

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

SOUND SHORE MEDICAL CENTER
OF WESTCHESTER, et al.

Case No. 13-22840 (RDD)

Debtors.

(Jointly Administered)

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**STIPULATION AND ORDER LIFTING AUTOMATIC STAY AND LIMITING
RECOVERY CLAIM TO AVAILABLE INSURANCE PROCEEDS**

This STIPULATION AND ORDER is before the Court on the stipulation and agreement of Sound Shore Medical Center of Westchester (“**SSMC**”), and its debtor affiliates, (collectively, the “**Debtors**”), as debtors and debtors-in-possession, in the above captioned Chapter 11 cases, and Martha K. Guadagnolo (the “**Claimant**”), to modify and lift the automatic stay with reference to the following facts:

A. On May 29, 2013, (the “**Petition Date**”), each Debtor filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). The Debtors’ cases are being jointly administered for procedural purposes only.

B. The Debtors remain in possession of their assets and continue to manage their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of Title 11 of the United States Code (the “**Bankruptcy Code**”).

C. On June 10, 2013, the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors (the “**Creditors Committee**”) pursuant to section 1102 of the Bankruptcy Code. The Creditors Committee has engaged Alston & Bird LLP as its counsel. No trustee or examiner has been appointed in these cases.

D. Prior to the Petition Date, the Claimant commenced an action entitled Martha K. Guadagnolo v. Seth L. Gendler, in the Supreme Court of the State of New York, Westchester County, Index. No. 61665/12 based on alleged medical malpractice and/or negligence. At the

time of the alleged incidents, the defendant, Seth L. Gendler (“**Gendler**”) was employed by the Debtors and rendered medical services on behalf of the Debtors to Claimant (the “**Action**”).

E. Upon commencement of the Chapter 11 Cases, the Action was stayed pursuant to the automatic stay imposed by Section 362(a) of the Bankruptcy Code (the “**Automatic Stay**”).

F. In connection with the Action, the Claimant seeks relief from the Automatic Stay to pursue a liquidation of her claim against Gendler (the “**Malpractice Claim**”) through a prosecution and/or settlement of the Action.

G. SSMC maintains professional liability insurance with third party insurers (the “**Insurance Policies**”) which provide for the payment of indemnification claims to doctors covered under the policy with respect to claims of the type asserted by the Claimant, and which occurred during the applicable policy period. SSMC has been advised through actuarials that there should be sufficient insurance coverage to pay, in full, any indemnification obligations required to be paid to Gendler in connection with any judgment obtained or settlement reached in the Action.

H. Claimant has agreed to limit any recovery that may be obtained in connection with the Action solely to the proceeds of the Insurance Policies and, to the extent available, any applicable insurance coverage obtained and maintained by Gendler, individually.

I. The Claimant has agreed to waive any claims Claimant may have against the Debtors’ estates, including without limitation the SSMC estate.

J. The Debtors are prepared to consent to relief from the Automatic Stay on the terms and conditions specifically set forth herein and on the condition that any amounts sought to be recovered by the Malpractice Claimant upon the liquidation of the Malpractice Claim by a final order or settlement be recovered solely from the proceeds of any applicable Insurance Policies and/or any available insurance policy maintained by Gendler individually (the “**Gendler Policy**”), and that the Claimant waives any and all right to a distribution from the Debtors’ estates.

NOW, THEREFORE, subject to the approval of this Court, the Debtors and Claimant agree as follows:

1. The foregoing recitals (paragraphs A through K) are hereby fully incorporated into and made an express part of this Stipulation.

2. The Automatic Stay is hereby modified solely to permit the Claimant to proceed with the Action to judgment and/or settlement and collection from the Insurance Policies and/or the Gendler Policy without further action of this Court; provided however, that:

- (a) any amounts recovered by the Claimant by a final order or settlement shall be limited and recoverable solely from the available proceeds of the Insurance Policies and/or the Gendler Policy;
- (b) the Claimant hereby waives all rights, if any, to collect any amount with respect to the Malpractice Claim against the Debtors' estates and any claims(s) or judgment(s) obtained by Claimant in the Action shall not be asserted as a claim or claims in these Chapter 11 Cases, or otherwise be enforceable against the Debtors;
- (c) the Claimant agrees that she shall not file a proof of claim in this case, or otherwise seek recovery from the Debtors' estates in any manner with respect to any claim arising from, or related to, the Malpractice Claim or Action and that to the extent a proof of claim already has been filed in this case, that such proof of claim shall be deemed withdrawn upon the approval of this Stipulation; and
- (d) the defense costs and other related fees and expenses associated with the Malpractice Action are covered by the Insurance Policies.

3. No judgment shall be entered in the Action against the Debtors in excess of the insurance coverage afforded to the Debtors and/or Gendler.

4. This Stipulation is subject to the approval of the Bankruptcy Court and shall not become effective against the Debtors unless and until it is "so-ordered" by the Court.

5. The Claimant acknowledges and agrees that the recovery of the Claimant against the Debtors and/or Gendler shall be limited to the insurance coverage available to the Debtors and/or Gendler, if any, under the Insurance Policies and/or the Gendler Policy, and the Claimant hereby releases the Debtors, their respective estates, directors, officers, employees and agents, and their respective representatives, heirs, executors, administrators, successors and assigns from any and all claims, whether direct or indirect, arising out of or related to the Action and the

Malpractice Claim. Claimant further agrees that Claimant shall not seek any recovery from the Debtors, their respective estates, directors, officers, employees or agents, for any amounts that may be awarded to Claimant with respect to the Malpractice Claim and/or the Action.

6. Except as otherwise provided herein, this Stipulation may not be modified other than by a signed writing executed by the Debtors and the Claimant, or by a further order of the Bankruptcy Court.

7. Each party executing this Stipulation represents that such party has the full authority and legal power to do so.

8. Each party understands and agrees that this Stipulation is solely to allow the Claimant to litigate the Action against Gendler to the extent of available insurance coverage under the Insurance Policies and/or the Gendler Policy, and that the Stipulation shall not be construed as an admission of liability by the Debtors.

9. This Stipulation may be executed in counterparts and each such counterpart together with the others shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation to present any copy, copies or facsimiles signed by the party hereto to be charged.

10. This Stipulation constitutes the entire agreement and understanding between the Debtors and the Claimant relating to the subject matter herein and supersedes all previous or contemporaneous oral or written representations, understandings or agreements between the parties.

11. The Bankruptcy Court shall retain jurisdiction over the subject matter of this Stipulation to resolve all disputes arising under or relating to this Stipulation.

Dated: September __, 2013
Great Neck, New York

GARFUNKEL WILD, P.C.
Bankruptcy Counsel to the Debtors

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Dated: September __, 2013
White Plains, New York

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Dated: September __, 2013
New York, New York

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NO OBJECTION:
OFFICIAL COMMITTEE OF UNSECURED CREDITORS

/s/ Craig Freeman
By: Craig Freeman
Alston & Bird LLP
Counsel for the Official Committee of Unsecured Creditors

SO ORDERED THIS 2nd
DAY OF OCTOBER, 2013

/s/Robert D. Drain
HON. ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE