeepsie, New York.
- f) Neubert Pepe represented a defendant in personal injury or professional liability litigation in which Montefiore is or was also a defendant. Neubert Pepe's file is now closed.
- g) Neubert Pepe performs services, primarily litigation, for Yale-New Haven Hospital ("Yale"). The Debtors' filings in the Case indicate that the Debtors had prepetition communications with Yale regarding a possible acquisition but that Yale "passed on" the possible transaction.
- h) The Ombudsman's firm, Focus Management Group USA, Inc. ("Focus") was retained in the Spectrum Healthcare case in Connecticut by the same client that retained Neubert Pepe and may represent other clients in common with Neubert Pepe.
- i) Garfunkel Wild, P.C. ("Garfunkel") represents the Debtors in the Case. From approximately July to September, 2010, as trustee of Highgate, Mark I. Fishman retained Garfunkel as his special healthcare counsel to advise and assist him with respect to the technical and regulatory aspects of his sale of Highgate's nursing homes, which sale closed on or about August 31, 2010.
- j) Neubert Pepe was co-counsel to National Realty & Development Corp. ("National Realty") in 2008 and 2009 in unrelated litigation in which Lisa Penpraze and the firm in which she was then employed served as co-counsel to National Realty. Ms. Penpraze is now an Assistant United States Trustee in Albany.

k) A family member of Mark I. Fishman was a patient at Montefiore in 2000.