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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:
SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.,¹

Chapter 11 Case
Case No. 13- 22840 (RDD)

Debtors.

(Jointly Administered)

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**DEBTORS' MOTION FOR AN ORDER (I) APPROVING MANDATORY CLAIMS
RESOLUTION PROCESS TO RESOLVE CERTAIN MEDICAL MALPRACTICE AND
RELATED INDEMNIFICATION CLAIMS AGAINST THE DEBTORS
AND (II) ENJOINING ANY MEDICAL MALPRACTICE ACTION
AGAINST CERTAIN OF THE DEBTORS' MEDICAL PROFESSIONALS**

Sound Shore Medical Center of Westchester. ("Sound Shore"), The Mount Vernon
Hospital ("Mount Vernon"), and the other above-captioned debtors and debtors-in-possession
(collectively, the "Debtors"), by and through their undersigned counsel, hereby move (the
"Motion") this Court for entry of an order, pursuant to section 105(a) of title 11 of the United
States Code (the "Bankruptcy Code") and rule 9019-1 of the Local Bankruptcy Rules for the
Southern District of New York (the "Local Bankruptcy Rules"), (i) approving a mandatory
claims resolution process (the "Claims Resolution Process") to resolve certain medical

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: Sound Shore Health System, Inc. (1398), Sound Shore Medical Center of Westchester (0117), The Mount Vernon Hospital, Inc. (0115), Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center (0781), NRHMC Services Corporation (9137), The M.V.H. Corporation (1514) and New Rochelle Sound Shore Housing, LLC (0117). There are certain additional affiliates of the Debtors who are not debtors and have not sought relief under Chapter 11.

malpractice and related indemnification claims against the Debtors and (ii) enjoining any medical malpractice action against certain of the Debtors' current and former employees and other professionals. In support of the Motion, the Debtors respectfully represent as follows:

SUMMARY OF RELIEF REQUESTED

1. The Debtors propose implementing the Claims Resolution Process to resolve or otherwise dispose of (a) certain claims against any of the Debtors on account of or related to such Debtors' purported liability resulting from the provision of medical services, including personal injury or wrongful death claims (each a "Medical Malpractice Claim," and collectively, the "Medical Malpractice Claims"), and (b) potential indemnification claims of the Debtors' current and/or former employees and other professionals providing medical services at the Debtors' institutions who were covered under the Debtors' third party insurance or under the Debtors' self-insured medical malpractice plans (including, without limitation, doctors, interns, residents, nurses and others, collectively, the "Medical Professionals"), some of whom may be defendants in actions related to the Medical Malpractice Claims (each a "Medical Malpractice Action"). In addition, certain of the Medical Professionals may possess contractual indemnification rights and/or are additional insureds under the Debtors' insurance policies or programs. In order to maximize the probability of consensually resolving the Medical Malpractice Claims, and to help preserve the assets of the Debtors' estates, the Debtors also seek to enjoin the holders of Medical Malpractice Claims (each individually, a "Medical Malpractice Claimant", and collectively, the "Medical Malpractice Claimants") from prosecuting any Medical Malpractice Action against the Debtors' Medical Professionals until confirmation of a plan of liquidation for the Debtors (a "Plan").

2. Pursuant to the proposed Claims Resolution Process, the Debtors and the Medical Malpractice Claimants (as defined below) would first attempt to settle, rather than litigate, the

Medical Malpractice Claims through a Court-imposed mediation process described in detail below.² The Debtors propose that if the Debtors and a particular holder of a Medical Malpractice Claim are unable to liquidate or compromise such Medical Malpractice Claim through good faith efforts in accordance with the mediation procedures and requirements set forth below, the Medical Malpractice Claim, together with any vicarious or other liability the Debtors may have on account of such claim, shall be estimated pursuant to section 502(c) of the Bankruptcy Code in the United States District Court for the Southern District of New York (the "District Court").

3. A Medical Malpractice Claimant may opt out of the mediation process by advising counsel for the Debtors in writing of his or her desire to resolve a Medical Malpractice Claim by entering into and filing with the Court a stipulation with the Debtors modifying the automatic stay to permit the Medical Malpractice Claimant to liquidate his or her Medical Malpractice Claim in a forum outside of this Court, but limiting all recovery solely to any available insurance coverage, or by withdrawing such claim. In addition, the Debtors seek authority, in their discretion and after consultation with the Committee (as defined below), to offer any Medical Malpractice Claimant a cash payment of up to \$5,000.00 in full and final settlement and satisfaction of his or her Medical Malpractice Claim against the Debtors or their Medical Professionals.

4. The Claims Resolution Process will enable the Debtors and the Medical Malpractice Claimants to resolve the Medical Malpractice Claims by mediation or otherwise as soon as practicable, thereby maximizing the benefits of any available insurance while, at the

² By seeking to mediate the Medical Malpractice Claims through the Claims Resolution Process, the Debtors are not acknowledging or admitting any liability in connection with the Medical Malpractice Claims and in fact believe that they have little or no liability with respect to many of the Medical Malpractice Claims.

same time, ensuring equitable treatment among the Medical Malpractice Claimants. The liquidation of the Medical Malpractice Claims will also be a key component in the ultimate formulation of a feasible Plan. Accordingly, the Debtors respectfully submit that the Claims Resolution Process should be approved by this Court.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B). Venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory and rule-based predicates for the relief requested herein are section 105(a) of the Bankruptcy Code and Local Bankruptcy Rule 9019-1.

INTRODUCTION AND BACKGROUND

A. The Bankruptcy Filing

7. On May 29, 2013 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their businesses and manage their affairs as debtors-in-possession. No trustee or examiner has been appointed in these cases. On June 10, 2013, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors (the "Committee").

8. 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..

B. The Bar Date and the Medical Malpractice Claims

9. By order dated July 25, 2013 [Docket No. 194], pursuant to rule 3003(c)(3) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), this Court set September 16, 2013 at 4:00 p.m. (the “Bar Date”) as the deadline by which proofs of claim are required to be filed in the Chapter 11 Cases by each person or entity asserting a pre-petition claim against the Debtors. Prior to the Petition Date, the Debtors were named as defendants or co-defendants in a number of pending Medical Malpractice Actions. The pre-petition Medical Malpractice Actions are stayed by operation of law against the Debtors under section 362(a) of the Bankruptcy Code, but are not automatically stayed against any non-debtor co-defendants in the Medical Malpractice Actions, including the Debtors’ Medical Professionals. Nor are pre-petition malpractice actions against the Debtors’ former employees and other professionals (without the Debtors as co-defendants) automatically stayed.³ As the Bar Date has not yet passed, the Debtors do not yet know the entire universe of pre-petition Medical Malpractice Claims. Also, the Debtors anticipate that there may be Medical Malpractice Claims filed after the Bar Date and the Debtors reserve the right either to include such claims in the Claims Resolution Process or to object to any Medical Malpractice Claims filed after the Bar Date as late-filed claims.

10. The Debtors intend to request a supplemental bar date (“Administrative Claims Bar Date”) to establish a deadline within which proofs of claim are required to be filed by persons or entities asserting post-petition claims arising or accruing between the Petition Date and the date the sale of substantially all of the Debtors’ assets closes. The Administrative Claims Bar Date is intended to capture, without limitation, any post-petition Medical Malpractice

³ In addition, the Debtors anticipate that a number of current or former employees and other professionals will file contingent indemnification claims although they have not been named as a codefendant.

Claims. The Debtors reserve the right to require the holders of post-petition Medical Malpractice Claims, if any, to participate in the Claims Resolution Process.

11. The Medical Malpractice Claims need to be liquidated in a systematic, comprehensive and cost-efficient manner. The Medical Malpractice Claims are asserted against either Sound Shore, Mount Vernon and/or the Medical Professionals. While the Debtors maintained third party medical malpractice insurance at Sound Shore Medical Center, they did not do so for Mount Vernon which was self-insured. Accordingly, many of the Medical Malpractice Claims are not covered by insurance and the Medical Malpractice Claimants with claims against Mount Vernon will likely not have the option to proceed against insurance proceeds.

C. Plan Process and Potential Distribution to Unsecured Creditors

12. The Debtors believe that there will be sufficient funds in the Debtors' estates to ultimately make some distribution to general unsecured creditors in these cases.⁴ In fact, part of the underlying reasoning for seeking implementation of the Claims Resolution process is the need to balance the Debtors' requirements in connection with the plan formulation process with the concurrent needs of the Medical Malpractice Claimants to fix and determine the amounts of their respective claims, all without overly burdening, or unnecessarily diminishing the assets of these estates.

13. The Debtors anticipate that most, if not all, of the Medical Malpractice Claims will be asserted as general unsecured claims and that the holders of Medical Malpractice Claims will represent only a small fraction of the total amount of allowed general unsecured claims. Thus, it will benefit all parties in these cases to have an efficient mechanism to resolve Medical

⁴ While the Debtors believe that there will be sufficient funds to pay all administrative and priority claims and confirm a plan of liquidation, there is no assurance that a plan will be confirmed.

Malpractice Claims. The Debtors have reviewed procedures for the resolution of medical malpractice claims in other hospital bankruptcies and have attempted to model the Claims Resolution Process proposed here after the procedures employed in those cases.

RELIEF REQUESTED

14. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as Exhibit A, (i) approving and establishing the Claims Resolution Process for the Medical Malpractice Claims, as described herein; and (ii) in the event a particular Medical Malpractice Claimant chooses to opt out of the mediation process pursuant to the Stay Modification Option (as defined below), approving the form of the stipulation attached to this Motion as Exhibit B providing, among other things, that the automatic stay shall be modified solely to liquidate such claimant's Medical Malpractice Claim, but limiting all recovery solely to any available insurance coverage and otherwise waiving all claims against the Debtors and the Medical Professionals. The Debtors also seek authority, after consultation with the Committee, in the Debtors' discretion, to offer any Medical Malpractice Claimant a cash payment of up to \$5,000.00 (a "Settlement Payment") in full and final settlement and satisfaction of his or her Medical Malpractice Claim against the Debtors and the Debtors' Medical Professionals.

15. The Debtors submit that under the circumstances it would be time consuming, unduly burdensome and expensive for the Debtors to have to defend against and liquidate the numerous Medical Malpractice Claims in other tribunals. Such a cumbersome process would significantly delay the resolution of the Medical Malpractice Claims and the administration of these chapter 11 cases. It would also unnecessarily increase the administrative expenses of the Debtors' estates. Therefore, the Debtors have designed a comprehensive and systematic program to resolve the Medical Malpractice Claims fairly, expeditiously and in a cost-effective manner through the Claims Resolution Process outlined below.

16. In addition, in order to further streamline the liquidation of Medical Malpractice Claims and enhance the benefits that will accrue to the Debtors and their estates through the institution of the Claims Resolution Process, the Debtors request that the order granting this Motion also extend the automatic stay, until confirmation of a Plan, to any Medical Malpractice Claim against the Medical Professionals.⁵ Since some of the underlying Medical Malpractice Actions against the Medical Professionals are ongoing, the Debtors submit that an extension of the automatic stay is necessary to avoid any prejudicial effect such ongoing actions could have on the Debtors' interests. In particular, the Debtors are concerned about potential indemnification claims that may be asserted by Medical Professionals found liable on Medical Malpractice Claim, potentially subjecting the Debtors to liability without having any opportunity to be involved in the defense of the underlying claim. Moreover, the Debtors are concerned that a judgment against a Medical Professional may be res judicata with respect to any potential defenses the Debtors could ultimately present in connection with such Medical Malpractice Claim against the Debtors, again potentially subjecting these estates to liability without an opportunity to defend themselves.

PROPOSED TERMS OF THE CLAIMS RESOLUTION PROCESS

17. The Debtors propose that the Claims Resolution Process consist of the following elements⁶:

A. Mediation

18. Referral to Mediation. All Medical Malpractice Claims shall be referred by the

⁵ While the Debtors now seek only a limited extension of the automatic stay to Medical Malpractice Claims against the Medical Professionals until confirmation of a Plan, the Debtors expect that they will seek a further extension through a Plan. The Debtors also reserve the right to seek a stay of any post-petition Medical Malpractice Actions filed against the Debtors.

⁶ The Debtors reserve the right to seek to amend or modify the terms of the proposed Claims Resolution Process.

Court to mediation (“Mediation”). No Medical Malpractice Claimant shall be allowed to seek a recovery on account of any Medical Malpractice Claim against the Debtors, the Medical Professionals, or any of the Debtors’ assets, unless they have first complied, in good faith, with the Claims Resolution Process.

19. Appointment of Mediator. The Debtors shall select a mediator or mediators (the “Mediator”) after consultation with the Committee.⁷ The Debtors request that they be authorized to retain and compensate the Mediator without further order of the Court. The Mediator shall serve for an initial term of six (6) months from the date he or she is selected. The Mediator’s term may be extended upon further order of the Court. The Mediator shall charge its standard hourly rate for services of this kind.

20. Conduct of Mediation. As soon as practicable after the appointment of the Mediator, he or she shall confer with representatives of the Debtors and the applicable Medical Malpractice Claimant to discuss procedural issues applicable to the mediation process. The Mediator shall have the duty and authority to establish the time for all mediation activities, including the mediation session or sessions with respect to each particular claim (the “Mediation Sessions”) and the submission and exchange of relevant documents. With the advice of the Debtors, the Mediator shall select the order in which Medical Malpractice Claims will be presented to the Mediator, including the date, time and location of each Mediation Session. In all cases, the Mediator shall have the authority to establish reasonable and practical Mediation procedures and requirements. Nothing in this Mediation process shall preclude the Debtors from attempting to resolve a Medical Malpractice Claim without having the Medical Malpractice

⁷ The Debtors anticipate that any mediator selected will have extensive experience in presiding over and mediating medical malpractice claims of the nature of the Medical Malpractice Claims.

Claimant attend a Mediation Session (including, without limitation, by offering to make a Settlement Payment).

21. Notice. At the direction of the Mediator, the Debtors shall serve notice of the date, time and location of the individual Mediation Sessions (the "Mediation Notice") upon counsel to the respective Medical Malpractice Claimants, and if counsel is not known, then upon the Medical Malpractice Claimant at the address listed on the proof of claim filed by the Medical Malpractice Claimant against the Debtors. The Mediation Notice also shall contain the procedures applicable to the individual Mediation Sessions, including the time for submission of any documents or statements by the parties. No party in interest shall be allowed to conduct any discovery related to a Medical Malpractice Claim prior to the initial Mediation Session. Any discovery allowed after the initial Mediation Session shall be determined by the Mediator in his or her sole discretion.

22. Settlement Conferences. Any party may be represented by legal counsel at its own cost and expense, although the participation of legal counsel shall not be required for the conduct of the Mediation. The Mediator shall meet with the parties or their representatives, individually and jointly, for a conference or series of conferences as determined by the Mediator. The Medical Malpractice Claimant and the Debtors or their respective representatives must be present at the conferences. Each representative must have the complete authority to negotiate all disputed amounts and issues associated with a given Medical Malpractice Claim. With respect to any Medical Malpractice Claim for which there is third party insurance coverage, either a representative of the insurance carrier or such other person with authority to settle on behalf of the insurance carrier must be present at the conferences. The Mediator shall report any willful failure to attend or participate in good faith in the Mediation Sessions to the Court. Such failure

may result in the imposition of sanctions by the Court. The Mediator shall have the authority to establish a deadline for the Medical Malpractice Claimants to act upon a proposed settlement or upon a settlement recommendation from the Mediator. Subject to the approval procedures set forth herein, settlement of any pre-petition Medical Malpractice Claim reached pursuant to Mediation (other than by a Settlement Payment) shall be treated as an allowed unsecured non-priority claim in these chapter 11 cases, and the holder thereof shall receive a pro rata distribution from a medical malpractice reserve to be established under a Plan or as otherwise provided in a Plan or the Bankruptcy Code.

23. Approval of Settlements. With regard to any settlements reached in connection with the Mediation (other than a Settlement Payment), the following procedures shall apply: (i) the Mediator shall have no obligation to make written comments or recommendations; provided, however, that the Mediator may furnish the parties with a written or oral settlement recommendation, which shall not be filed with the Court; (ii) if the parties reach an agreement regarding the disposition of the matter, the Debtors shall give ten (10) days' prior written notice of the settlement to the Committee and the U.S. Trustee (together, the "Notice Parties"); in the event a Notice Party opposes the settlement, it shall promptly (within such ten (10) day period) so advise the Debtors and the other Notice Party in writing, after which the Debtors and the opposing Notice Party shall attempt to resolve the opposition, and if such opposition cannot be resolved, the Debtors may submit to the Court a stipulated order or motion to approve the settlement (as appropriate, in the Debtors' discretion) on ten (10) days' notice to the Notice Parties; in the event no Notice Party opposes the settlement within the original ten (10) day notice period, the Debtors may submit to the Court a stipulated order approving the settlement without notice; (iii) any stipulated order or order approving the motion, as applicable, shall

contain, among other things, appropriate releases by the Medical Malpractice Claimant against the Debtors' estates and to the extent relevant, to the Medical Professionals; and (iv) absent such a stipulated order or order approving the motion, no party shall be bound by any statement made or action taken during the Mediation.⁸

24. Confidentiality. With regard to confidentiality, the following shall apply: (i) any statements made by the Mediator, the Medical Malpractice Claimants, the Debtors, their respective representatives, or by others during the Mediation process shall not be divulged by any of the participants in the Mediation (or their representatives) or by the Mediator to the Court or to any third party; (ii) all records, reports, or other documents received or made by the Mediator while serving in such capacity shall be confidential and shall not be provided to the Court, unless they would be otherwise admissible at any hearing or trial in connection with any Medical Malpractice Claim; and (iii) the Mediator shall not be compelled to divulge such records or to testify in regard to the Mediation in connection with any arbitral, judicial or other proceeding, including any hearing held by the Court or any other court in connection with any Medical Malpractice Claim.

25. Costs. The Mediator's fees and expenses incurred in connection with each Mediation Session (the "Mediation Costs") shall be borne as follows: (i) the Debtors and each Medical Malpractice Claimant shall each be responsible for fifty percent (50%) of the Mediation Costs for such Medical Malpractice Claimant's Mediation Sessions, provided, however, that the Debtors shall advance 100% of such fees and the Medical Malpractice Claimant's share of the Mediation Costs shall be payable as a reimbursement only from a distribution in the Chapter 11 Cases, except as otherwise set forth herein or by further order of the Court, (ii) each party shall

⁸ The Debtors reserve the right to seek to revise the foregoing procedures with respect to the approval of settlements.

bear its own legal and other professional fees and expenses, and (iii) if either a Medical Malpractice Claimant (or a representative thereof) or a representative of the Debtors fails to appear for any scheduled Mediation Session without giving written notice, to be received at least five (5) days prior to the scheduled Mediation Session, to (a) the Mediator and (b) counsel for the opposing party, if any, the party failing to appear shall be responsible for one hundred percent (100%) of the Mediation Costs for that Mediation Session, including attorneys' fees and costs for opposing counsel, if the Mediator or the Debtors are unable to substitute an alternate Mediation Session for the cancelled Mediation Session. If the party cancelling the Mediation Session fewer than five (5) days prior to the Mediation Session is a Medical Malpractice Claimant, the Medical Malpractice Claimant shall be responsible for one hundred percent (100%) of the cost of the cancelled Mediation Session regardless of whether the Medical Malpractice Claimant ultimately receives a distribution in the Chapter 11 Cases, but only in the event that an alternate Mediation Session was unable to be substituted for the cancelled Mediation Session.

26. Additional Medical Malpractice Claims. With respect to Medical Malpractice Claims filed after the Bar Date, the Debtors shall have the right to object to such claims as late-filed and/or to serve a notice (without further order of the Court) on the applicable Medical Malpractice Claimant requiring participation in the Claims Resolution Process. Moreover, with respect to Medical Malpractice Claims filed after the Bar Date that are deemed timely filed by the Court, the Debtors shall have the right to serve a notice (without further order of the Court) on the applicable Medical Malpractice Claimant requiring participation in the Claims Resolution Process.

27. Estimation of Medical Malpractice Claims. If the Debtors and a particular Medical Malpractice Claimant are unable to liquidate or compromise a Medical Malpractice

Claim through good faith efforts in accordance with the Mediation procedures and requirements set forth above, the Medical Malpractice Claim shall be estimated pursuant to section 502(c) of the Bankruptcy Code in the District Court, together with any vicarious or other liability the Debtors may have on account of any indemnification claim related to such Medical Malpractice Claim or otherwise. The holders of allowed Medical Malpractice Claims, whether estimated by the District Court or liquidated through Mediation (other than by a Settlement Payment), shall receive a pro rata distribution from a medical malpractice reserve to be established under a Plan, or as otherwise provided in a Plan or the Bankruptcy Code in full and complete satisfaction of such allowed claims.

B. Opt Out From Mediation Process

28. A Medical Malpractice Claimant may opt out of the Mediation process by advising counsel for the Debtors in writing of his or her desire to resolve the Medical Malpractice Claim by entering into and filing with the Court a stipulation with the Debtors, substantially in the form attached hereto as Exhibit B (the "Stay Modification Stipulation"),⁹ modifying the automatic stay for the sole purpose of permitting the Medical Malpractice Claimant to liquidate his or her Medical Malpractice Claim in a forum outside of this Court, but limiting all recovery solely to any available insurance coverage and otherwise waiving all claims against the Debtors and the Medical Professionals (the "Stay Modification Option"). A Medical Malpractice Claimant also may avoid the Mediation process by withdrawing his or her Medical Malpractice Claim in its entirety or by otherwise reaching a settlement with the Debtors.

⁹ The Medical Malpractice Claimant shall not have the right to modify the terms and conditions of the Stay Modification Stipulation.

C. Settlement Payment

29. The Debtors also seek authority, in their discretion, to offer any Medical Malpractice Claimant a Settlement Payment. A Settlement Payment may be paid by the Debtors without further order of the Court with consent of the Committee.

D. Notice of Entry

30. As soon as practicable following entry of an order granting this Motion, the Debtors propose to serve each of the Medical Malpractice Claimants (at the addresses of such claimants or their counsel set forth in the proofs of claim filed against the Debtors) with a notice of entry of such order, substantially in the form attached hereto as Exhibit C (the "Notice of Entry"). The Notice of Entry shall, among other things, (i) advise each Medical Malpractice Claimant that his or her Medical Malpractice Claim has been referred to Mediation, (ii) indicate that the Medical Malpractice Claimant may opt out of the Mediation process by advising counsel for the Debtors in writing of his or her desire to resolve the Medical Malpractice Claim pursuant to the Stay Modification Option, and (iii) advise each Medical Malpractice Claimant that he or she may avoid the Mediation process by withdrawing his or her Medical Malpractice Claim in its entirety or by otherwise reaching a settlement with the Debtors.

BASIS FOR RELIEF REQUESTED

A. The Claims Resolution Process

31. The Debtors submit that the proposed Claims Resolution Process is in the best interests of the Medical Malpractice Claimants, the Debtors, their estates and all other parties in interest. The Debtors further believe that the Claims Resolution Process will facilitate consensual settlement and liquidation of most, if not all, Medical Malpractice Claims in a manner that is most efficient for both the Debtors and the Medical Malpractice Claimants.

32. The proposed Claims Resolution Process also is fair in that it merely requires a Medical Malpractice Claimant to participate in the Mediation in good faith. If a settlement cannot be reached, the Medical Malpractice Claim shall be estimated pursuant to section 502(c) of the Bankruptcy Code in District Court. Thus, the Claims Resolution Process protects the Medical Malpractice Claimants' rights, if any, under 28 U.S.C. § 157(b)(5). In the event a Medical Malpractice Claimant opts out of the Mediation process pursuant to the Stay Modification Option, the Medical Malpractice Claimant's right to litigate the merits of his or her Medical Malpractice Claim in a forum other than this Court and his or her rights, if any, under section 362(d) of the Bankruptcy Code and 28 U.S.C. § 157(b)(5) are protected, although in accordance with the Stay Modification Option such Medical Malpractice Claimant's recovery is limited to any available insurance coverage. Moreover, a Medical Malpractice Claimant that does not wish to spend the time and/or incur the expense of mediation or litigation of his or her Medical Malpractice Claim may avoid the Mediation process by withdrawing his or her Medical Malpractice Claim in its entirety or by otherwise reaching a settlement with the Debtors (including, without limitation, by a Settlement Payment).

33. Given the large number of Medical Malpractice Claims, the Debtors believe that the continued efficient administration of their estates and the fair treatment of creditors requires them to develop and implement a uniform and systematic approach for resolving the Medical Malpractice Claims that appropriately balances a variety of factors including, without limitation, limited bankruptcy court jurisdiction over the Medical Malpractice Claims, the amount of the Debtors' defense costs, and the anticipated limited recoveries to unsecured creditors.

34. This Court may not liquidate the Medical Malpractice Claims. See Germain v. The Connecticut Nat'l Bank, 988 F.2d 1323, 1327 (2d Cir. 1993) (noting that 28 U.S.C. §

157(b)(5) requires bankruptcy litigants to try a personal injury action in the district court); In re United States Lines, Inc., 1998 WL 382023 at *4 (S.D.N.Y. July 9, 1998) (28 U.S.C. § 157(b)(5) was enacted to address the issue that the bankruptcy courts were not constitutionally permitted to adjudicate non-core matters, such as personal injury cases). Indeed, only the federal district courts possess the power to reduce the Medical Malpractice Claims to judgment. See In re Waterman S.S. Corp., 63 B.R. 435, 436 (Bankr. S.D.N.Y. 1986) (stating that “28 U.S.C. § 157(b)(5) mandates that trials of personal injury or wrongful death claims arising under Title 11 be held in the district court.”).

35. Nevertheless, this Court has the authority to approve the Claims Resolution Process. Bankruptcy courts have jurisdiction to require claimants to participate in some type of central claims resolution process and have done so when faced with resolving a large number of tort claims in a bankruptcy proceeding. See In re Johns-Manville Corp., 97 B.R. 174, 177-78 (Bankr. S.D.N.Y. 1989) (injunction issued by bankruptcy court requiring asbestos claimants to proceed against established trust by first attempting settlement and then by mediation or arbitration prior to litigation); see also In re Sargeant Farms, Inc., 224 B.R. 842, 847 (Bankr. M.D. Fla. 1998) (stating that “the bankruptcy court has the authority and power to promulgate rules associated with court-annexed mediation and, where necessary, to require the parties to participate in same”); In re New York Med. Group, P.C., 265 B.R. 408, 414 (Bankr. S.D.N.Y. 2001) (noting that a bankruptcy court “may deny stay relief in favor of mediation where the time and expense of litigating a substantial number of personal injury claims would seriously threaten the reorganization”).

36. Section 105(a) of the Bankruptcy Code authorizes a bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of

[title 11].” 11 U.S.C. § 105(a). Under that section, the Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of the Debtors’ assets and to facilitate the efficient administration of the Chapter 11 Cases. See, e.g., In re Momentum Mfg. Corp., 25 F.3d 1132, 1136 (2d Cir. 1994) (“It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.”); In re NWFX, Inc., 864 F.2d 588, 590 (8th Cir. 1988) (“The overriding consideration in bankruptcy ... is that equitable principles govern.”). Thus, in the absence of any express statutory prohibition, section 105(a) empowers the Court to require Medical Malpractice Claimants to participate in the Claims Resolution Process. Nothing in the Bankruptcy Code or other law prevents such a process, and because Medical Malpractice Claimants are not bound by the results of the Mediation process, the Medical Malpractice Claimants retain their rights, if any, under 28 U.S.C. § 157(b)(5).

37. The Court’s authority to require participation in the Claims Resolution Process also is supported by the Alternative Dispute Resolution Act of 1998 (the “ADR Act”), which is codified at 28 U.S.C. §§ 651-658. The ADR Act defines alternative dispute resolution as “. . . any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial and arbitration . . .” 28 U.S.C. § 651(a). The ADR Act further provides, in relevant part, that

“[e]ach United States District Court shall authorize, by local rule adopted under section 2071(a), the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy Each United States district court shall devise and implement its own alternative dispute resolution program, by local rule . . . to encourage and promote the use of alternative dispute resolution in its district.”

28 U.S.C. § 651(b).

38. Bankruptcy courts may adopt their own alternative dispute resolution rules pursuant to 28 U.S.C. § 651(b) and Bankruptcy Rule 9029. See Alternative Dispute Resolution in Bankruptcy, 876 PLI/Comm 999 (2005). Consistent therewith, the Bankruptcy Court for the Southern District of New York has promulgated the Procedures Governing Mediation of Matters and the Use of Early Neutral Evaluation and Mediation/Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings (the “Bankr. SDNY ADR Procedures”) pursuant to Local Bankruptcy Rule 9019-1 and General Order M-390 as amended by General Order M-452. The Debtors submit that the procedures for the Mediation Sessions set forth herein comport with the Bankr. SDNY ADR Procedures.

39. In addition to the authority granted by the ADR Act and Local Bankruptcy Rule 9019-1, there is support for a bankruptcy court’s power to require that claimants participate in a central claims resolution process in rule 16(c)(2)(I) of the Federal Rules of Civil Procedure and Bankruptcy Rule 9019.¹⁰ See Alternative Dispute Resolution in Bankruptcy, 876 PLI/Comm at 1032. Rule 16(c)(2)(I) expressly authorizes a trial court to take action, at a pretrial conference, with respect to “settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule.” Pursuant to Bankruptcy Rule 7016, Rule 16(c)(2)(I) applies in adversary proceedings. Under Bankruptcy Rule 9014, a bankruptcy court may direct that Bankruptcy Rule 7016 shall apply in contested matters as well.

40. Consistent with this policy, courts in this and other districts have approved claims resolution procedures similar to the procedures proposed herein. See In re Cabrini Medical Center, Case No. 09-14398, Docket No. 497 (Bankr. S.D.N.Y. 2009)(AJG); In re Caritas Health

¹⁰ Settlements are favored in bankruptcy and the Claims Resolution Process is designed to facilitate settlements with the Medical Malpractice Claimants. See In re Martin, 91 F.3d 389, 393 (3d Cir. 1996) (stating that compromises are favored in bankruptcy).

Care, Inc., jointly administered under Case No. 09-40901, Docket No. 751 (Bankr. E.D.N.Y. 2009); In re Our Lady of Mercy Medical Center, et al., jointly administered under Case No. 07-10609 (Bankr. S.D.N.Y. 2007)(REG); In re New York Westchester Square Medical Center, Case No. 06-13050, Docket No. 255 (Bankr. S.D.N.Y. 06-13050)(SMB); In re Victory Mem'l Hosp., et al., jointly administered under Case No. 06-44387, Docket No. 732 (Bankr. E.D.N.Y. 2006); In re The Brooklyn Hosp. Ctr. and Caledonian Health Ctr., Inc., jointly administered under Case No. 05-26990, Docket No. 380 (Bankr. E.D.N.Y. 2005); In re Flushing Hosp. and Med. Ctr., Case No. 198-17475-260, Docket. No. 444 (Bankr. E.D.N.Y. 1998); see also In re Penn Traffic Co., et al., jointly administered under Case No. 03-22945, Docket No. 911 (Bankr. S.D.N.Y. 2003); In re Kmart Corp., et al., jointly administered under Case No. 02-B02474, Docket No. 4970 (Bankr. N.D. Ill. 2002); In re Union Hosp. Ass'n of the Bronx (d/b/a Union Hosp.), Case No. 97-45032, Docket No. 184 (Bankr. S.D.N.Y. 1997).

41. As noted, in the event the Debtors and a particular Medical Malpractice Claimant are unable to liquidate or compromise the Medical Malpractice Claim through good faith efforts in accordance with the Mediation process, the Medical Malpractice Claim shall be estimated pursuant to section 502(c) of the Bankruptcy Code in the District Court. As set forth above, pursuant to 28 U.S.C. § 157(b)(5), this Court may not liquidate the Medical Malpractice Claims and only the District Court has the power to determine such claims. Accordingly, the Debtors submit that estimation of the Medical Malpractice Claims by the District Court in the event Mediation does not prove to be fruitful is appropriate under the circumstances.

42. The Debtors believe that the Claims Resolution Process represents the best and the most efficient method of resolving the Medical Malpractice Claims. Granting authority to resolve the Medical Malpractice Claims as set forth herein will significantly reduce expenses and

help the parties avoid the delay and uncertainty associated with litigating each of the Medical Malpractice Claims. Moreover, the authority requested herein provides an incentive to the Medical Malpractice Claimants to work with the Debtors to reconcile, settle or compromise the Medical Malpractice Claims prior to engaging in expensive and time-consuming litigation. Accordingly, the Debtors respectfully submit that implementing the proposed Claims Resolution Process is in the best interests of the Debtors, their estates and the Medical Malpractice Claimants.

B. Extension of the Automatic Stay

43. As noted above, the Debtors request that the order granting this Motion also extend the automatic stay, until confirmation of a Plan, to any Medical Malpractice Claim against the Medical Professionals. Since some of the underlying Medical Malpractice Actions against the Medical Professionals are ongoing, the Debtors submit that an extension of the automatic stay is necessary to avoid any prejudicial effect such ongoing actions could have on the Debtors' interests.

44. In particular, the Debtors are concerned about potential indemnification claims that may be asserted by Medical Professionals found liable on Medical Malpractice Claims, potentially subjecting the Debtors to liability without having any opportunity to be involved in the defense of the underlying claim. Thus, to the extent a judgment is entered against a Medical Professional, that judgment could be equivalent to a liquidated claim against the Debtors, resulting in the creation of large claims against the estate by the Medical Malpractice Claimants. Such an outcome, which is entirely inconsistent with what the Claims Resolution Process is designed to accomplish, would severely diminish the aggregate recovery to the unsecured creditors and would impede the Debtor's efforts in these Chapter 11 cases.

45. Moreover, the Debtors are concerned that a judgment against a Medical Professional may be res judicata with respect to any potential defenses the Debtors could ultimately present in connection with such Medical Malpractice Claim against the Debtors. Again, this potentially subjects these estates to liability without an opportunity to defend themselves.

46. It has been repeatedly held that 11 U.S.C. § 105(a) empowers the bankruptcy court to enjoin parties from commencing or continuing litigation against parties other than the debtor. See In re Otero Mills, Inc., 25 B.R. 1018, 1020 (D. N.M.1982). Citing to the broad discretion granted to bankruptcy courts under section 105(a) of the Bankruptcy Code, courts in this circuit have noted that “[i]t is well settled that bankruptcy courts, under this provision, may extend the automatic stay to `enjoin suits by third parties against third parties if they threaten to thwart or frustrate the debtor’s reorganization efforts.” In re Adelpia Communications Corp., 298 B.R. 49, 54 (S.D.N.Y. 2003) (citing In re Granite Partners L.P., 194 B.R. 318, 337 (Bankr. S.D.N.Y. 1996)). In fact, courts have recognized a variety of circumstances in which it was necessary to extend the automatic stay to non-debtors third parties in order to protect the debtor’s estate. See e.g., Queenie, Ltd. v. Nygard Int’l, 321 F.3d 282, 287288 (2d Cir. 2003) (stay extended to debtor’s non-debtor wholly-owned corporation because a claim against the non-debtor would have “an immediate adverse economic consequence for the debtor’s estate.”); see also Crysen/Montenay Energy Co. v. Esselen Assoc., Inc., 902 F.2d 1098 (2d Cir. 1990) (extending the automatic stay to debtor’s non-debtor purchaser because claims against the purchaser were the exclusive property of the debtor’s estate). In particular, it has been recognized that “key personnel” should be protected under the automatic stay because otherwise “immediate and irreparable harm” could befall a debtor and its reorganization efforts. Lomas Fin. Corp. v.

Northern Trust Co. (In re Lomas Fin. Corp.), 117 B.R. 64, 67 (S.D.N.Y. 1990). Accordingly, the Debtors respectfully request that the Court stay any actions against the Medical Professionals until confirmation of a plan, pursuant to the Court's authority under section 105(a) of the Bankruptcy Code.

47. Further, the relief requested herein is necessary to ensure that the Claims Resolution Process is not circumvented and that all Medical Malpractice Claims are addressed according to the procedures approved by this Court. Similar relief has been granted in other cases, including: In re Cabrini Medical Center, Case No. 09-14398, Docket No. 497 (Bankr. S.D.N.Y. 2009)(AJG); In re Caritas Health Care, Inc., jointly administered under Case No. 09-40901, Docket No. 751 (Bankr. E.D.N.Y. 2009); In re Our Lady of Mercy Medical Center, et al., jointly administered under Case No. 07-10609 (Bankr. S.D.N.Y. 2007)(REG); In re New York Westchester Square Medical Center, Case No. 06-13050, Docket No. 255 (Bankr. S.D.N.Y. 06-13050)(SMB); In re Victory Mem'l Hosp., et al., jointly administered under Case No. 06-44387, Docket No. 732 (Bankr. E.D.N.Y. 2006); In re The Brooklyn Hosp. Ctr. and Caledonian Health Ctr., Inc., jointly administered under Case No. 05-26990, Docket No. 380 (Bankr. E.D.N.Y. 2005).

48. The Medical Malpractice Claimants will not be prejudiced by the extension and expansion of the stay to actions against the Medical Professionals. Indeed, the continued extension of the stay and the Debtors' attempt to globally resolve Medical Malpractice Claims may enable the Medical Malpractice Claimants to receive an award much more rapidly than otherwise possible through the normal tort system.

49. Accordingly, this Court should extend the stay to the Medical Professionals as requested herein. Such an extension and expansion will enable the Debtors to proceed with the

reorganization process without the enormous costs likely to result from the fragmented and potentially conflicting adjudication of the Medical Malpractice Claims in the state courts and the concomitant decline in patient services. See In re A.H. Robins, 788 F.2d at 1003 (court can use equitable powers under section 105(a) to “enjoin proceedings [against non-debtors] which will have an adverse impact on the Debtor’s ability to formulate a Chapter 11 plan.”) (quoting In re Otero Mills, Inc., 25 B.R. 1018, 1020 (D. N.M. 1982); In re Arrow Huss, Inc., 51 B.R. 853 (Bankr. D. Utah 1985)).

NOTICE

50. Notice of this Motion has been given to (i) the U.S. Trustee; (ii) the Committee; (iii) the Medical Malpractice Claimants or their counsel at the addresses listed on the proofs of claim filed against the Debtors; (iv) all other parties named in the state court actions with respect to the Medical Malpractice Claims, to the extent the Debtors are aware of such actions and addresses for counterparties have been provided to the Debtors or were obtainable using reasonable efforts and (v) in accordance with the Administrative Order Establishing Case Management and Scheduling Procedures (the “Case Management Order”), entered on June 4, 2013, the parties identified on the General Service List and the Master Service List (as such terms are identified in the Case Management Order). The Debtors respectfully submit that such notice is sufficient, and request that, except as provided herein, the Court find that no further notice of the relief requested herein is required.

NO PRIOR REQUEST

51. No prior request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, in substantially the form annexed hereto as Exhibit A, granting the relief requested in the Motion, and granting the Debtors such other and further relief as may be just and proper.

Dated: September 12, 2013
Great Neck, New York

GARFUNKEL WILD, P.C.

By: 

Burton S. Weston

Afsheen A. Shah

Adam T. Berkowitz

111 Great Neck Road

Great Neck, NY 11021

Telephone: (516) 393-2200

Facsimile: (516) 466-5964

*Counsel for the Debtors
and Debtors in Possession*

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:
SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.,¹

Chapter 11 Case
Case No. 13- 22840 (RDD)

Debtors.

(Jointly Administered)

-----X
**ORDER (I) APPROVING MANDATORY CLAIMS RESOLUTION PROCESS TO
RESOLVE CERTAIN MEDICAL MALPRACTICE AND RELATED
INDEMNIFICATION CLAIMS AGAINST THE DEBTORS
AND (II) ENJOINING ANY MEDICAL MALPRACTICE ACTION
AGAINST CERTAIN OF THE DEBTORS' MEDICAL PROFESSIONALS**

Upon the motion (the "Motion")² of Sound Shore Medical Center ("Sound Shore"), The Mount Vernon Hospital ("Mount Vernon"), and the other above-captioned debtors and debtors-in-possession (collectively the "Debtors"), for an order, pursuant to section 105(a) of the Bankruptcy Code and Local Bankruptcy Rule 9019-1, (i) approving a mandatory claims resolution process (the "Claims Resolution Process")³ to resolve (a) certain claims against any of the Debtors on account of or related to such Debtors' purported liability resulting from the provision of medical services, including personal injury or wrongful death claims (each, a "Medical Malpractice Claim" and, collectively, "Medical Malpractice Claims"), and (b) related indemnification claims filed by Medical Professionals, some of whom may be defendants in pre-petition medical malpractice actions and (ii) enjoining the holders of Medical Malpractice

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: Sound Shore Health System, Inc. (1398), Sound Shore Medical Center of Westchester (0117), The Mount Vernon Hospital, Inc. (0115), Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center (0781), NRHMC Services Corporation (9137), The M.V.H. Corporation (1514) and New Rochelle Sound Shore Housing, LLC (0117). There are certain additional affiliates of the Debtors who are not debtors and have not sought relief under Chapter 11.

² All capitalized undefined terms used in this Order shall have the meanings ascribed to them in the Motion.

³ The Debtors reserve the right to seek the Court's authorization to amend or modify the terms of the Claims Resolution Process.

Claims (the "Medical Malpractice Claimants") from prosecuting any action related to the Medical Malpractice Claims against the Debtors' current or former Medical Professionals until confirmation of a plan of liquidation for the Debtors (a "Plan"), all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and relief requested therein; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors and all parties-in-interest in these Chapter 11 cases; and it appearing that notice of the Motion was adequate and proper; and it appearing that no other or further notice need be given; and upon the Motion and the entire record of the proceedings before the Court; and after due deliberation and sufficient cause therefor, it is hereby

ORDERED, that the Motion is granted in all respects; and it is further

ORDERED, that the Claims Resolution Process is approved; and it is further

ORDERED, that all Medical Malpractice Claimants who hold timely-filed Medical Malpractice Claims, and/or are served with a Mediation Notice, are hereby referred to mediation (the "Mediation"), and no Medical Malpractice Claimant shall be allowed to continue any action with respect to, or seek a recovery on account of, any Medical Malpractice Claim against the Debtors, the Medical Professionals, or any of the Debtors' assets, unless they have first complied, in good faith, with the Claims Resolution Process; and it is further

ORDERED, that a mediator or mediators (the "Mediator") shall be selected by the Debtors, after consultation the Committee, who shall serve for an initial term of six (6) months from the date he or she is selected, subject to extension upon further order of the Court; and it is further

ORDERED, that the Debtors are authorized to retain and compensate the Mediator without further order of the Court; and it is further

ORDERED, that as soon as practicable after the appointment of the Mediator, he or she shall confer with representatives of the Debtors and the applicable Medical Malpractice Claimant to discuss procedural issues applicable to the mediation process, and the Mediator shall have the duty and authority to establish the time for all mediation activities, including the mediation session or sessions with respect to each particular claim (the "Mediation Sessions") and the submission and exchange of relevant documents; and it is further

ORDERED, that the Mediator, with the advice of the Debtors, shall select the order in which Medical Malpractice Claims will be presented to the Mediator, including the date, time and location of each Mediation Session, and that in all cases, the Mediator shall have sole authority to establish reasonable and practical Mediation procedures; provided, however, that nothing in this Mediation process shall preclude the Debtors from attempting to resolve a Medical Malpractice Claim without having the Medical Malpractice Claimant attend a Mediation Session (including, without limitation, by offering to make a Settlement Payment (as defined below)); and it is further

ORDERED, that at the direction of the Mediator, the Debtors shall serve notice of the date, time and location of the individual Mediation Sessions (the "Mediation Notice") upon counsel to the respective Medical Malpractice Claimants, and if counsel is not known, then upon the Medical Malpractice Claimant at the address listed on the proof of claim filed by the Medical Malpractice Claimant against the Debtors, and the Mediation Notice also shall contain the procedures applicable to the individual Mediation Sessions, including the time for submission of any documents or statements by the parties; and it is further

ORDERED, that no party in interest shall be allowed to conduct any discovery related to a Medical Malpractice Claim prior to the initial Mediation Session, and any discovery allowed

after the initial Mediation Session shall be determined by the Mediator in his or her sole discretion; and it is further

ORDERED, that any party may be represented by legal counsel at its own cost and expense, although the participation of legal counsel shall not be required for the conduct of the Mediation; and it is further

ORDERED, that the Mediator shall meet with the parties or their representatives, individually and jointly, for a conference or series of conferences as determined by the Mediator, subject to the following conditions:

1. The Medical Malpractice Claimant and the Debtors or their respective representatives must be present at the conferences;
2. Each representative must have the complete authority to negotiate all disputed amounts and issues associated with a given Medical Malpractice Claim;
3. With respect to any Medical Malpractice Claim for which there is third party insurance coverage, either a representative of the insurance carrier or such other person with authority to settle on behalf of the insurance carrier must be present at the conferences;
4. The Mediator shall report any willful failure to attend or participate in good faith in the Mediation Sessions to the Court. Such failure may result in the imposition of sanctions by the Court; and
5. The Mediator shall have the authority to establish a deadline for the Medical Malpractice Claimants to act upon a proposed settlement or upon a settlement recommendation from the Mediator;

and it is further

ORDERED, that settlement of any pre-petition Medical Malpractice Claim reached pursuant to the Mediation (other than by a Settlement Payment) shall be treated as an allowed unsecured non-priority claim in these Chapter 11 cases, and the holder thereof shall receive a pro rata distribution on account of such claim pursuant to a Plan, or as otherwise provided in a Plan

or the Bankruptcy Code, and that the following procedures shall apply to all such settlements (although the Debtors reserve the right to seek to revise such procedures):

1. The Mediator shall have no obligation to make written comments or recommendations; provided, however, that the Mediator may furnish the parties with a written or oral settlement recommendation, which shall not be filed with the Court;
2. If the parties reach an agreement regarding the disposition of the matter, the Debtors shall give ten (10) days' prior written notice of the settlement to the Committee and the U.S. Trustee (together, the "Notice Parties"). In the event a Notice Party opposes the settlement, it shall promptly (within such ten (10) day period) so advise the Debtors and the other Notice Party in writing, after which the Debtors and the opposing Notice Party shall attempt to resolve the opposition, and if such opposition cannot be resolved, the Debtors may submit to the Court a stipulated order or motion to approve the settlement (as appropriate, in the Debtors' discretion) on ten (10) days' notice to the Notice Parties. In the event no Notice Party opposes the settlement within the original ten (10) day notice period, the Debtors may submit to the Court a stipulated order approving the settlement without notice;
3. Any stipulated order or order approving the motion, as applicable, shall contain, among other things, appropriate releases by the Medical Malpractice Claimant against the Debtors' estates and to the extent relevant, the Medical Professionals; and
4. Absent such a stipulated order or order approving the motion, no party shall be bound by any statement made or action taken during the Mediation;

and it is further

ORDERED, that with regard to confidentiality in the Mediation, the following shall apply:

1. Any statements made by the Mediator, the Medical Malpractice Claimants, the Debtors, their respective representatives, or by others during the Mediation process shall not be divulged by any of the participants in the Mediation (or their representatives) or by the Mediator to the Court or to any third party;
2. All records, reports, or other documents received or made by the Mediator while serving in such capacity shall be confidential and shall not be provided to the Court, unless they would be otherwise admissible at any hearing or trial in connection with any Medical Malpractice Claim; and

3. The Mediator shall not be compelled to divulge such records or to testify in regard to the Mediation in connection with any arbitral, judicial or other proceeding, including any hearing held by the Court or any other court in connection with the Medical Malpractice Claim;

and it is further

ORDERED, that the Mediator's fees and expenses incurred in connection with each Mediation Session (the "Mediation Costs") shall be borne as follows: (i) the Debtors and each Medical Malpractice Claimant shall each be responsible for fifty percent (50%) of the Mediation Costs for such Medical Malpractice Claimant's Mediation Sessions, provided, however, that the Debtors shall advance 100% of such fees and the Medical Malpractice Claimant's share of the Mediation Costs shall be payable as a reimbursement only from a distribution in the Chapter 11 Cases, except as otherwise set forth herein or by further order of the Court, (ii) each party shall bear its own legal and other professional fees and expenses, and (iii) if either a Medical Malpractice Claimant (or a representative thereof) or a representative of the Debtors fails to appear for any scheduled Mediation Session without giving written notice, to be received at least five (5) days prior to the scheduled Mediation Session, to (a) the Mediator and (b) counsel for the opposing party, if any, the party failing to appear shall be responsible for one hundred percent (100%) of the Mediation Costs for that Mediation Session, including attorneys' fees and costs for opposing counsel, if the Mediator or the Debtors are unable to substitute an alternate Mediation Session for the cancelled Mediation Session. If the party cancelling the Mediation Session fewer than five (5) days prior to the Mediation Session is a Medical Malpractice Claimant, the Medical Malpractice Claimant shall be responsible for one hundred percent (100%) of the cost of the cancelled Mediation Session regardless of whether the Medical Malpractice Claimant ultimately receives a distribution in the Chapter 11 Cases, but only in the event that an alternate Mediation Session was unable to be substituted for the cancelled Mediation Session; and it is further

ORDERED, that with respect to Medical Malpractice Claims filed after the Bar Date, the Debtors shall have the right to object to such claims as late-filed and/or to serve a notice (without further order of the Court) on the applicable Medical Malpractice Claimant requiring participation in the Claims Resolution Process, and with respect to Medical Malpractice Claims filed after the Bar Date that are deemed timely filed by the Court, the Debtors shall have the right to serve a notice (without further order of the Court) on the applicable Medical Malpractice Claimant requiring participation in the Claims Resolution Process; and it is further

ORDERED, that the Debtors rights to require any post-petition Medical Malpractice Claimant to participate in the Claims Resolution Process, and the ability to seek an extension of the automatic stay in connection therewith, are reserved; and it is further

ORDERED, that if the Debtors and a particular Medical Malpractice Claimant are unable to liquidate or compromise a Medical Malpractice Claim through good faith efforts in accordance with the Mediation procedures and requirements set forth above, the Medical Malpractice Claim shall be estimated pursuant to section 502(c) of the Bankruptcy Code in the District Court, together with any vicarious or other liability the Debtors may have on account of any indemnification claim related to such Medical Malpractice Claim. The holders of allowed Medical Malpractice Claims, whether estimated by the District Court or liquidated through Mediation (other than by a Settlement Payment), shall receive a pro rata distribution from a medical malpractice reserve to be established under a Plan, or as otherwise provided in a Plan or the Bankruptcy Code in full and complete satisfaction of such allowed claims; and it is further

ORDERED, that a Medical Malpractice Claimant may opt out of the Mediation process by advising counsel for the Debtors in writing of his or her desire to resolve the Medical Malpractice Claim by entering into and filing with the Court a stipulation with the Debtors,

substantially in the form attached to the Motion as Exhibit B (the “Stay Modification Stipulation”), which form is hereby approved, modifying the automatic stay for the sole purpose of permitting the Medical Malpractice Claimant to liquidate his or her Medical Malpractice Claim in a forum outside of this Court, but limiting all recovery solely to any available insurance coverage and otherwise waiving all claims against the Debtors and Medical Professionals (the “Stay Modification Option”). A Medical Malpractice Claimant also may avoid the Mediation process by withdrawing his or her Medical Malpractice Claim in its entirety or by otherwise reaching a settlement with the Debtors; and it is further

ORDERED, that the Medical Malpractice Claimant shall not have the right to modify the terms and conditions of the Stay Modification Stipulation; and it is further

ORDERED, that, notwithstanding any other provision of this Order, the Debtors shall have the authority, after consultation with the Committee, in their discretion, to offer any Medical Malpractice Claimant a cash payment of up to \$5,000.00 in full and final settlement and satisfaction of his or her Medical Malpractice Claim (a “Settlement Payment”). A Settlement Payment may be paid by the Debtors without further order of the Court with consent of the Committee; and it is further

ORDERED, that as soon as practicable following entry of this Order, the Debtors shall serve each of the Medical Malpractice Claimants (at the addresses of such claimants or their counsel set forth in the proofs of claim filed against the Debtors) with a notice of entry of this Order, substantially in the form attached to the Motion as Exhibit C (the “Notice of Entry”), which form is hereby approved, and it is further

ORDERED, that the Notice of Entry shall (i) advise each Medical Malpractice Claimant that his or her Medical Malpractice Claim has been referred to Mediation, (ii) indicate that the

Medical Malpractice Claimant may opt out of the Mediation process by advising counsel for the Debtors in writing of his or her desire to resolve the Medical Malpractice Claim pursuant to the Stay Modification Option, and (iii) advise each Medical Malpractice Claimant that he or she may avoid the Mediation process by withdrawing his or her Medical Malpractice Claim in its entirety or by otherwise reaching a settlement with the Debtors; and it is further

ORDERED, that all Medical Malpractice Claimants are hereby enjoined from commencing or continuing any action relating to their Medical Malpractice Claims against the Medical Professionals until confirmation of a Plan, subject to further order of this Court; and it is further

ORDERED, that this Court shall retain jurisdiction over the Debtors and the Medical Malpractice Claimants with respect to any matters related to or arising from the implementation of this Order.

Dated: October __, 2013
New York, New York

HON. ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Form of Stipulation and Order re Lifting Automatic Stay

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:
SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.,¹

Chapter 11 Case
Case No. 13- 22840 (RDD)

Debtors.

(Jointly Administered)

-----X

**STIPULATION AND AGREED ORDER
MODIFYING THE AUTOMATIC STAY AND LIMITING
RECOVERY TO PROCEEDS OF AVAILABLE INSURANCE**

([Name of Claimant _____, Claim No. ____])

THIS CAUSE coming before the Court on the agreement between Sound Shore Medical Center of Westchester, and the other above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) and [NAME OF CLAIMANT] (the “Claimant”), to modify the automatic stay in connection with the Action (as defined below) against the Debtors, but limiting all recovery solely to any available insurance coverage; and the Court being fully advised of the following agreement between the parties:

A. On May 29, 2013 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”).

B. Prior to the Petition Date, the Claimant commenced an action against the Debtors styled as [INSERT CAPTION] containing allegations of medical malpractice against the Debtors in [JURISDICTION] as Case No. _____ (the “Action”).

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number include: Sound Shore Health System, Inc. (1398), Sound Shore Medical Center of Westchester (0117), The Mount Vernon Hospital, Inc. (0115), Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center (0781), NRHMC Services Corporation (9137), The M.V.H. Corporation (1514) and New Rochelle Sound Shore Housing, LLC (0117). There are certain additional affiliates of the Debtors who are not debtors and have not sought relief under Chapter 11.

C. Upon the commencement of the Chapter 11 Cases, the Action was stayed by operation of section 362(a) of the Bankruptcy Code.

D. On or about _____, 20____, the Claimant filed a proof of claim in the Chapter 11 Cases, asserting a claim in the amount of \$ _____ (the "Claim") in connection with the allegations raised in the Action. The Claim has been assigned Claim No. _____ in the claims register maintained in the Chapter 11 Cases.

E. Pursuant to an order dated _____, 2013 [Docket No. _____] (the "Order"),¹ in the event Claimants opt out of the Mediation process pursuant to the Stay Modification Option, this Court authorized the Debtors to enter into and file stipulations with the Court modifying the automatic stay for the sole purpose of permitting the Claimants to liquidate their Medical Malpractice Claims in a forum outside of this Court, but limiting all recovery solely to any available insurance coverage.

F. In accordance with the Order, the Debtors have agreed to modify the automatic stay solely to permit the Claimant to liquidate the Claim, but limiting all recovery solely to any available insurance coverage, it being understood that the Debtors make no representation as to the availability, applicability or amount of any such insurance applicable to the Action.

IT IS THEREFORE STIPULATED, AGREED AND ORDERED as follows:

1. The foregoing recitals are hereby fully incorporated into and made an express part of this Stipulation and Agreed Order.

2. Effective as of the date hereof, the automatic stay imposed in the Chapter 11 Cases pursuant to section 362(a) of the Bankruptcy Code, as extended by the Order, is hereby modified for the sole purpose of allowing the Action to proceed to judgment or settlement in a

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Order.

forum other than this Court; provided, however, that (a) any recovery by the Claimant in the Action against the Debtors or the Medical Professionals shall be limited solely to any available insurance coverage of the Debtors or Medical Professionals as the case may be; (b) other than as set forth in (2)(a) above, the Claimant (i) withdraws with prejudice any and all claims filed against the Debtors or the Medical Professionals in these Chapter 11 proceedings, including, without limitation, claim numbers [] and (ii) waives and releases any and all other claims against each of the Debtors and the Medical Professionals; (c) each party shall bear its own legal fees and defense costs and other related fees and expenses in connection with any such litigation; and (d) no Debtor shall be required to participate in any way in the Action.

3. Except as otherwise set forth herein, the provisions of section 362 of the Bankruptcy Code, including, without limitation, those provisions prohibiting execution, enforcement, or collection of any judgment that may be obtained against the Debtors shall remain in full force and effect, and neither the Claimant, nor his or her agents, attorneys or representatives shall take any action to execute, enforce or collect on any such judgment against the Debtors or their estates.

4. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Stipulation and Agreed Order.

5. This Stipulation and Agreed Order is solely to allow the Claimant to liquidate the Claim (but limiting all recovery solely to any available insurance coverage) and this Stipulation and Agreed Order shall not be construed as an admission of liability by the Debtors or their estates in connection with the Claim.

[SIGNATURE PAGE FOLLOWS]

AGREED TO IN FORM AND SUBSTANCE:

GARFUNKEL WILD, P.C.

[CLAIMANT'S COUNSEL'S FIRM]

By: _____

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

*Counsel for the Debtors
and Debtors in Possession*

By: _____

[NAME]
[ADDRESS]
Tel: () []
Fax: () []

Counsel to the Claimant

SO ORDERED:

Dated: White Plains, New York
_____, 2013

By: _____

Honorable Robert D. Drain
United States Bankruptcy Judge

Exhibit C

Notice of Approval of Procedures

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:
SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.,¹

Chapter 11 Case
Case No. 13- 22840 (RDD)

Debtors.

(Jointly Administered)

-----X

**NOTICE OF ENTRY OF ORDER (I) APPROVING MANDATORY CLAIMS
RESOLUTION PROCESS TO RESOLVE CERTAIN MEDICAL
MALPRACTICE AND RELATED INDEMNIFICATION CLAIMS
AGAINST THE DEBTORS AND (II) ENJOINING
ANY MEDICAL MALPRACTICE ACTION AGAINST
CERTAIN OF THE DEBTORS' MEDICAL PROFESSIONALS**

PLEASE TAKE NOTICE that on _____, 2013, the Court entered an Order (I)
Approving Mandatory Claims Resolution Process to Resolve Certain Medical Malpractice and
Related Indemnification Claims Against the Debtors and (II) Enjoining Any Medical
Malpractice Action Against Certain of the Debtors' Medical Professionals (the "Order") [Docket
No. ____].²

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: Sound Shore Health System, Inc. (1398), Sound Shore Medical Center of Westchester (0117), The Mount Vernon Hospital, Inc. (0115), Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center (0781), NRHMC Services Corporation (9137), The M.V.H. Corporation (1514) and New Rochelle Sound Shore Housing, LLC (0117). There are certain additional affiliates of the Debtors who are not debtors and have not sought relief under Chapter 11.

² All capitalized undefined terms used in this Notice shall have the meanings ascribed to them in the Debtors' Motion for an Order (I) Approving Mandatory Claims Resolution Process to Resolve Certain Medical Malpractice

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, your Medical Malpractice Claim has been referred to Mediation.

PLEASE TAKE FURTHER NOTICE that you will receive a separate notice from the Debtors indicating, among other things, the date, time and location of the individual Mediation Sessions.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, you may opt out of the Mediation process by advising the undersigned counsel for the Debtors in writing of your desire to resolve your Medical Malpractice Claim by entering into and filing with the Court a stipulation with the Debtors, substantially in the form attached to the Motion as Exhibit B, modifying the automatic stay for the sole purpose of permitting you to liquidate your Medical Malpractice Claim in a forum outside of this Court, but limiting all recovery solely to any available insurance coverage. You also may avoid the Mediation process by withdrawing your Medical Malpractice Claim in its entirety or by otherwise reaching a settlement with the Debtors.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, you are enjoined from commencing or continuing any action relating to your Medical Malpractice Claim against the Medical Professionals until confirmation of a Plan, subject to further order of the Court.

and Related Indemnification Claims Against the Debtors and (II) Enjoining Any Medical Malpractice Action Against Certain of the Debtors' Medical Professionals (the "Motion") [Docket No. ____].

Dated: _____, 2013
Great Neck, New York

GARFUNKEL WILD, P.C.

By: _____

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