

GARFUNKEL WILD, P.C.
111 Great Neck Road
Great Neck, New York 11021
Telephone: (516) 393-2200
Telefax: (516) 466-5964
Burton S. Weston
Afsheen A. Shah
Adam T. Berkowitz

*Counsel for Debtors
And Debtors in Possession*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11 Case

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.,

Case No. 13- 22840 (RDD)

Debtors.

(Jointly Administered)
-----X

TO THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE:

**DEBTORS' OBJECTION TO MOTION OF FRANK ALLGAIER
FOR RELIEF FROM THE AUTOMATIC STAY**

Sound Shore Medical Center of Westchester ("SSMC"), and the other above captioned debtors, as debtors-in-possession (each a "Debtor" and collectively, the "Debtors"), hereby submit this Objection to the motion of Frank Allgaier ("Allgaier") for relief from the automatic stay (the "Motion") [Docket No. 267], and respectfully represent as follows:

Preliminary Statement

1. Allgaier seeks relief from the automatic stay (the "Automatic Stay") to allow his complaint for medical malpractice (the "State Court Action") against SSMC to proceed. 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.

2. The Debtors' Chapter 11 cases are still in their preliminary stages. The Debtors are primarily focusing their limited resources on, among other things, on maintaining their going concern healthcare operations, effectuating the sale of substantially all of their assets in a prompt and efficient manner so as to maximize value for all creditors and satisfying the conditions precedent for the proposed asset sale. The Debtors are also attending to various other demanding and emergent 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.

3. More importantly, the Debtors are in the process of analyzing all medical malpractice cases and the extent of coverage to develop protocols to present to the bankruptcy court to facilitate the resolution of all such claims. The Debtors anticipate filing a motion to establish such a protocol prior to the scheduled hearing on this matter. Maintaining the status quo until such time as the hearing on the proposed motion is held will expedite and streamline the process, while allowing the Debtors to tend to more urgent matters immediately. Granting the relief on the other hand, would no doubt encourage the filing of numerous similar requests which would further strain the Debtors' resources and attention. The Debtors submit that it is in the best interest of their estates and creditors that they be given time to address the claims asserted against their estates in the aggregate, rather than having to litigate such claims piecemeal.

4. Finally, sufficient cause has not been established to grant the relief sought in the Motion. Allgaier has not set forth any grounds which would weigh in favor of granting the Motion and certainly has not established "cause" for granting relief from the Automatic Stay. Further, the relief requested would also adversely impact the Debtors' estates since SSMC would

be responsible for the cost of defending the State Court Action and potentially, for any judgment or settlement entered into in connection therewith. Accordingly, the Motion should be denied.

General Background

5. 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.

6. On June 10, 2013, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors (the "Committee"). The Committee has retained Alston & Bird LLP as its counsel.

7. 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.

8. On August 16, 2013, Allgaeir, through his attorneys, filed the Motion [Docket No. 267], seeking relief from the automatic stay.

ARGUMENT

Lifting the Automatic Stay is Premature at This Time

9. The Debtors are using the time afforded by the Automatic Stay to develop a protocol to address all of the medical malpractice actions that have been, or will be, filed against the Debtors in a uniform and streamlined manner. While the Debtors initially anticipated

waiting for the passage of the bar date established in these cases before filing a motion to approve such procedures, the influx of motions to lift the Automatic Stay has forced the Debtors to expedite their timeline. The Debtors are finalizing a motion seeking approval of such procedures and anticipate filing it prior to the hearing set on this matter.

10. The mediation procedures the Debtors are developing are similar to those employed in other recent hospital bankruptcy cases which, if approved, will provide a framework for the resolution of medical malpractice actions. Such protocols have proven extremely effective in resolving a multitude of matters in a cost effective and expedited manner. If, however, the Automatic Stay were lifted to allow Allgaeir 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. The inconvenience (if any) suffered by the Allgaeir 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.

The Sonnax Factors do not Justify Lifting the Stay

11. 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 Nat’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 allows debtors to focus their attention on restructuring without the distraction of having to defend against multiple litigations in non-bankruptcy courts. CAE Indus. Ltd. v. Aerospace Holding Co., 116 B.R. 31, 32 (Bankr. S.D.N.Y. 1990) (the legislative history reveals that the section was intended ‘to permit the debtor to organize his or her affairs without creditor harassment and to allow orderly resolution of all claims’’).

12. 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). Courts will only modify or lift the automatic stay upon a showing of “cause”. 11 U.S.C. § 362(d)(1); In re Lord, 325 B.R. 121, 129 (Bankr. S.D.N.Y. 2005). However, neither section 362(d)(1) nor the legislative history of section 362 define “cause”. In re Touloumis, 170 B.R. 825, 828 (Bankr. S.D.N.Y. 1994). Because section 362(d) does not define “cause,” the decision to modify the stay is left to the discretion of the bankruptcy court. In re Marketxt Holdings Corp., 428 B.R. 579, 584 (Bankr. S.D.N.Y. 2010) (citing Sonnax Indus. Inc. v. Tri Component Prod. Corp. (In re Sonnox Indus. Inc.), 907 F.2d 1280, 1286 (2d. Cir. 1990)). Generally, courts determine what

constitutes such cause based on the totality of the circumstances. In re Wilson, 116 F.3d 87, 90 (3d Cir. 1997).

13. The Second Circuit has also 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 Sonnox 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 Allgaier. 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).

14. Courts need not consider each of these factors, but may consider only the factors "that are relevant to the particular case." Burger Boys, Inc. v. S. St. Seaport Ltd. P'ship (In re Burger Boys, Inc.), 183 B.R. 682, 688 (Bankr. S.D.N.Y. 1994). Additionally, courts also do not

need to assign equal weight to each factor, and have discretion in weighing the factors against one another. *In re RCM Global Long Term Capital Appreciation Fund, Ltd.*, 200 B.R. 514, 526 (Bankr. S.D.N.Y. 1996) (“A court should apply these factors on a case-by-case basis...assigning to each factor whatever weight the court feels is appropriate.”).

15. The Second Circuit has held that the party seeking to lift or modify the automatic stay bears the initial burden to show cause why the automatic stay should be lifted and “[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.” Sonnax, 907 F.2d at 1285.

16. Allgaier has not addressed the Sonnax factors nor met his 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. Moreover, several of the relevant Sonnax factors weigh against Allgaier, namely (i) whether granting the Motion would lead to partial or complete resolution of Allgaier’s claims, (ii) interference with the Debtors’ bankruptcy cases, (iii) whether the claims primarily involve third parties, (iv) whether lifting the stay could prejudice other creditors, and (v) whether the parties are ready for trial in the other proceeding.

17. As indicated, the State Court Action involves claims for medical malpractice against SSMC and several other non-debtor defendants. While lifting of the stay would ultimately lead to the fixing of Allgaier’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, particularly since the State Court Action does not appear to be trial

ready. To the contrary, allowing the State Court Action to continue will only interfere with the Chapter 11 Cases and force the Debtors to expend time and effort defending against the State Court Action. 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.

18. 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 to evaluate claims such as Allgaier's and through the implementation of streamlined procedures governing the resolution of such claims. As indicated above, the Debtors will be seeking 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 Allgaier to proceed with his claim in the State Court, it would serve as a precedent for other similarly situated claimants to seek similar relief, potentially inundating the Debtors and this Court with similar requests for relief from the stay on similar grounds. The Debtors would then be required to participate in a multitude of litigations, further draining available resources, and before they have had adequate time to review such claims in the aggregate and consider their options with respect thereto. The Debtors should not be required to divert their resources to respond to a multitude of "lift stay" requests or defend against the underlying claims while they are endeavoring to successfully restructure their businesses and effectuate a sale of their assets. See, e.g., In re Northwest Airlines Corp., 2006 WL 2583637 at *2 (Bankr. S.D.N.Y. 2006) (denying a motion for relief from stay under the Sonnax factors where "lifting the automatic stay...would open the floodgates for similar motions and cause the Debtor to refocus their energies on litigation before other courts rather than emergence from

Chapter 11.”); In re Celotex Corp., 140 B.R. 912, 916 (Bankr. M.D. Fla. 1992) (maintaining stay imposed pursuant to sections 362 and 105 of the Bankruptcy Code where relief would result in an “avalanche of litigation”).

19. The inconvenience (if any) suffered by Allgaier from the imposition of the Automatic Stay is no different than that of any number of plaintiffs 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. The Debtors thus 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.

Lifting the Stay will Interfere with the Debtors Bankruptcy Case

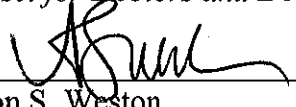
20. The Debtors continue to operate a hospital system under incredibly strenuous conditions. A merger of the magnitude anticipated by the approved sale [Docket No. 259] places an incredible stress on any organization which is further complicated by the rigors of the bankruptcy process. Accordingly, in addition to their day-to-day responsibilities, hospital personnel are now tasked with addressing the administrative and legal requirements imposed by asset purchase agreement, the sale order, and the Bankruptcy Code. Requiring the Debtors to participate in state court litigations will place additional and unnecessary stress on the Debtors and the numerous personnel who are working tirelessly to effectuate a successful reorganization.

CONCLUSION

21. For the foregoing reasons, the Debtors respectfully submit that there is no basis to lift the Automatic Stay, and that any such modification could prejudice the interests of the Debtors. Therefore, the Debtors request that the Court deny the relief requested in the Motion.

Dated: September __, 2013
Great Neck, New York

GARFUNKEL WILD, P.C.
Counsel for Debtors and Debtors in Possession

By: 
Burton S. Weston
Afsheen A. Shah
Adam T. Berkowitz
111 Great Neck Road
Great Neck, New York 11021
Telephone: (516) 393-2200
Facsimile: (516) 466-5964