Hearing Date: September 13, 2013 at 10:00 a.m. (ET)
Objection Deadline (by Agreement): September 6, 2013 at 5 p.m. (ET)
Objection Deadline (For Service on Counsel for Debtor and MMC): August 16, 2013 at midnight

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

OBJECTION OF NEW YORK STATE NURSES ASSOCIATION TO DEBTORS' MOTION FOR AN ORDER AUTHORIZING APPROVAL OF A PRIVATE SALE OF THE ACQUIRED ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, SECURITY INTERESTS AND OTHER INTERESTS TO MMC

The New York State Nurses Association ("NYSNA") responds and objects as follows to the Debtors' May 29, 2013 Motion (the "Motion"), as supplemented by the May 31 Supplemental Statement, for an order authorizing the approval of a private sale of the acquired assets to various Montefiore entities ("MMC" or the "Buyer") free and clear of all liens, claims, encumbrances, security interests, and interests, including successor liability claims except as expressly assumed by Buyer (Dockets 103):[1]

[1] NYSNA's rights in relation to this Objection were fully reserved under this Court's August 8, 2013 Order. *See, e.g.*, Order, n. 5, pp. 8-9 (Docket No. 259). The Objection was served on counsel for the Debtors and MMC on August 16, and NYSNA reserved the right to update any facts as of the time of the ultimate court filing on September 6.

INTRODUCTION

1. As a general matter NYSNA does not necessarily oppose the sale of assets to MMC, as long as appropriate commitments and safeguards are established consistent with NYSNA's collective bargaining agreements ("CBAs") with the Sellers. The Buyer obviously has a need to retain quality and essential nursing personnel to effect a seamless transition in operations and patient care. This transaction can only succeed through the contribution of bargaining unit members represented by NYSNA working pursuant to labor contracts. A consensual resolution is key to those goals, and is in the interest of all parties and this transaction.

2. NYSNA has sought discussions over this matter with the Buyer, with whom it is also a party to CBAs, over a considerable period of time. As of the filing of this Objection, MMC has apparently still not been prepared to seriously enter into those discussions with NYSNA, as evidenced by the fact that there have been informal discussions but no formal negotiations and no written proposal. NYSNA is also waiting to receive further updated information on accrued Paid Days Off from the Debtors. In the absence of satisfactory agreements, NYSNA objects to the Motion because a consensual resolution is in the interest of all parties, because approval of this Motion is inconsistent with the Debtors' successorship obligations under their relevant unrejected collective bargaining agreements with NYSNA, and because the assumption of employee obligations as contemplated by the Motion would be undefined and uncertain. In addition, clarifying language must be added to any potential sale order clarifying that any such order is without prejudice to NYSNA's rights under labor law.

3. On information and belief a closing may not take place for several months. Indeed, a recent WARN Act notice and communication to employees suggested that a closing would not take place until the end of October, 2013.

BACKGROUND

4. NYSNA represents 350-400 employees of the Debtors at Sound Shore, Mount Vernon, and the Howe Avenue Nursing Home d/b/a Schaffer Extended Care Center Employees represented by NYSNA at the Nursing Home are covered by the NYSNA CBA with Sound Shore.

5. The proposed asset purchase agreement ("APA") in its current form is inconsistent with the Debtors' obligations under its unrejected CBAs with NYSNA. Pursuant to the APA, the Buyer will not be assuming any collective bargaining agreements and has not yet entered into any alternative agreements with NYSNA. It will hire substantially all employees as probationary employees who were employed at the time the APA was signed "in the Buyer's sole discretion, meet Buyer's job qualifications as of the Closing, and agree to resign from employment with Debtors." (Motion, par. 52 (i), p. 21; Asset Purchase Agreement, Sections 2.4, 7.6, 9.1, 9.2, 9.3, 14.2). While the Buyer will be assuming $9 million in "assumed employee liabilities" relating to employees who are hired (APA § 2.3(b)), that appears to be far from a full assumption of the obligations of the NYSNA CBAs. The liabilities are not defined or scheduled, and, indeed, it is not clear what, if any, obligations under the NYSNA CBAs are being assumed.

6. Thus, under the current formulation of the proposed transaction the purchaser, MMC, would, in the absence of agreements reached with NYSNA, leave behind the CBAs, choose which employees to hire, unilaterally set the initial terms and conditions of employment, and assume undefined employee obligations.

7. However, the current unrejected CBAs provide successorship protections against this type of transaction enforceable against the Debtors.[2] Both the Mount Vernon and

[2] These full agreements will be placed into evidence at the hearing. The Sound Shore CBA expires on December 31, 2013; the Mount Vernon CBA expires on August 31, 2013.

Sound Shore CBAs, relevant provisions of which are attached hereto as Exhibit A and B, provide that those CBAs are binding on corporate or operational successors and assigns:

> This agreement will bind the parties and their corporate or operational successors or assigns.

Mount Vernon CBA, Section 16.05, p. 39; Sound Shore CBA, Section 16.05, p. 45. Both CBAs also include binding grievance and arbitration provisions. Mount Vernon CBA, Article 14, pp. 37-38; Sound Shore CBA, Article 14, Article 14, pp. 43-44. NYSNA has filed grievances objecting to the proposed sale of assets absent compliance with successorship provisions, and copies of those grievances are attached hereto as Exhibit C.

8. MMC is no stranger to these types of provisions. MMC has a similar successorship clause in Section 16.05 of its CBA with NYSNA, as well as a grievance and arbitration provisions in Article 13 of its agreement with NYSNA.

9. In addition, Article 16.12 of NYSNA's CBA with MMC, titled "Accretion," states that the parties agree that it is in both their interests "for Montefiore Medical Center to expand its services and operations into other areas throughout the metropolitan area," and provides that if the MMC acquires operations, certain provisions of the MMC CBA will apply to RNs working at facilities, and certain wage and benefits will continue at those facilities.

OBJECTION

THE MOTION CANNOT BE APPROVED BECAUSE THE DEBTORS MUST COMPLY WITH SECTION 1113 OF THE CODE AND CANNOT REJECT OBLIGATIONS UNDER COLLECTIVE BARGAINING AGREEMENTS THROUGH THIS PROPOSED SALE; CERTAIN OTHER PROVISIONS MUST BE INCLUDED IN ANY SALE ORDER

A. A Collective Bargaining Agreement May Be Rejected Only Pursuant to the Exclusive Provisions of Section 1113

10. A debtor may reject a collective bargaining agreement with a union representing its employees and the obligations contained therein only if the debtor meets the

stringent and exclusive requirements set forth in Section 1113 of the Bankruptcy Code. *See* 11 U.S.C. § 1113. Section 1113(a) provides that a debtor may reject a collective bargaining agreement "only in accordance with the provisions of this section", 11 U.S.C. § 1113(a), and section 1113(f) provides that "[n]o provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section." 11 U.S.C. § 1113(f).

11. As the Second Circuit has emphasized, "[w]e construe subsection 1113(f) quite literally. We hold that it was meant to prohibit the application of *any* other provision of the Bankruptcy Code when such application would permit a debtor to achieve a unilateral termination or modification of a collective bargaining agreement without meeting the requirements of § 1113." *In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 990-91 (2d Cir. 1990) (emphasis added). The Third Circuit agrees that the statute forbids the application of other Code provisions to permit a debtor to escape the requirements of section 1113. "The intent behind section 1113 is to preclude debtors or trustees in bankruptcy from unilaterally terminating, altering, or modifying the terms of a collective bargaining agreement without following its strict mandate. Moreover, the provision operates to preclude the application of other bankruptcy code provisions to the advantage of debtors and trustees to permit them to escape the terms of a collective bargaining agreement without complying with the requirements of section 1113." *See In re Continental Airlines*, 125 F.3d 120, 137 (3d Cir. 1997) (citation omitted).

12. As the district court concluded in the *Frontier Airlines* case, "Section 1113 expressly prohibits a debtor from terminating or modifying a collective bargaining agreement absent compliance with these requirements [citing statute]." *Teamsters Airline Div. v. Frontier Airlines, Inc.*, No. 9 Civ. 343, 2009 WL 2168851, at *5 (S.D.N.Y. July 20, 2009), *rev'g on other*

grounds, In re Frontier Airlines Holdings, Inc., No. 08-12298, 2008 WL 5110927, at *13 (S.D.N.Y. Nov. 14, 2008) ("One begins, of course, with the words of the statute itself, which provides that the debtor in possession may assume or reject, in this case reject, a collective bargaining agreement only if it does the following . . .").

13. Thus, a debtor cannot reject, or *de facto* reject, collectively bargained obligations, including relevant successorship clauses, without invoking and meeting the stringent requirements of Section 1113. The instant Motion therefore must be denied absent the Debtors' compliance with section 1113; the Motion cannot be approved if the Debtors' binding entry into the APA is inconsistent with the collective bargaining agreements and Section 1113

B. The Stringent Requirements of Section 1113

14. Congress added section 1113 to the Code in response to the Supreme Court's decision in *NLRB v. Bildisco & Bildisco,* 465 U.S. 513 (1984). There, the Court held that a collective bargaining agreement is an executory contract like any other, and could be unilaterally repudiated on a mere showing that it "burden[ed] the estate" and that the balance of equities favored rejection. *Id.* at 526. *Bildisco* heightened fears that debtors would increasingly use "bankruptcy law as an offensive weapon in labor relations." *In re Roth Am. Inc.,* 975 F.2d 949, 956 (3d Cir. 1992). This led to the enactment of section 1113. *Truck Drivers Local 807, IBT v. Carey Transp. Inc.*, 816 F.2d 82, 87 (2d Cir. 1987).

15. In order to reject its collective bargaining agreement, a debtor must satisfy each of the requirements of section 1113(c) by demonstrating that:

- its proposal provides for "those necessary modifications in the employees benefits and protection that are necessary to permit the reorganization" of the debtor;
- it has provided the union "with such relevant information as is necessary to evaluate the proposal";

- its proposal "assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably";
- it has met with the union "to confer in good faith in attempting to reach mutually satisfactory modifications";
- the union has "refused to accept such proposal without good cause;" and
- "the balance of the equities clearly favors rejection of such agreement."

See 11 U.S.C. §1113(b) and (c); *Carey*, 816 F.2d at 93.

16. Thus, rejection would be possible here only if the Debtors had made a proposal to NYSNA and provided the information necessary to evaluate the proposals, met and negotiated in good faith, and the Court ultimately found that all of the statute's requirements had been met, including, *inter alia*, that the proposal was necessary to reorganize and that the Locals had rejected the proposal without good cause.

C. The Debtors' Failure to Comply with Section 1113

17. It is undisputed that the Debtor has failed to comply with the exclusive and stringent requirements of section 1113. At the threshold, the Debtors have made no proposals to modify the CBAs. Having made no such proposals, the initial step of the section 1113 process, the Debtors have obviously not complied with any of the other statutory requirements.

18. In their Motion, the Debtors seek to sell the Debtors' assets free and clear of the CBAs and apparently any successor liability claims. First, as noted *supra*, section 1113(f) plainly states that "[n]o provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section." In addition, the Second Circuit has held that section 1113 applies with full force to asset sales. In *In re Maxwell Newspapers, Inc.*, 981 F.2d 85, 89 (2d Cir. 1992),

the Court concluded that "[a] debtor may sell the assets of the business unencumbered by a collective bargaining agreement *if* that agreement has been rejected pursuant to § 1113." (emphasis added).

19. Similarly, in *American Flint Glass Workers Union v. Anchor Resolution Corp.*,[3] the Third Circuit held that a debtor could not alter its obligations under a CBA by a partial assumption and assignment to a purchaser because that would be "an attempt to effect an alteration of the CBA" and therefore the debtor "was required to comply with the procedures set out in Code § 1113." *Id.* at 81-82. To do otherwise, the court held, would permit the debtor and a purchaser "to misuse the Code in an effort to avoid the collective bargaining process that Congress deemed essential to the balance between labor and reorganizing debtors that it struck in Section 1113." *Id* at 82.[4]

D. Section 1113's Requirements Apply to Successorship Clauses

20. Consistent with the decisions of the Second Circuit in *Maxwell Newspapers* and the Third Circuit in *Anchor Resolution*, bankruptcy courts have also upheld the application of contractual successorship clauses to asset sales. *See In re Stein Henry Co., Inc.*, No. 91-15491S, 1992 WL 122902, at *2 (Bankr. E.D. Pa. June 1, 1992) (refusing to confirm plan which would result in asset sale without satisfaction of CBA's successorship clause, which stated that the contract applied to "successors" and "assigns," because "[o]nly through the medium of 11 U.S.C. § 1113(f) can a collective bargaining agreement be terminated or modified in any

[3] 197 F.3d 76, 81-82 (3d Cir. 1999).

[4] Attempts to utilize other provisions of the Code to override Section 1113's exclusive provisions have similarly been rejected. S*ee. e.g., Chicago Dist. Council of Carpenters Pension Fund v. Cotter*, 914 F.Supp. 237, 242 (N.D. Ill. 1996) (CBA cannot be rejected as part of plan of reorganization pursuant to provision providing automatic rejection of unassumed executory contracts pursuant to section 365).

way" and "[r]ights provided in the agreement as to successor-entities must be preserved unless there is, unlike here, compliance with the procedures of 11 U.S.C. § 1113."); *In re Agripac, Inc.*, No. 699*-60001-frall, Slip Op. at 10-13 (Bankr. D. Ore. April 2, 1999)[5] (concluding that "[f]ailure to include in Sale Agreement a successor clause as required by the CBA is a breach of the Collective Bargaining Agreement which may result in a substantial claim against the estate" and holding that the sale could not proceed absent compliance with section 1113). [6]

[5] A true and correct copy of the *Agripac* decision is attached hereto as Exhibit D.

[6] The Eighth Circuit BAP case *In re Family Snacks, Inc.*, 257 B.R. 884, 890-98 (8th Cir. BAP 2001), and the bankruptcy court decision in *In re The Lady H Coal Co., Inc.* 193 B.R. 233 (Bankr. S.D.W.Va. 1996), *aff'd*, 199 B.R. 595 (S.D.W.Va. 1996), *aff'd on other grounds, sub nom. In re Leckie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996), are not to the contrary.

In *Family Snacks*, the purchaser of assets ultimately signed a new CBA with the union and assumed post-petition employee claims. 257 B.R. at 888. The union had objected to the sale on the basis of the failure to pay certain prepetition medical claims, and it not even clear that a successorship clause was at issue. *Id*. Thereafter the union sought administrative treatment for those prepetition claims, asserting that the agreement had been impliedly assumed or assumed as a matter of law, while the debtor, now a non-operating entity, moved to reject that agreement. The only remaining questions on appeal were whether a rejection application could be made after the sale of the debtor's assets and whether the bankruptcy court's denial of a section 1113 rejection motion resulted in the assumption of a CBA. *Id*. at 887, 890. In that situation, the question at issue was not whether the sale of the assets was an alteration of the CBA, and so the issue of a potential conflict between Section 363 and Section 1113 was not before the panel. Indeed, the panel noted that "[a] debtor may not, however, fail to take steps to reject the CBA under § 1113 and, at the same time, fail to comply with the terms of the CBA. A debtor remains bound by the terms of the CBA until it takes affirmative steps to reject that agreement." *Id.* at 896 n.8. In short, to the extent that *Family Snacks* bears on the question before this Court, it supports the position of NYSNA, not the Debtors.

The *Lady H* decision is neither binding nor persuasive. The court initially held that, consistent with the successorship clause and Section 1113, a sale could proceed only if the union and the buyer reached an agreement or if the court granted Section 1113 relief. 193 B.R. at 237-38. The court then refused to grant relief pursuant to Section 1113 because it found relief was not fair and equitable in light of certain executive compensation. *Id*. at 242. Thereafter, without explaining how it could ignore the mandate of Section 1113(f), the court reversed itself and held that the sale could go forward based on "relative equities to all parties-in-interest" and "the best combination of rights and remedies that can be tailored considering the issues presented and the limited choices that are available as a result of the Debtors' precarious financial position which has turned even worse during consideration of the Debtors' Motion," *Id*. at 236, 243. The *Lady*

21. As Judge Bernstein most recently concluded in the *Journal Register* case in this district, a debtor may not utilize Section 363 to bypass the requirements of Section 1113 in relation to a labor contract's successor clause:

> The collective bargaining agreement continues to bind the debtor post-petition, and a debtor cannot reject a collective bargaining agreement except in accordance with Bankruptcy Code § 1113. Generally speaking, a rejection represents a decision not to perform a burdensome executory contract. A debtor cannot bypass § 1113 and obtain a *de facto* rejection of its collective bargaining agreement simply by refusing to perform it. Although the obligation to comply with the successor clause is only one duty among many under a collective bargaining agreement, a debtor's intentional breach of a material provision of the collective bargaining agreement is tantamount to a rejection, or alternatively, a unilateral alteration of its provisions in violation of Bankruptcy Code § 1113(f). Thus, as a general proposition, a sale under Bankruptcy Code § 363 cannot circumvent the condition imposed under a successor clause absent compliance with § 1113.

In re Journal Register Company, 488 B.R. 835, 840 (Bankr. S.D.N.Y. 2013).[7]

H court, which issued its decision prior to the Third Circuit's decision in *Anchor Resolution* discussed above and the *Journal Register* decision, simply ignored the fundamental requirements of section 1113. Further, the *Lady H Coal* court granted the union an administrative expense claim, not for the rejection of the contract under section 1113, *compare In re Nw. Airlines Corp.*, 483 F.3d 160, 170-73 (2d Cir. 2007), but for breach of contract, 193 B.R. at 243.

Finally, Debtors may also cite a 2007 transcript decision by Judge Gerber in *In re Our Lady of Mercy Medical, et al.* (Case No, 07-10609) (S.D.N.Y.). That Court suggested it was unaware of any statutory provision or decision holding that Section 1113 compliance was a prerequisite to a Section 363 sale, and it otherwise depended on the *Family Snacks* and *Lady H* decisions and a prior transcript decision. For the reasons demonstrated *supra*, (1) Sections 1113(a) and (f) make clear that no Code provision other than Section 1113 authorizes alteration or termination of a CBA, (2) the *Stein Henry, Agripac, Journal Register,* and indeed *Anchor Resolution* cases correctly deal with the impact of Section 1113 on a bankruptcy sale, and (3) the *Family Snacks* and *Lady H* decisions are not controlling or persuasive.

[7] While in this case, as in *Journal Register*, there is one CBA that may expire before the closing on a sale, here, unlike in *Journal Register*, there is no need for immediate approval as the sale is not expected to close for several months. Further, the action of the Debtors in entering into this purchase agreement in violation of the Mount Vernon CBA will continue to be subject to the mandatory grievance and arbitration process and appropriate remedies, and pursuant to labor law most terms and conditions of employment continue to remain in effect post contract

E. Any Dispute Over Interpretation of the Successorship Clauses Must be Resolved Through Arbitration

22. To the extent the Debtors differ on the interpretation of the successorship clauses, that difference must be resolved through the exclusive and binding arbitration provisions of the CBAs, which remain in full force in bankruptcy. *Ionosphere Clubs, Inc.*, 922 F.2d at 993; *see also Continental Airlines*, 125 F.3d at 137-38*; In re Fulton Bellows & Components, Inc.*, 307 B.R. 896, 901 (Bankr. E.D. Tenn. 2004); *In re Bunting Bearings*, 302 B.R. 210, 214 (Bankr. N.D. Ohio 2003); *In re US Airways Group, Inc*., 296 B.R. 734, 746-48 (Bankr. E.D. Va. 2003); *In re Bob's Supermarket's, Inc*., 118 B.R. 783, 785 (Bankr. D. Mont. 1990).

23. As noted *supra*, NYSNA and its affiliates are willing to continue meeting in an attempt to resolve this Objection by entering into consensual agreements with the proposed buyer. In the absence of a consensual resolution NYSNA has filed grievances and intends to proceed to arbitration over any dispute as to the meaning or application of the successorship clauses, and is willing to do so in an expedited fashion.

F. This Court Should Include Appropriate Protective Language in Any Sale Order

24. This Court also cannot preclude the National Labor Relations Board from making determinations post sale about the Buyer's obligations under labor law, including successorship or alter ego obligations. *See NLRB v. Laborers' Int'l Union of N. Am., AFL-CIO*, 882 F.2d 949, 955 (5th Cir. 1989) ("The question of whether a new entity, be it an employer or labor organization, is a successor, disguised continuance, or alter ego of another entity is a question of substantive labor law which could not have been decided, in this case, by the bankruptcy court."); *see also RCR Sportswear, Inc.*, 312 NLRB 513, 518-19 (1993), *enforced*, 37

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termination until the parties reach impasse. *See NLRB v. Katz*, 369 U.S. 736, 743 (1962); *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 206 (1991).

F.3d 1488 (3d Cir. 1994); *Century Printing Co.*, 242 NLRB 659, 666-67 (1979); *enforced*, 661 F.2d 914 (3d Cir. 1981) (cases where the Board found a purchaser to be an alter ego where a bankruptcy court had authorized the purchaser's acquisition of another employer's business); *Erica, Inc. v. NLRB*, 200 Fed. App'x 344, 347 (5th Cir. Sept. 19, 2006) ("[i]f the new employer makes a conscious decision to maintain generally the same business and to hire a majority of its employees from the predecessor," then the new employer must bargain with the union that represented the predecessor's employees, and a bankruptcy court order cannot shield the new employer from its bargaining obligations) (internal citations omitted). *See also NLRB v. Horizons Hotel Corp*., 49 F.3d 795, 803 (1st Cir. 1995); *Massey Energy Co. and Its Subsidiary, Spartan Mining Co. d/b/a Mammoth Coal Co. and United Mine Workers of Am.*, 358 N.L.R.B. 1, 89, 2012 WL 4482797, at *57 (NLRB Sept. 28, 2012) ("a bankruptcy sale order in no way insulates against the possibility that a buyer will take actions subsequent to the sale that give rise to a successorship bargaining obligation or require the buyer to maintain the existing terms and conditions of employment"); *In re Wrangell Seafoods, Inc*., No. K09–00012–DMD, 2009 WL 8478297, at *2 (Bankr. D. Alaska Mar. 9, 2009) (requiring the following language be added to a 363(f) sale order: "Nothing in this Order is intended to, nor shall it be deemed to, preclude the National Labor Relations Board or any court from finding that Trident Seafoods, Inc., or any other purchaser of the Debtor's assets, is subject to a successor collective bargaining obligation under the National Labor Relations Act.");; *Grumman Olson Indus., Inc*., 445 B.R. 243, 250 (Bankr. S.D.N.Y. 2011) (Judge Bernstein) ("The Sale Order did not give Morgan a free pass on future conduct, and the suggestion that it could is doubtful"), *aff'd*, 467 B.R. 694 (S.D.N.Y. 2012).

25. Thus, any sale order include the following language:

> Nothing in this Sale Order or the Asset Purchase Agreement shall be held to limit any independent obligation of the Buyer that potentially could arise after the closing pursuant to the National Labor Relations Act, 29 U.S.C. §145 *et seq.*

Compare In re Hostess Brands, Inc., et al., Case No. 12-22052 (RDD), Docket 2514 (Drake's Sale Order), ¶16.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion absent a consensual agreement between NYSNA and the buyer; in the alternative, the hearing on this Objection should be further adjourned.

Dated: New York, NY
September 6, 2013

Respectfully submitted,

/s/ Richard M. Seltzer

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2013, I have caused a true and correct copy of the Objection Of New York State Nurses Association To Debtors' Motion For An Order Authorizing Approval Of A Private Sale Of The Acquired Assets Free And Clear Of All Liens, Claims, Encumbrances, Security Interests And Other Interests To MMC was served by electronically filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system, as well as serving by FedEx overnight delivery upon the following parties:

(a) the Office of the United States Trustee, 33 Whitehall Street, New York, New York 10004, Attn: Susan D. Golden, Esq. and William E. Curtin, Esq.;

(b) counsel for the Debtors, Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, New York 11021, Attn: Burton S. Weston, Esq;

(c) counsel to the Committee, Alston & Bird, LLP, 90 Park Avenue, New York, New York 10016, Attn: Marty G. Bunin, Esq. and Craig E. Freeman, Esq.;

(d) counsel to DIP Lender, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, TN 37219, Attn: Katie G. Stenberg and Daniel Flournoy;

(e) counsel for the Buyer, Togut, Segal & Segal, LLP, One Penn Plaza, Suite 335, New York, New York, 10019 Attn: Frank A. Oswald, Esq.

And by hand delivery upon:

Honorable Robert D. Drain
United States Bankruptcy Judge
United States Bankruptcy Court
300 Quarropas Street
New York, New York 10601-4140

Dated: New York, New York
September 6, 2013

By */s/ Richard M. Seltzer*

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EXHIBIT A

AGREEMENT

BETWEEN

NEW YORK STATE NURSES ASSOCIATION

AND

SOUND SHORE MEDICAL CENTER OF WESTCHESTER

January 1, 2011 – December 31, 2013

AGREEMENT between (1) Sound Shore Medical Center of Westchester, 16 Guion Place, New Rochelle, New York, (herein called "Employer" or "Medical Center") and (2) New York State Nurses Association (herein called "Association").

The Medical Center and Association recognize their common interests beyond their collective bargaining relationship; thus, they pledge to strive together to insure the highest quality of service by the Medical Center and the highest standards of professional nursing care and practice.

1. AGREEMENT SCOPE

This Agreement covers all regular full-time, regular part-time, and per diem registered professional nurses and persons authorized by permit to practice as registered professional nurses employed at the Employer's 16 Guion Place, New Rochelle, New York facility and referenced in the Certification of Representative (34-RC-1661). Job titles include: Clinical Nurse I, Clinical Nurse II, Clinical Nurse III, ANCC, Nurse Practitioner and Certified Registered Nurse Anesthetist, but excluding Senior Vice President of Patient Care Services, Director of Home Care, Assistant Director of Home Care, Director of Nursing, Quality Improvement Coordinator, Administrative Coordinator, Nursing Care Coordinator, Director of Occupational Health Service, Occupational Health Nurse, Nurse Educator, Staff Development Coordinator, Clinical Nurse Educator, Diabetes Educator, Patient/Family Education Coordinator, Clinical Nurse Specialist, Clinical Manager of Psychiatric Home Care Program, Trauma Nurse Coordinator, Nurse Manager Medical Stabilization Unit, Operating Room Materials Manager, Operating Room Manager, Liaison Nurse, Patient Care Facilitator, all other managerial employees, confidential employees, guards, professional employees and supervisors as defined in the Act.

The Association will receive expeditious notification of any changes or additions in the above bargaining unit titles. Such titles will be negotiated with the Association as to the salary level, and designation of other contract terms whose designation depends upon job title.

2. ASSOCIATION STATUS

2.01 Recognition

The Medical Center recognizes the Association as the exclusive bargaining representative of the employees covered by this Agreement.

2.02 Association Membership

It shall be a condition of employment that every employee who is a member of the Association as of the effective date of this Agreement shall remain a member in good standing and those who are not members on the effective date of this Agreement shall, on or after the thirty-first (31st) day following the effective date of this Agreement or the execution thereof, whichever is later, become and remain members in good standing of the Association. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after the effective date, or the execution thereof, whichever is later, on or after the thirty-first (31st) day following the beginning of such employment become and remain members in good standing of the Association, provided that any employee who does not desire to become a member of the Association need not do so, but must, in lieu of becoming a member, tender to

14. GRIEVANCE AND ARBITRATION

14.01 Scope

A grievance shall be defined as a dispute or complaint arising between the parties hereto under or out of this Agreement, or the interpretation, performance, termination or any alleged breach thereof.

Except as otherwise provided in this Agreement, every grievance that the Association and the employees it represents may have arising from application or interpretation of this Agreement will be adjusted as stated in paragraphs 14.02 through 14.05.

A grievance which affects a substantial number or class of employees, or on behalf of the Association, and which the Medical Center's representative designated in Steps One and Two lacks authority to settle, may initially be presented to Step Two by the Association.

14.02 Informal Discussion

An employee who has a grievance arising from application or interpretation of this Agreement will present the claim promptly to the employee's Nursing Care Coordinator or designee. The employee and the Nursing Care Coordinator will discuss and attempt to resolve it. An employee may elect to have a local representative present at this step. However, the time frames for filing a grievance identified in Section 14.03 will continue to run from the date after the occurrence of the facts on which the grievance is based regardless, and shall not be suspended during the informal discussion process unless mutually agreed in writing by the parties.

14.03 Procedure and Time Limits: Step One

If the grievance is not adjusted, or if the grievance involves a matter affecting more employees than one (1), the Association, the employee, or group of employees or Association will serve a written notice or a complaint other than a monetary claim (i.e., a claim for compensation, holiday pay, vacation pay or any other benefit payable in money to or for an employee's benefit) to the Vice President of Nursing or designee within fifteen (15) workdays after occurrence of the facts on which it is based, and will so serve a written notice of a monetary claim within sixty (60) workdays after occurrence of the facts on which it is based. If no such notice is served in the time specified, the complaint will be barred. After a proper and timely notice is filed, the Vice President of Nursing or designee, any employee or employees concerned and an Association representative (to be designated by Association) will discuss the grievance. This discussion, unless extended by written agreement for a specified period, will be completed within five (5) workdays after receipt of the required initiation notice. A written decision shall be rendered to the Association within ten (10) workdays after presentation of the grievance or within ten (10) workdays after a mutually agreed upon meeting, whichever is later.

14.04 Procedure and Time Limits: Step Two

If the grievance is not adjusted in the time specified in Step One, the Association may appeal it to Step Two by written notice served on the Director of Employee Relations or designee within ten (10) workdays after the

completion of proceedings in Step One. If no such notice is served in the time specified, the grievance will be barred. The Director of Employee Relations or designee will then discuss the grievance with Association's general representative. This discussion, unless extended by written agreement for a specified period, will be completed within fifteen (15) workdays after receipt of the required notice of appeal to Step Two. A written decision shall be rendered to the Association within ten (10) workdays after the presentation of the grievance or within ten (10) days after a mutually agreed upon meeting, whichever is later.

Terminations of non-probationary employees may be initially filed at Step Two of the grievance procedure.

14.05 Procedure and Time Limits: Step Three

If the grievance is not adjusted in the time specified in Steps One and Two, such grievance may be submitted to arbitration by the Association. The Medical Center and Association will select the Arbitrator, by mutual agreement, from lists submitted to them by the American Arbitration Association, under the Voluntary Labor Arbitration Rules. The Arbitrator's decision will be final and binding on the parties. If the grievance is not submitted for arbitration under this paragraph within thirty (30) workdays after Step Two's completion, it will be barred. The fees and expenses of any arbitration will be shared equally by the parties.

14.06 Arbitrator's Powers: Limitation

The decision of the arbitrator shall be final and binding upon both parties. The Arbitrator will not have any power to add to, subtract from or otherwise amend this Agreement.

14.07 Time Limits

Any time limits specified shall be deemed to be exclusive of Saturdays, Sundays and contractually recognized holidays.

15. NON-DISCRIMINATION

Neither the Medical Center nor the Association shall discriminate against any employee or applicant for employment as an employee, in any matter relating to employment because of race, creed, color, national origin, sex, marital status, age, political beliefs, veteran status or disability.

16. MISCELLANY

16.01 Definitions

As used in this Agreement and except as otherwise clearly required by its context:

"Agreement" means this Agreement and each appendix, schedule, amendment, side letter or supplement thereto;

"Employer" means Sound Shore Medical Center of Westchester;

"Association" means the New York State Nurses Association;

"Employee" means an employee covered by Article 1, except as specified in Section 4.05 Probationary Employee;

"Article" means a whole numbered Article of this Agreement;

"Section" means a subdivision of a whole numbered Article of this Agreement;

"Council of Nursing Practitioners" means the bargaining unit;

"Working days" means Monday through Friday, excluding holidays listed in Section 7.01 of this Agreement;

"Day" shall mean 7.5 hours unless otherwise stated; and

"Qualified" shall mean having the necessary ability, skill, knowledge, efficiency and work history to perform the job within the specified orientation period as outlined in the job posting.

16.02 Labor-Management Meetings

The parties will meet at least six (6) times per year at mutually convenient times and places to consider employment conditions and the operation of this Agreement. Such meetings normally will not exceed two (2) hours and shall be attended by no more than five (5) Association representatives and five (5) Medical Center representatives. Agendas normally will be submitted in advance to Human Resources.

16.03 Notice to Parties

Any notice required to be served on the Medical Center under this Agreement will be either mailed to the Medical Center by registered or certified mail or delivered to the Medical Center or so mailed or delivered to such person and at such address as the Medical Center may designate by written notice served on the Association. Any notice required to be served on the Association under this Agreement will be mailed to Association's Director of Economic and General Welfare by registered or certified mail and addressed to the Association's headquarters office at 11 Cornell Road, Latham, New York 12110, and to the Association's New York City office at 120 Wall Street, 23rd Floor, New York, New York 10005.

16.04 Separability

This Agreement and its component provisions are subordinate to any present or future laws and regulations. If any Federal or New York law or regulation or the final decision of any Federal or New York court of administrative agency affects any provision of this Agreement, each such provision will be deemed amended to the extent necessary to comply with such law, regulation or decision, but otherwise this Agreement will not be affected.

16.05 Succession

This agreement will bind the parties and their corporate or operational successors or assigns.

16.06 Contract Provisions

All provisions of the collective bargaining agreement will be effective upon the date of ratification unless specified except for wages which are presumed to be retroactive unless the parties agree otherwise.

17. AMENDMENT

This agreement may be modified, amended or supplemented only by further written agreement between the parties.

18. EFFECTIVE DATES AND DURATION

This agreement, except as otherwise stated, will be effective from January 1, 2011 12:01 a.m. and will remain in effect until 12 midnight December 31, 2013 and from year to year thereafter unless terminated as provided in paragraph 19.

19. TERMINATION

This Agreement may be terminated effective midnight December 31, 2013 by written notice from either party, delivered to the other not later than October 2, 2013 of intent to modify or terminate it and may be terminated effective midnight any subsequent December 31st by similar notice delivered to the other party not later than the preceding October 2. Notice of intent to modify will be equivalent to notice of intent to terminate.

20. EXECUTION

Any clerical errors or obvious errors in the memorandum of agreement will be corrected by agreement of the parties.

Signed by Employer and Association.

SOUND SHORE MEDICAL CENTER	NEW YORK STATE NURSES ASSOCIATION
By _____	By _____
Title _____	Title Deputy Director
Date _____	Date _____

EXHIBIT B

AGREEMENT

Between

NEW YORK STATE NURSES ASSOCIATION

And

THE MOUNT VERNON HOSPITAL

September 1, 2012 - August 31, 2013

PREAMBLE

AGREEMENT between The Mount Vernon Hospital (herein called the Hospital) and New York State Nurses Association (herein called Association).

The Hospital and Association recognize their common interest beyond their collective bargaining relationship; thus, they pledge to strive together to insure the highest quality of service by the Hospital and the highest standard of professional nursing care and practice.

1. AGREEMENT SCOPE

This agreement covers the bargaining unit certified by the National Labor Relations Board in Case No. 2-RC-18416 including all full-time, regular part-time and per diem registered professional nurses, and all persons lawfully authorized by permit to practice as registered professional nurses employed by the Hospital as Staff Nurses, Assistant Nurse Coordinators or I.V. Therapy Nurses; Nurse Practitioners and excluding all other employees including the Director of Nursing Services, Assistant Director of Nursing Services, Nursing and Unit Supervisors, I.V. Therapy Nurse Supervisor, Administrative Nurse Coordinators, In-Service Coordinator, In-Service Instructor, Infection Control Nurse, Utilization Review Nurses, Discharge Planning Coordinator, Health Service Nurse, Nurse Anesthetists, Methadone Clinic Nurses, Faculty and Staff of the School of Nursing, Admissions Supervisor, EKG-EEG Laboratory Supervisor, Guards and Supervisors as defined by the National Labor Relations Act.

Any changes or additions in the above will require the Hospital to notify the Association within five (5) days of establishing the title. Posting shall comply with paragraph 4.12. Terms and conditions of employment for said title will be negotiated within thirty (30) days. Disputes will be subject to paragraph 14.06.

2. ASSOCIATION STATUS

2.01 Recognition

The Hospital recognizes the Association as the exclusive collective bargaining representative of the employees covered by this agreement.

2.02 Association Membership

It shall be a condition of employment that every employee who is a member of the Association in good standing as of the effective date of this agreement shall remain a member in good standing and those who are not members on the effective date of this agreement shall, on or after the thirty-first (31st) day following the effective date of this agreement or the execution thereof, whichever is later, become and remain members in good standing of the Association. It shall also be a condition of employment that all employees covered by this agreement and hired on or after the thirty-first (31st) day following the beginning of such employment become and remain members in good standing of the Association.

On or before the tenth (10th) of each calendar month after the employee's employment or change in status, the Hospital shall notify the Association in writing of the name, address, social security number, position or change of status of each employee so affected. Whenever the Association shall charge that any employee who is required by provisions of this paragraph to maintain

direction of the work force shall be at the sole discretion and the sole responsibility of the Hospital, and, except as otherwise provided herein, the Hospital retains its sole and exclusive right to promulgate rules and regulations, direct, designate, schedule and assign duties to the work force; plan, direct and control the entire operation of the Hospital; discontinue, consolidate or reorganize any department or branch; transfer any or all operations to any location or discontinue the same in whole or in part; merge with any other institution; make technological improvement; install or remove equipment regardless of whether or not such action causes a reduction of any kind in the number of employees, or transfers in the work force, requires the assignment of additional or different duties or causes the elimination or addition of nursing titles or jobs; and carry out the ordinary and customary functions of management whether or not possessed or exercised by the Hospital prior to the execution of this agreement, except as limited herein. All the rights, powers, discretion, authority and prerogatives possessed by the Hospital prior to execution of this agreement, whether exercised or not, are retained by and are to remain exclusively with the Hospital except as limited herein.

13. BUSINESS OR EMPLOYMENT INTERRUPTION

Neither the Association nor any employee will, directly or indirectly, cause, engage or participate in any strike, work stoppage, including sympathy strikes, work interruption, work interference, slowdown, picketing or boycott during the life of this agreement.

14. GRIEVANCE ADJUSTMENT

14.01 Scope

Except as otherwise provided in this agreement, every grievance that the Association and the employees it represents may have arising from application or interpretation of this agreement will be adjusted as stated in paragraphs 14.02 through 14.06.

A grievance which affects a substantial number or class of employees, or on behalf of the Association, and which the Hospital's representative designated in Steps One and Two lacks authority to settle, may initially be presented to Step Three by the Association.

14.02 Informal Discussion

An employee who has a complaint arising from application or interpretation of this agreement will present the claim promptly to the employee's Administrative Nurse Coordinator or designee. The employee and the Administrative Nurse Coordinator will discuss and attempt to resolve this complaint. An employee may elect to have a local representative present at this step.

14.03 Procedure and Time Limits: Step One

If the complaint is not adjusted, or if the complaint involves a matter affecting more employees than one (1) or the Association, the employee, group of employees or Association will serve a written notice of a complaint other than a monetary claim (i.e., a claim for compensation, holiday pay, vacation pay or any other benefit payable in money to or for an employee's benefit) on the appropriate Nursing Administrative Supervisor, or designee, within ten (10) workdays after occurrence of the facts on which it is based and will so serve written notice of a monetary claim within thirty (30) days after occurrence of the facts on which it is based. If no such notice is served in the time specified, the

complaint will be barred. After a proper and timely notice is filed, the Nursing Administrative Supervisor, any employee or employees concerned and an Association representative (to be designated by Association) will discuss the complaint. This discussion, unless extended by written agreement for a specified period, will be completed within five (5) workdays after receipt of the required initiation notice. A written decision shall be rendered to the Association within five (5) workdays after presentation of the grievance or within five (5) days after a mutually agreed upon meeting, whichever is later. This step may be waived by mutual agreement between the parties.

14.04 Procedure and Time Limits: Step Two

If the grievance is not adjusted in the time specified in Step One, Association may appeal it to Step Two by written notice served on the Hospital's Director of Nursing, within ten (10) workdays after the completion of proceedings in Step One. If no such notice is served in the time specified, the grievance will be barred. The Director of Nursing will then discuss the grievance with Association's general representative. This discussion, unless extended by written agreement for a specified period, will be completed within five (5) workdays after receipt of the required notice of appeal to Step Two. A written decision shall be rendered to the Association within five (5) workdays after the presentation of the grievance or within five (5) days after a mutually agreed upon meeting, whichever is later.

14.05 Procedure and Time Limits: Step Three

If the grievance is not adjusted in Step Two, Association may appeal to Step Three by written notice, served on the Director of Employee Relations within fifteen (15) workdays after receipt of the written decision in Step Two. If no such notice is served in the time specified, the grievance will be barred. The Director of Personnel or his/her designee shall render his/her decision in writing to the grievant and the Association within ten (10) workdays after the presentation of the grievance.

14.06 Procedure and Time Limits: Step Four

If the grievance is not adjusted in the time specified in Steps Two and Three, such grievance may be submitted to arbitration by Association. The Hospital and Association will select the Arbitrator, by mutual agreement, from lists submitted to them by the American Arbitration Association, under the Voluntary Labor Arbitration Rules. The Arbitrator's decision will be final and binding on the parties. If the grievance is not submitted for arbitration under this paragraph within thirty (30) workdays after Step Three's completion, it will be barred. The fees and expenses of any arbitration will be shared equally by the parties.

14.07 Arbitrator's Powers: Limitation

The Arbitrator will not have any power to add to, subtract from, or otherwise amend this agreement.

14.08 Time Limits

All time limits herein specified shall be deemed to be exclusive of Saturdays, Sundays and holidays.

14.09 Arbitration Venue

Arbitrations will be filed with American Arbitration Association in New York City.

15. NON-DISCRIMINATION

Neither the Hospital nor Association will discriminate against any employee or applicant for employment as an employee, in any matter relating to employment because of race, color, creed, national origin, sex, marital status, age, political beliefs, veteran status or disability.

16. MISCELLANY

16.01 Definitions

As used in this agreement and except as otherwise clearly required by its context:

(a) "agreement" means this agreement and each appendix, schedule, amendment or supplement thereto;

(b) "Hospital" means The Mount Vernon Hospital;

(c) "Association" means New York State Nurses Association;

(d) "employee" means an employee covered by paragraph 1;

(e) "section" means a whole numbered article of the agreement;

(f) "Local Bargaining Unit" means the bargaining unit.

16.02 Meetings

Hospital and Association will meet at mutually convenient times and places to consider employment conditions and the operation of this agreement.

16.03 Notices to Parties

Any notice required to be served on Hospital under this agreement will be either mailed to Hospital by registered or certified mail or delivered to Hospital or so mailed or delivered to such person and at such address as Hospital may designate by written notice served on Association. Any written notice required to be served on Association under this agreement will be mailed to Association's Executive Director by registered or certified mail addressed to Association's headquarters office, 11 Cornell Road, Latham, New York 12110, and to the Association's New York City office, 120 Wall Street, 23rd Floor, New York, New York 10005.

16.04 Separability

This agreement and its component provisions are subordinate to any present or future laws and regulations. If any Federal or New York law or regulation or the final decision of any Federal or New York Court or Administrative agency affects any provision of this agreement, each such provision will be deemed amended to the extent necessary to comply with such law, regulation or decision but otherwise this agreement will not be affected.

16.05 Succession

This agreement will bind the parties and their corporate or operational successors or assigns.

16.06 Complete Agreement

Both parties hereto acknowledge that they had full opportunity during the negotiations prior to the execution hereof to make any demands and proposals. There is no obligation on either party, during the life of this agreement, to bargain collectively with respect to any matter, whether included or not included in this contract, except as provided in the agreement.

16.07 U.S. Savings Bonds

The Employer will permit employees to make payroll deductions at the employee's sole expense for the purpose of purchasing U.S. Savings Bonds. The Hospital will make its best efforts to implement such program by March 31, 1994.

17. AMENDMENT

This agreement may be modified, amended or supplemented only by further written agreement between the parties.

18. PAST PRACTICES

Past practices on the following provisions, i.e., vacation, sabbatical, sick leave, health benefits, pension plan, on-call and tuition, shall continue until the applicable effective date of any new or additional benefits provided by this agreement.

19. EFFECTIVE DATE AND DURATION

This agreement, except as otherwise stated, will be effective from 12:01 a.m. September 1, 2012 and will remain effective until midnight, August 31, 2013, and from year to year thereafter unless terminated as provided in paragraph 20.

20. TERMINATION

This agreement may be terminated effective midnight, August 31, 2013 by written notice from either party, delivered to the other not later than May 31, 2013, of intent to modify or terminate it and may be terminated effective midnight any subsequent May 31 by similar notice delivered to the other party not later than the preceding May 31. Notice of intent to modify will be equivalent to notice of intent to terminate.

EXECUTION

Signed by Employer and Association.

THE MOUNT VERNON HOSPITAL	NEW YORK STATE NURSES ASSOCIATION
By _____	By _____
Title _____	Title Deputy Director
Date _____	Date _____

EXHIBIT C

New York State NURSES ASSOCIATION® One strong, united voice for nurses and patients

July 30, 2013

Via Email & Fax
dashley1@sshsw.org
evelez@sshsw.org
(914) 633-4553

Dennis Ashley
Vice President of Human Resources

Emy Velez
Labor Relations Manager
Sound Shore Medical Center of Westchester
16 Guion Place
New Rochelle, NY 10802

Re: Association/Class Action Grievance #218513

Dear Mr. Ashley and Ms. Velez:

The New York State Nurses Association (NYSNA) hereby files the enclosed Association/Class Action Grievance on behalf of our members.

We look forward to an early scheduling and resolution of this issue.

Respectfully,

Magda Guillaume
Magda Guillaume
Program Representative

cc: Mount Vernon Hospital Executive Committee Members

Enc.

MG/pj O:\2013\MOUNT VERNON HOSPITAL\Grievances\Class Action Grievance #218513\7.30.13 Mount Vernon Hospital filing Association Class Action Grievance #218513.docx

NEW YORK STATE NURSES ASSOCIATION

GRIEVANCE FORM

218513

Mount Vernon Hospital
(Employment Facility)

Name of Employee	*Association /Class Action*	Social Security No.	n/a
Department	Hospital	Date of Hire	n/a
Job Title	RN	Date Submitted	July 30, 2013

Complete Details of Grievance: (Include Section of Agreement Violated) **Violation of the Collective Bargaining Agreement, including but not limited to, the successorship provisions of Section 16.05. The Employer entered into an Asset Purchase Agreement with various entities affiliated with Montefiore Medical Center ("MMC") for the sale of substantially all of the assets of the Employer, and is pursuing steps to implement and effect that agreement, without MMC assuming this CBA and complying with the successorship provisions of Section 16.05.**

(Use Additional Sheet If Necessary)

Remedy Requested: **Finding that the propose sale violates the CBA and enjoining the sale unless and until the Buyer has entered into a collective bargaining agreement with NYSNA or assumed the current CBA and any other appropriate remedy.**

Employee *Magda Guillaume,* **Program Representative;** ***on behalf of all employees***

(Signature)

Disposition – Step 1:

Immediate Super. (Signature)	Date Communicated	Date Accepted	Date Appealed
		NYSNA Rep.	

Disposition – Step 2:

Management Rep. (Signature)	Date Communicated	Date Accepted	Date Appealed
		NYSNA Rep.	

Disposition – Step 3:

Management Rep. (Signature)	Date Communicated	Date Accepted	Date Appealed
		NYSNA Rep.	

New York State NURSES ASSOCIATION® One strong, united voice for nurses and patients

July 30, 2013

Via Email & Fax
dashley1@sshsw.org
evelez@sshsw.org
(914) 633-4553

Dennis Ashley
Vice President of Human Resources

Emy Velez
Labor Relations Manager
Sound Shore Medical Center of Westchester
16 Guion Place
New Rochelle, NY 10802

Re: Association/Class Action Grievance #218514

Dear Mr. Ashley and Ms. Velez:

The New York State Nurses Association (NYSNA) hereby files the enclosed Association/Class Action Grievance on behalf of our members.

We look forward to an early scheduling and resolution of this issue.

Respectfully,

Magda Guillaume
Magda Guillaume
Program Representative

cc: Sound Shore Medical Center Executive Committee Members

Enc.

MG/pj O:\2013\SHORE MEDICAL CENTER\Grievances\Class Action Grievance #218514\7.30.13 Sound Shore Medical Center filing Association Class Action Grievance #218514.docx

NEW YORK STATE NURSES ASSOCIATION

GRIEVANCE FORM

218514

Sound Shore Medical Center
(Employment Facility)

Name of Employee	*Association /Class Action*	Social Security No.	n/a
Department	Hospital	Date of Hire	n/a
Job Title	RN	Date Submitted	July 30, 2013

Complete Details of Grievance: (Include Section of Agreement Violated) **Violation of the Collective Bargaining Agreement, including but not limited to, the successorship provisions of Section 16.05. The Employer entered into an Asset Purchase Agreement with various entities affiliated with Montefiore Medical Center ("MMC") for the sale of substantially all of the assets of the Employer, and is pursuing steps to implement and effect that agreement, without MMC assuming this CBA and complying with the successorship provisions of Section 16.05.**
(Use Additional Sheet If Necessary)

Remedy Requested: **Finding that the propose sale violates the CBA and enjoining the sale unless and until the Buyer has entered into a collective bargaining agreement with NYSNA or assumed the current CBA and any other appropriate remedy.**

Employee *Magda Guillaume,* **Program Representative;** ***on behalf of all employees***

(Signature)

Disposition – Step 1:

Immediate Super. (Signature)	Date Communicated	Date Accepted	Date Appealed
		NYSNA Rep.	

Disposition – Step 2:

Management Rep. (Signature)	Date Communicated	Date Accepted	Date Appealed
		NYSNA Rep.	

Disposition – Step 3:

Management Rep. (Signature)	Date Communicated	Date Accepted	Date Appealed
		NYSNA Rep.	

EXHIBIT D

Sale free and clear of liens
Assumption and assignment of contracts

In re Agripac, Inc. 699-60001-fra11

4/2/99 FRA Unpublished

The DIP sought leave to sell its canned goods division pursuant to Code § 363 and to assume and assign to the purchaser certain contracts under Code § 365. A number of objections to both the sale and the assumption and assignment of contracts were made by interested parties. The court concluded that the sale and the assumption and assignment could proceed under certain circumstances.

The proposed sale did not comply with terms of the Debtor's collective bargaining agreement with its employees nor had the DIP complied with Bankruptcy Code § 1113 requiring good-faith bargaining prior to rejection of a collective bargaining agreement. Consequently, the sale could not go forward without compliance with the collective bargaining agreement, until Code § 1113 is complied with, or an agreement between the buyer and the union renders compliance moot.

A creditor objected to that part of the proposed sale which effectively provided for direct payment of the sale proceeds to CoBank, a secured creditor. The court required as a condition of the sale that all funds be deposited into a separate account so that distribution may be made pursuant to a confirmed plan of reorganization.

The final condition of the sale is a limit of $60,000 cost to the estate for the assumption of contracts. Any amount above that figure must be either waived or borne by the purchaser.

E99-8(16)

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:	)	Bankruptcy Case No.
	)	699-60001-fra11
AGRIPAC, INC.,	)	
	)	MEMORANDUM OPINION
Debtor.	)	

The Debtor-in-Possession seeks leave to sell its Canned Foods Division, pursuant to Bankruptcy Code § 363. In connection with the sale it seeks leave to assume certain executory contracts, and assign them to the purchaser, pursuant to Code § 365.

The matter came on for hearing on March 31 and April 1, 1999. Having considered the evidence, testimony and argument of the parties, the Court concludes that the sale and assignment of contracts may proceed, but only on certain conditions discussed in this opinion. Moreover, the Court finds that the proceeds of the sale must be held by the Debtor-in-Possession pending further proceedings in this Chapter 11 case.

I. FACTS

The Debtor-in-Possession has reached an agreement with NorPac Foods, Inc., for the sale by the Debtor-in-Possession and purchase

by NorPac of the DIP's Canned Foods Division. A complete copy of the written agreement was placed into evidence as Exhibit Z. The purchase price, set out at Paragraph 2.4 of the Agreement, is $10 Million, plus 80% of the value of the bulk of the Debtor's inventory, 50% of the remaining inventory, and 95% of the book value of the Debtor-in-Possession's receivables. The value of the inventory is to be determined in accordance with generally accepted accounting principles, and the contract provides, at Paragraph 2.5, for post-closing adjustments which take into account, among other things, variations in the available inventory. A provision is also made for arbitration in the event of any dispute regarding the amount or value of the inventory.

At Paragraph 2.6 the Agreement contemplates that it will be closed in escrow, with CoBank, ACB, acting as escrow agent. CoBank is a secured creditor of the Debtor-in-Possession, and has a standing banking relationship with NorPac. The Agreement contemplates that CoBank will finance the sale for NorPac. The security interest securing the Debtor-in-Possession's obligation to the Banks attaches to the proceeds of this sale. The Agreement provides for payment to the Bank by allowing the Bank simply to issue a new note to NorPac, acquire a new security agreement, and make appropriate entries crediting the sale price against the amount owed to the Bank by AgriPac. In furtherance of a prior agreement between the Bank, AgriPac, and the Unsecured Creditors' Committee, the Bank would cause $3 Million in cash to be paid to the Debtor-in-Possession, free and clear of any security interest.

While the terms are not spelled out in Exhibit Z, implicit in the understanding between AgriPac and NorPac is NorPac's announced intention to pay $2 Million in "sign-up bonuses" to growers who, once the sale closes, contract with NorPac to provide crops for processing. The parties assume that a significant number of the farmers availing themselves of this arrangement will be growers previously associated with AgriPac.

Three interested parties have raised objections to the sale. The Unsecured Creditors' Committee, and Crown Cork and Seal ("CCS"), an unsecured creditor, each claim that the sale price in inadequate, and that the Debtor-in-Possession has failed to articulate a sound business reason for the sale in the absence of a confirmed plan of reorganization. Counsel for the Committee advised at the hearing that he Committee did "not Necessarily oppose" the sale, but was concerned that the Debtor-in-Possession had not provide sufficient, and timely, information from which the Committee could ascertain whether the sale was appropriate. In addition, Crown Cork and Seal objects to the handling of the sale proceeds, in light of claims it is asserting against the Bank. Finally, Teamster Local 670 has objected for the reason that the sale, as constituted, violates provisions of the Union's collective bargaining agreement with the Debtor-in-Possession, and because the Debtor-in-Possession has failed to comply with Code § 1113 regarding the rejection of Collective Bargaining Agreements.

II. DISCUSSION

Ordinarily, estate property in a Chapter 11 case is disposed of, and the proceeds distributed, pursuant to a plan of reorganization. Proceeding in this manner provides significant protections to the interests of creditors, who are entitled to full disclosure of the provisions of the plan, and an opportunity to vote. This general rule notwithstanding, the courts in many cases have recognized that, under certain circumstances, partial or even total liquidation of the assets of a debtor-in-possession under Code § 363, in the absence of a plan of reorganization, may be appropriate. See, e.g., In re Lionel Corp., 722 F.2d 1063(2d Cir.1983),In re Chateagay Corp., 973 F.2d 141 (2d Cir, 1992). A review of the applicable case law yields the following distillation of the factors a court should consider in reviewing an application for a sale, prior to or in lieu of confirmation of a plan, of a substantial portion of the Debtor's assets:

1. Whether there is an articulated business justification for the sale. This requires consideration of (a) the proportion of the assets to be sold to the whole of the estate; (b) the time which has elapsed since commencement of the case; (c) the likelihood of any reorganization, or, conversely, whether a liquidation is being proposed; (d) whether the assets to be sold are gaining or losing value, or whether an immediate sale as a going concern is likely to yield materially more than an orderly liquidation over time.

2. Whether there has been fair, adequate and accurate notice to interested parties of the transaction and its terms. "Fairness"

in this context includes time to make reasonable inquiry into the value of the assets and the terms of the transaction. Whether the time allowed is reasonable will depend on the particular situation, and exigent circumstances may justify an otherwise unreasonably short time for review and decision. However, less weight should be given to such circumstances if the exigency is attributable to the debtor's unjustified delay in seeking relief.

The Court must also consider whether there has been adequate information given to interested parties, either through discovery or the original notice. In particular, the Court must look at whether any material terms remain to be negotiated, and whether doubts about such terms render notice ineffective.

3. Whether the price is adequate and fair under the circumstances. This does not mean simply the highest bid, or proof that a quick sale may yield something more than an ordered liquidation. Where the face value of a quick sale is only marginally higher than an ordered liquidation, the Court must weigh the marginal benefit against the loss of vital creditor protections under Chapter 11, including the right to vote on a plan after full disclosure.

4. Whether the terms of the proposed transaction are severable, allowing the Court to defer or deny approval of particular aspects of the agreement which may be inappropriate under the circumstances.

5. Whether the transaction requires approval of assumption and assignment of executory contacts, and whether in fact such contracts may be assigned.

6. Whether the transaction is proposed in good faith. This includes the requirement that the proposed transaction not unfairly discriminate against any creditor or class of creditors or claimants, and that it not give undue advantage to the purchaser, or to equity holders, or any class of creditors or claimants.

7. Whether the proposed transaction, and he any resulting distribution, is consistent with the provisions of the Bankruptcy Code. The sale should not contemplate a transfer of assets in derogation of the absolute priority rule either by direct payment to interest holders or agreed payments to holders (as such) by the purchaser.

8. Whether the transaction subjects the estate to unjustified administrative expenses or claims.

These principles lead to the following conclusions regarding the issues in dispute:

A. Justification of Sale

The agreement to sell to NorPac was reached after lengthy negotiations between the Debtor-in-Possession and NorPac, and Chiquita Brands, a competing suitor. These discussions culminated in an auction spread over two to three days immediately prior to the hearing on this matter. I am persuaded that the auction yielded the best available price, particularly in light of time constraints

which required a virtually immediate sale of the assets prior to the commencement of this year's growing season.

The objecting parties' expert testified to certain aspects of the Debtor's records which suggest that further investigation might yield evidence tending to prove that a liquidation over time, as opposed to a sale as a going concern, might have yielded a better result. However, there is no firm evidence to that effect. The Debtor-in-Possession has, at the very least, made out a *prima facie* case that the consideration for the sale is adequate, and that a valid business purpose exists for allowing the sale at this time. Evidence that the Debtor-in-Possession might have tried harder is not, by itself, sufficient to overcome this *prima facie* demonstration. I find that there is an articulated business reason for the sale.

The Unsecured Creditors' Committee argues that the sale price is indefinite, since the contract is based on the value of the Debtor-in-Possession's inventory, and the contract is not clear in defining how that value is to be arrived at. However, it appears that the contract calls for application of generally accepted accounting principles, and arbitration by an accountant in the event of a dispute. These provisions provide adequate protection of the Debtor-in-Possession's and the estate's interests, under the contract.

The issue of adequacy of notice is more difficult. Opposing counsel have pointed out frequently, and not unreasonably, that important information has been delivered to them at the last minute.

There is no denying that this case has proceeded at a breathtaking pace. The Debtor-in-Possession justifies its insistence on accelerated action by pointing out that the sale (and the sale of the frozen food division that proceeded it) can only succeed if accomplished in time for the growing season. It is true that nature will not slow down in order to accommodate lawyers and judges. In this case the crops necessary to support the canned foods operation have to bee planted by early April. On top of that, the auction process that finally yielded the enhanced sale price makes it impossible to obtain complete information days in advance, much less provide the information to others.

On the other hand, the deadlines imposed by nature have been known to the parties all along. The Debtor-in-Possession also knew, as early as August 1998, that it was in sever financial trouble. [1] This case was commenced on January 4, 1999. Given the delay in starting the bankruptcy process, the DIP's argument that the high speed treatment of the case is appropriate is not entirely satisfactory.

This is not to suggest that opposing creditors have been kept completely in the dark, at least judging by the record before the Court. The court finds that, on balance, the inadequacy of notice is not by itself sufficient to deny approval of the sale.

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[1]This is based on testimony by the Debtor-in-Possession's CEO on previous occasions.

B. Payments to Growers

The Unsecured Creditors object to the Agreement to the extent it provides for payment by the purchaser to AgriPac member/growers. It is argued that such payments violate the absolute priority rule, 11 U.S.C. § 1129(b)(2)(B)(ii).

The absolute priority rule, is not violated by the proposed payments to growers, if the funds are not payable from the estate, or paid strictly on account of the recipient's prior relationship with AgriPac. It is necessary for any entity purchasing the Debtor-in-Possession's assets to induce growers to contract to provide agricultural products to be processed. Payment of sign-up bonuses is a standard practice. It follows that these payments are an ordinary cost to the purchaser in a transaction such as the one under review here. This is not the equivalent to receipt by the growers of property of the estate, or payments on account of their interest in AgriPac.

The Court was assured at the hearing that there would be no discrimination in the payment of bonuses in favor of, or for that matter, against, any former member/grower of AgriPac. The order approving the sale should so direct, in order to remove any doubt on this point.

C. Collective Bargaining Agreement

The Sale Agreement contains the following provisions of concern to Teamster Local 670:

> **3.19. Labor Matters.** Seller has not engaged in any unfair labor practice with respect to its present or former personnel which could reasonably be expected to

have a material adverse effect on the results of operations or financial condition of the Canned Food Business, nor is there any unfair labor practice complaint pending against Seller with respect to any of its present or former personnel. There is no labor strike, dispute, slowdown or stoppage pending, or, to the knowledge of Seller, threatened against or affecting Seller and Seller has not experienced any primary work stoppage or other labor dispute involving their employees during the last five years. There are no pending or, to Seller's knowledge, threatened, state or federal administrative claims, grievances, arbitrations, litigation or consent decrees against Seller.

3.22. Employee Relations. Buyer shall have no obligation to hire any specific number of Seller's former employees or to assume Seller's collective bargaining agreements with respect to the Canned Food Business. Section 3.22 of the Disclosure Memorandum contains a list of each salaried and hourly employee of the Seller and such employee's years of service, salary and grade. Seller believes that its relations with its employees are satisfactory. Except as set forth in Section 3.22 of the Disclosure Memorandum, no claim has been asserted or, to the knowledge of Seller, threatened by an employee on account of any alleged violation by Seller of any law relating to employment discrimination or employment practices or any other law governing the employment relationship within the last three (3) years.

5.1. Employees. Buyer will offer employment to some of the Seller's administrative personnel and some of the production workers involved in the Canned Food Business, in its sole discretion according to its business needs and plans.

8.3. Labor Agreement. [As a condition of closing] Buyer must have reached a full agreement with Teamsters Local 670 resolving all issues and questions with respect to: all seniority, hiring and benefit rights and obligations of Buyer with respect to former employees of Seller that Buyer may hire; the integration of the pre-existing supervisory and union workforces of Buyer into the Canned Food Business, and vice versa; and a complete labor agreement and/or agreement resolving all grievances and unfair labor practice or other employment related claims, satisfactory to Buyer in its sole discretion, applicable to the operations of the Assets.

The Collective Bargaining Agreement ("CBA") between Teamsters Local 670 and the Debtor-in-Possession provides that:

> This Agreement shall be binding upon the parties and their successors. In the event that the Company's business is sold, transferred or merged, such business shall continue to be subject to the terms and conditions of this Agreement. The Company shall give notice of the existence of this Agreement to any purchaser, assignee, etc., of the business. Such notice shall be in writing with a copy to the Union and shall be given at the time of such sale or transfer of the business. In the event that the Company fails to require the purchaser or transferee to assume the obligations of this contract, the Company shall be liable to the Union and to the employees for all damages sustained as a result of such failure to require the assumption of the terms of this Agreement, but shall not be liable if the purchaser or transferee has agreed to assume the obligation of this Agreement.

The proposed sale agreement does not comply with the terms of the Collective Bargaining Agreement. Moreover, it is obvious from the Union's protests that provisions in the Purchase Agreement concerning labor relations have not been complied with.

The proposed sale is a sale of the Debtor-in-Possession's business as that term is employed in Article XII of the Collective Bargaining Agreement. Failure to include in the Sale Agreement a successor clause as required by the CBA is a breach of the Collective Bargaining Agreement which may result in a substantial claim against the estate. Moreover, the claim may be subject to priority treatment as an administrative expense, having occurred post-petition. It follows that any order permitting the sale to go forward must be conditioned on compliance with the CBA, or a waiver

of strict compliance by the Union. Otherwise the economic benefit of the sale to the estate will be substantially eroded by the Union's claims under the CBA.

In addition, Bankruptcy Code § 1113 requires that the Debtor-in-Possession bargain in good faith with the Union prior to rejecting the Collective Bargaining Agreement. The sale of the Canned Foods Business without compliance with the Collective Bargaining Agreement, amounts to a rejection of the contract for purposes of §1113. It follows that the sale cannot go forward until §1113 is complied with, or an agreement between the Union and the new buyer renders compliance moot.

D. Sequestration of Funds

Crown Cork and Seal objects to that part of the Agreement which effectively provides for direct payment of the sale proceeds to CoBank, the secured creditor. CCS has commenced an adversary proceeding seeking equitable subordination of CoBank's secured claim, pursuant to Code § 510. They now argue that the escrow arrangement contemplated by the sale deprives them of their remedy under § 510.

In response, the Bank refers to a settlement agreement entered into between the Debtor-in-Possession, Unsecured Creditors' Committee, and the Banks, in connection with the prior sale of the Debtor-in-Possession's Frozen Food Division. The agreement was approved by the Court and incorporated into its order of February 18, 1999, approving that sale.

The provisions relied on by the Bank read as follows:

> 2.d. Any unsold collateral that has not been transferred to the Buyer of either the Frozen or Canned Divisions will be transferred or surrendered to the Banks in partial satisfaction of debt or sold pursuant to a sale under § 363.

The Bank further argues that the settlement agreement constituted a release of claims such as the one now asserted by Crown Cork and Seal in its action under Code § 510.

It does not appear that the equitable subordination claim was subject to the February 18 agreement. Paragraph 4 of the agreement provides, in part, that "[T]his release does not extend to any claim or cause of action of a creditor which is not derivative of a claim or cause of action of the bankruptcy estate." The complaint in the adversary proceeding alleges a claim on behalf of Crown Cork and Seal, and not a derivative claim on behalf of the estate.

The sale of estate property and distribution of the proceeds of the sale are distinct matters. The general rule is that distribution on pre-petition debt in a Chapter 11 case should not take place except pursuant to a confirmed plan of reorganization, absent extraordinary circumstances. In re Air Beds, Inc., 92 B.R. 419 (9th Cir. BAP 1988), In re Conroe Forge & Manufacturing Corp., 82 B.R. 781 (Bankr. W.D. Penn. 1988).

I find no compelling circumstance which justifies distribution of the proceeds of the sale in the absence of a plan of

reorganization, and in light of a colorable claim asserted for equitable subordination of the Bank's interest.[2]

A provision in the settlement agreement relied on by the Bank provides that "unsold collateral" will be surrendered to the Bank or sold pursuant to Code § 363. This language does not appear to include cash collateral. To the extent that it does, the provision is inconsistent with the rule laid down in Air Beds and Conroe. The agreement and the order approving it should be construed in a manner consistent with applicable legal principles and, accordingly, I find that the provision does not apply to the proceeds of the sale.

Pending further proceedings, the sale proceeds must be retained by the Debtor-in-Possession in an appropriate interest bearing account.

F. Assumption of Contracts

The Unsecured Creditors' Committee argues, not unreasonably, that the Court should not allow the Debtor-in-Possession's motions seeking leave to assume certain contracts for the purpose of assigning them to the purchaser. On the other hand, in a sale of this complexity, where the identity of the buyer could not be determined until the end of an auction, it is difficult to fashion a method consistent both with the review requirements of the Code and the need for the parties to move quickly to close the sale. The principal concern of the Unsecured Creditors is the cost to the

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[2]Nothing in this opinion should be construed as reflecting any judgement by the Court as to the merits of CCS's claim, or the Bank's response.

estate of assuming the contracts (which is a condition of assignment, see Code § 363) may have been severely underestimated. Protection of the estate and vindication of Code requirements of Court approval (which implies that the Court and all parties be duly advised) require some conditions on approval. That the assumption and assignment should be approved goes without saying, since the assignment of the contracts is an integral part of the purchase transaction.

The Court will approve the proposed assumption and assignment, on the condition that the total cost to the estate of assuming the subject contracts not exceed $60,000. Any costs above that amount must be waived by the third party or paid by the purchaser. In addition, the buyer must identify the contracts to be assumed prior to closing, and notify interested parties.

III. SUMMARY

1. The sale of the Canned Food Division is approved, subject to the following conditions:

a. The Purchase Agreement must be modified to comply with the requirements of the Collective Bargaining Agreement, or an agreement reached between the Union and the Purchaser wherein the Union waives the requirement;

b. Code § 1113 must be complied with before the sale is closed, unless compliance is rendered moor by an agreement between the buyer and he Union;

c. The proceeds of the sale, net of costs attributable to the closing, must be retained by the Debtor-in-Possession in an

appropriate interest-bearing account pending further proceedings in this Court;

e. The order approving the sale shall specify that any asset not explicitly described in the Sale Agreement is retained by the estate;

f. Sign-up bonuses or similar consideration paid to growers contracting with the Buyer shall not discriminate in favor of or against any person or entity on account of its prior association with AgriPac.

2. The assumption by the Debtor-in-Possession of contracts necessary to be assumed and assigned to the Buyer is approved, on the following conditions:

a. Total costs of assumption to the estate shall not exceed $60,000; and

b. The Buyer shall, at least seven days prior to the closing, identify the contracts to be acquired by it, and give notice of those contracts to the Debtor, Creditors' Committee, Crown Cork and Seal, and U.S. Trustee.

The foregoing constitutes the Court's findings of fact and conclusions of law, which will not be separately stated. Counsel for the Debtor-in-Possession shall prepare a form of order consistent with this memorandum.

FRANK R. ALLEY, III
Bankruptcy Judge