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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In Re:

Case No.: 13-22840 (RDD)

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER,

NOTICE OF MOTION FOR
RELIEF FROM AUTOMATIC
STAY

Debtors.

-----X

PLEASE TAKE NOTICE that, upon the annexed affirmation of Joseph P. Napoli, Esq., the undersigned will move this Court, before the Honorable Robert D. Drain, United States Bankruptcy Judge, on December 10, 2013, in his Courtroom located at the United States Bankruptcy Court, 300 Quarropas Street, White Plains, New York 10601, at **10:00 a.m., Eastern Standard Time**, or as soon thereafter as counsel may be heard, for an Order:

- (i) Pursuant to 11 U.S.C. § 362, Local Bankruptcy Rule 4001-1, and Fed. R. Bankr. P. 9014, lifting the Automatic Stay of Proceeding imposed pursuant to United States Bankruptcy Code § 362, to permit claimant ANGEL PELAEZ to proceed in his action for personal injuries suffered as a result of debtor's statutory violations, negligence, carelessness and recklessness, to the extent of debtor's available liability insurance coverage;
- (ii) Authorizing claimant to seek payment of any settlement or judgment from the applicable policy of liability insurance coverage; and
- (iii) Granting such other and further relief as the Court may deem just, fair and equitable.

PLEASE TAKE FURTHER NOTICE that, responsive papers, if any, must be in writing and filed with the Clerk of the United States Bankruptcy Court, Southern District of New York, located at One Bowling Green, New York, New York, with a copy delivered to the chambers of the Honorable Robert D. Drain and served so that they are received by **NAPOLI BERN RIPKA SHKOLNIK, LLP**, attorneys for claimant, and the parties listed below.

Dated: New York, New York
December 3, 2013

Yours, etc.,
NAPOLI BERN RIPKA SHKOLNIK, LLP

By: Joseph P. Napoli (JP9195)
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William R. Watson
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In Re:

Case No.: 13-22840 (RDD)

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER,

AFFIRMATION IN SUPPORT
OF MOTION FOR RELIEF
FROM AUTOMATIC STAY

Debtors.

-----X

JOSEPH P. NAPOLI, an attorney duly admitted to the practice of law in the Southern District of New York, hereby affirms the truth of the following, upon information and belief as follows, under penalty of perjury:

1. I am associated with the law firm of Napoli Bern Ripka Shkolnik, LLP, attorneys for ANGEL G. PELAEZ (hereinafter “claimant” or “Pelaez”), movant herein. By virtue of my review of the files maintained by my firm for purposes of prosecuting the movant’s claims, I am fully familiar with all relevant facts, circumstances, pleadings and procedural history of the underlying litigation.

2. This affirmation is respectfully submitted in support of claimant’s motion seeking an Order of this Honorable Court Pursuant to 11 U.S.C. § 362(d), Local Bankruptcy Rule 4001-1, and Fed. R. Bankr. P. 9014, lifting the Automatic Stay of Proceeding imposed pursuant to United States Bankruptcy Code § 362(a), to permit claimant to proceed in his action for personal injuries suffered as a result of Debtors’ statutory violations, negligence, carelessness and

recklessness, to the extent of Debtors' available liability insurance coverage, together with such other and further relief as this Honorable Court may deem just, fair and equitable.

3. On December 14, 2012, claimant commenced an action in the United States District Court for the Southern District of New York (hereinafter the "U.S. District Court action"), to which SOUND SHORE MEDICAL CENTER OF WESTCHESTER (hereinafter "debtor" or "Sound Shore"), debtor herein, was and is the sole named defendant. The District Court action is captioned *Angel G. Pelaez v. Sound Shore Medical Center of Westchester*, and has been assigned the civil docket number 12-CV-9107 (VLB). Debtor answered, by and through its counsel O'Connor, McGuinness, Conte, Doyle, Oleson, Watson & Loftus, LLP, on July 22, 2013. Copies of the pleadings in the District Court action are annexed hereto at **Exhibit "1"**.

4. Mr. Pelaez was injured while employed by an elevator maintenance company that had been contracted by debtors to install new elevator cars in the hospital facility owned, controlled, managed and operated by debtors. Specifically, he was caused to fall from a ladder, provided by an agent and/or employee of the debtors, which was unsafe for use under the conditions present in the elevator car where he was working. As a result, he suffered serious and permanent injury to his left knee, which caused him to lose income, required surgical intervention and continues to require him to undergo treatment. Liability in the District Court action is alleged, *inter alia*, pursuant to New York State Labor Law §§ 240(1), 241(6) and sounding in violations of 12 NYCRR 23-1.7(d), 23-1.7(f), 23-1.21(b)(3)(ii) and (4)(i).

5. Pursuant to Fed R. Civ. P. Rule 26(f), an Initial Case Management and Scheduling Conference was held before the Honorable Vincent L. Briccetti on August 26, 2013. At that conference, debtor's defense counsel in the District Court action informed Judge Briccetti

and my office that he had reason to believe that this bankruptcy action had been filed and that the District Court Action should therefore be stayed pursuant to 11 U.S.C. § 362(a).

6. My office was unaware of the pendency of these bankruptcy proceedings until it was informed of them at the conference held on August 26, 2013.

7. On August 29, 2013, upon receipt of a letter from Monica G. Snitily, Esq., an attorney associated with the office of debtor's defense counsel in the District Court action, which confirmed the pendency of the bankruptcy action, Judge Briccetti issued a Memorandum Endorsed Order staying all proceedings in the District Court action pending resolution of this action or until the automatic stay is lifted. A copy of the Memorandum Endorsed Order is annexed hereto at **Exhibit "2"**.

8. On December 2, 2013, I spoke via telephone with William R. Watson, Esq., another attorney associated with the office of debtor's defense counsel in the District Court action, to discuss the status of the bankruptcy proceedings and inform him of my office's intent to file the instant motion. Mr. Watson informed me that at the time of the occurrence giving rise to the District Court action, debtor was insured pursuant to policy issued by Physicians Reciprocal Insurers, which covers its liability in the District Court action in an amount that is more than sufficient to completely indemnify debtor.

9. Furthermore, upon issuance of an Order of this Court granting the instant motion and lifting the automatic stay, claimant agrees to pursue only the aforementioned insurance coverage; moreover, claimant will not pursue or be entitled to recover from debtor's estate or personal assets to the extent that any judgment, assessment and/or recovery against debtor in the District Court action exceeds the availability of insurance coverage. A copy of a Proposed Order is annexed hereto at **Exhibit "3"**.

10. As discussed in the accompanying Memorandum of Law, claimant has a high likelihood on prevailing on the merits of the District Court action, which sounds in New York state law imposing absolute liability on proper statutory defendants, such as Sound Shore; furthermore, granting the relief sought herein would in no way result in prejudice to the bankruptcy estate of debtor; finally, in light of the availability of insurance coverage and claimant's intention to pursue the claim no further than the limits of that coverage, the hardship imposed on claimant by maintenance of the stay would considerably outweigh the hardship to debtor in allowing the District Court action to proceed. Accordingly, the instant motion should be granted in its entirety.

WHEREFORE, claimant prays this Honorable Court issue an Order granting his motion in its entirety and permitting the District Court action to proceed without further delay.

Dated: New York, New York
December 3, 2013

Joseph P. Napoli (JP9195)

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
ANGEL G. PELAEZ,)	
)	
PLAINTIFF,)	
)	
v.)	Case No.
)	
SOUND SHORE MEDICAL CENTER)	Jury Trial Demanded
OF WESTCHESTER,)	
)	
DEFENDANT.)	
_____)	

COMPLAINT

COMES NOW the plaintiff, Angel G. Pelaez, by and through his attorneys Napoli, Bern, Ripka, Shkolnik and Associates, LLP, and submits his Complaint against defendant Sound Shore Medical Center of Westchester, and in support thereof would respectfully show the court and jury as follows:

THE PARTIES

1. Plaintiff Angel G. Pelaez is a citizen of the State of Connecticut, maintaining a residence at 107 West Wooster Street, Danbury, Connecticut.
2. Defendant Sound Shore Medical Center of Westchester (hereinafter referred to as "Sound Shore") is a domestic not-for-profit corporation duly organized and

existing under the laws of the State of New York, maintaining a principal place of business at 16 Guion Place, New Rochelle, New York.

JURISDICTION AND VENUE

3. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1).

4. Venue is proper pursuant to 28 U.S.C. § 1391(b).

FACTS

5. Plaintiff repeats, reiterates, and realleges the allegations set forth in paragraphs "1" through "4" of this Complaint as if fully set forth in this Paragraph.

6. At all times hereinafter mentioned, and more particularly on February 29, 2012, defendant Sound Shore owned certain premises located at 16 Guion Place, New Rochelle, New York (hereinafter referred to as the "subject premises").

7. At all times hereinafter mentioned, and more particularly on February 29, 2012, defendant Sound Shore, its servants, agents, and/or employees managed, maintained, controlled, operated, repaired, inspected, and supervised the subject premises.

8. At all times hereinafter mentioned, and more particularly on February 29, 2012, defendant Sound Shore, its servants, agents, lessees, permittees, contractors and/or employees entered into an agreement with D & D Elevator Maintenance, Inc. (hereinafter referred to as "D & D Elevator"), a domestic corporation duly organized and existing under the laws of the State of New York, relative to certain work, labor, and services to be performed upon the subject premises.

9. Specifically, D & D Elevator was hired by defendant Sound Shore to perform maintenance on an elevator located in the subject premises (hereinafter referred to as the "work site").

10. At all times hereinafter mentioned, and more particularly on February 29, 2012, defendant Sound Shore, its servants, agents, lessees, permittees, contractors and/or employees performed, organized, directed, supervised, managed, and controlled the work, labor, and services performed and/or apparatus provided and utilized relative to the work site upon the subject premises.

11. On February 29, 2012, at approximately eleven o'clock in the morning, plaintiff Angel G. Pelaez, an employee of D & D elevator, was lawfully present upon said work site upon the subject premises.

12. Specifically, plaintiff Angel G. Pelaez was working on the thirteenth floor of the subject premises, on top of an elevator cab that was being disassembled so that a new elevator cab could be installed.

13. On said date at the aforementioned time, plaintiff Angel G. Pelaez was required to use a ladder to descend from the top of the elevator cab when he had finished performing his assigned task.

14. The aforementioned ladder was owned by defendant Sound Shore, and was furnished to D & D elevator for its employees to use while performing maintenance on the elevator located at the work site.

15. The ladder was not constructed, placed, operated, guarded, and lighted so as to provide reasonable and adequate protection to plaintiff Angel G. Pelaez, in that it was provided to D & D elevator and its employees in a wobbly and shaky physical

condition, making it impossible for persons using it as a means of vertical passage to do so in a safe and stable manner.

16. The work site was not constructed, shored, equipped, guarded, arranged, operated, and constructed so as to provide reasonable and adequate protection and safety to plaintiff Angel G. Pelaez, in that the nature of the work performed therein prevented the installation of a stairway, ramp, or runway as a means of vertical passage, requiring the use of the aforementioned ladder, which possessed insecure joints between its members and parts, and did not extend more than thirty-six inches above the top of the elevator in which it was being used as a means of vertical passage.

17. By reason of the foregoing, the ladder constituted a defective, dangerous, traplike, and hazardous condition existing on the subject premises.

18. Defendant Sound Shore had notice of the aforementioned defective, dangerous, traplike and hazardous condition existing on the subject premises.

19. On said date at the aforementioned time, when plaintiff Angel G. Pelaez stepped on to the ladder, it shifted suddenly and without warning, causing plaintiff to fall more than six feet to the floor inside the cab.

20. As a result of the fall caused by the defective condition of the ladder furnished by Sound Shore for his use, plaintiff Angel G. Pelaez suffered severe and permanent personal injuries, including but not limited to damage to the bones, tendons, and connective ligaments in his left knee, which required surgery and may require future surgery; has suffered and will continue to suffer substantial pain and suffering, including but not limited to severe mental anguish; has had and will require other medical treatment; was and will be unable to attend to his usual duties and activities; has been

32. At all times hereinafter mentioned, and more particularly on February 29, 2012, defendant Sound Shore's actions with respect to the ladder furnished to D & D Elevator and used by plaintiff Angel G. Pelaez constituted multiple violations of N.Y. Labor Law § 241(6), by and through violations of the following codes, rules, regulations, and industry standards:

- a. 12 N.Y.C.R.R. § 23-1.7(d);
- b. 12 N.Y.C.R.R. § 23-1.7(f);
- c. 12 N.Y.C.R.R. § 23-1.21(b)(3)(ii) and (4)(i); and,
- d. O.S.H.A. Standard 29 CFR 1926.1053 et seq.

33. By reason of defendant Sound Shore's violations of N.Y. Labor Law § 241(6), Plaintiff Angel G. Pelaez has suffered serious and permanent physical injuries, for which he is entitled to relief.

PRAYER

Wherefore, premises considered, plaintiff prays that upon final trial by jury or ruling by the court that plaintiff have judgment against defendants as follows:

- a. General damages for a sum in excess of the minimal jurisdictional limits of the court;
- b. Damages for all compensable elements allowed by law, including physical pain and suffering, mental anguish, lost earnings and earning capacity, medical expenses, disfigurement, loss of companionship and society, and otherwise;
- c. Exemplary damages;
- d. Reasonable attorneys' fees;
- e. Pre-judgment and post-judgment interest as allowed by law;

deprived of the ability to enjoy his life; has undergone and will be forced to undergo extensive, painful physical therapy; and was otherwise damaged.

FIRST CLAIM FOR RELIEF

Negligence

21. Plaintiffs repeat, reiterate, and reallege the allegations set forth in Paragraphs "1" through "20" of this Complaint as if fully set forth in this paragraph.

22. At all times hereinafter mentioned, and more particularly on February 29, 2012, defendant Sound Shore had a duty to manage, maintain, control, operate, repair, inspect, supervise, and keep the subject premises in a safe and proper condition and was required to exercise reasonable care in doing so.

23. Defendant Sound Shore had actual and/or constructive notice of the presence of a defective, dangerous, traplike, and hazardous condition at the work site located at the subject premises but negligently, recklessly, and carelessly failed to correct same.

24. As a result of defendants' negligent, reckless, and careless failure to correct the aforementioned dangerous condition, plaintiff Angel G. Pelaez has suffered serious and permanent physical injuries, for which he is entitled to relief.

SECOND CLAIM FOR RELIEF

Violation of New York State Labor Law § 200

25. Plaintiffs repeat, reiterate, and reallege the allegations set forth in Paragraphs "1" through "24" of this Complaint as if fully set forth in this paragraph.

26. At all times hereinafter mentioned, and more particularly on February 29, 2012, defendant Sound Shore's actions with respect to the ladder furnished to D & D Elevator and used by plaintiff Angel G. Pelaez constituted a violation of N.Y. Labor Law § 200.

27. By reason of Sound Shore's violation of N.Y. Labor Law § 200, plaintiff Angel G. Pelaez has suffered serious and permanent physical injuries, for which he is entitled to relief.

THIRD CLAIM FOR RELIEF

Violation of New York State Labor Law § 240

28. Plaintiff repeats, reiterates, and realleges the allegations set forth in Paragraphs "1" through "27" of this Complaint as if fully set forth in this paragraph.

29. At all times hereinafter mentioned, and more particularly on February 29, 2012, defendant Sound Shore's actions with respect to the ladder furnished to D & D Elevator and used by plaintiff Angel G. Pelaez constituted a violation of N.Y. Labor Law § 240.

30. By reason of Sound Shore's violation of N.Y. Labor Law § 240, plaintiff Angel G. Pelaez has suffered serious and permanent physical injuries, for which he is entitled to relief.

FOURTH CLAIM FOR RELIEF

Violation of New York State Labor Law § 241(6)

31. Plaintiff repeats, reiterates, and realleges the allegations set forth in Paragraphs "1" through "30" of this Complaint as if fully set forth in this paragraph.

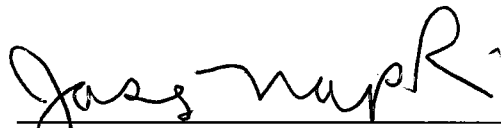
- f. Costs of court; and
- g. Such other and further relief to which plaintiffs may be found to be justly entitled, at law or in equity.

JURY DEMAND

1. Plaintiff demands a trial by the jury of his peers and represents that the necessary fee has been paid to the appropriate authorities.

Dated: December 7, 2012

Respectfully submitted,



Joseph P. Napoli (JP9195)
NAPOLI BERN RIPKA SHKOLNIK &
ASSOCIATES, LLP
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New York, New York 10118
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Facsimile: (212) 587-0031

ATTORNEYS FOR PLAINTIFFS

ATTORNEY VERIFICATION


Joseph P. Napoli, an attorney at law, duly admitted to practice in the Courts of the State of New York, affirms under the penalties of perjury that:

He is the attorney for the plaintiff(s) in the above-entitled action. That he has read the foregoing COMPLAINT and knows the contents thereof, and upon information and belief, deponent believes the matters alleged therein to be true.

The reason this Verification is made by deponent and not by the plaintiff(s) is that the plaintiff(s) herein reside(s) in a county other than the one in which the plaintiffs' attorneys maintain their office.

The source of deponent's information and the grounds of his belief are communication, papers, reports and investigation contained in the file.

Dated: December 7, 2012



Joseph P. Napoli

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW

-----X
ANGEL G. PELAEZ,

Plaintiff,

-against-

SOUND SHORE MEDICAL CENTER
OF WESTCHESTER,

Defendant.
-----X

ANSWER

12-CV-9107

SOUND SHORE MEDICAL CENTER OF WESTCHESTER, by and
through their attorneys, O'CONNOR, McGUINNESS, CONTE,
DOYLE, OLESON, WATSON & LOFTUS, LLP, as and
for their Answer in response to Plaintiff's Complaint:

ANSWER TO THE PARTIES

1. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph numbered "1" of the complaint herein.
2. Admits each and every allegation contained in Paragraph numbered "2" of the complaint herein.

ANSWER TO JURISDICTION & VENUE

3. Denies each and every allegation contained in Paragraph numbered "3" of the complaint herein and leaves all questions of law to the Court.
4. Denies each and every allegation contained in Paragraph numbered "4" of the complaint herein.

ANSWER TO FACTS

5. Repeats and realleges each and every admission and denial heretofore made herein with respect to those Paragraphs numbered "1" through "4" of the complaint with the same force and effect as if set forth at length herein.

6. Admits each and every allegation contained in Paragraph numbered "6" of the complaint herein.

7. Denies each and every allegation contained in Paragraph numbered "7" of the complaint herein and leaves all questions of law to the Court.

8. Denies each and every allegation contained in Paragraph numbered "10" of the complaint herein and leaves all questions of law to the Court.

9. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs numbered "11", of the complaint herein.

10. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs numbered "13", of the complaint herein.

11. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs numbered "14", of the complaint herein.

12. Denies each and every allegation contained in Paragraphs numbered "15", of the complaint herein.

13. Denies each and every allegation contained in Paragraphs numbered "16" of the complaint herein.

14. Denies each and every allegation contained in Paragraphs numbered "17" of the complaint herein.

15. Denies each and every allegation contained in Paragraphs numbered "18" of the complaint herein.

16. Denies each and every allegation contained in Paragraphs numbered "19" of the complaint herein.

17. Denies each and every allegation contained in Paragraphs numbered "20" of the complaint herein.

ANSWER TO FIRST CLAIM

18. Repeats and realleges each and every admission and denial heretofore made herein with respect to those Paragraphs numbered "1" through "20" of the complaint with the same force and effect as if set forth at length herein.

19. Denies each and every allegation contained in Paragraph numbered "22" of the complaint herein and leaves all questions of law to the Court.

20. Denies each and every allegation contained in Paragraphs numbered "23" of the complaint herein.

21. Denies each and every allegation contained in Paragraphs numbered "24" of the complaint herein.

ANSWER TO SECOND CLAIM

22. Repeats and realleges each and every admission and denial heretofore made herein with respect to those Paragraphs numbered "1" through "24" with the same force and effect as if set forth at length herein.

23. Denies each and every allegation contained in Paragraphs numbered "26" of the complaint herein.

24. Denies each and every allegation contained in Paragraphs numbered "27" of the complaint herein.

ANSWER TO THIRD CLAIM

25. Repeats and realleges each and every admission and denial heretofore made herein with respect to those Paragraphs numbered "1" through "27" with the same force and effect as if set forth at length herein.

26. Denies each and every allegation with respect to those Paragraphs numbered "29" of the complaint herein.

30. Denies each and every allegation contained in Paragraphs numbered "30" of the complaint herein.

ANSWER TO FOURTH CLAIM

31. Repeats and realleges each and every admission and denial heretofore made herein with respect to those Paragraphs numbered "1" through "30" with the same force and effect as if set forth at length herein.

32. Denies each and every allegation with respect to those Paragraphs numbered "32" of the complaint herein.

33. Denies each and every allegation contained in Paragraphs numbered "33" of the complaint herein.

**AS AND FOR A FIRST SEPARATE AFFIRMATIVE COMPLETE
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND SHORE
MEDICAL CENTER ALLEGES:**

34. That the plaintiff's pleadings fails to implicate the provisions of the New York Labor Law for purposes of imputing liability against the defendant under any of the provisions of "Sections 200, 240 and 241(6) of the Labor Law, the Industrial Code of the State of New York and the Occupational Safety and Health Act" as recited within the Complaint.

35. That the above-cited provisions are inapplicable as a matter of fact and law where the occurrence in issue did not constitute a qualifying elevation-related risk that is subject to the imposition of liability under any of the provisions of the New York Labor law cited in the Complaint.

36. By reason of the foregoing, the action and all causes of action contained therein, along with any related and derivative claims seeking recovery by reason of purported violation of the New York Labor Law must be dismissed in their entirety.

**AS AND FOR A SECOND SEPARATE AFFIRMATIVE COMPLETE
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND SHORE
MEDICAL CENTER OF WESTCHESTER, ALLEGES:**

37. That the plaintiff's pleadings fails to implicate the provisions of the New York Labor Law for purposes of imputing liability against the defendant under any of the provisions of "Sections 200, 240 and 241(6) of the Labor Law, the Industrial Code of the State of New York and the Occupational Safety and Health Act" as recited within the Complaint.

38. That the above-cited provisions are inapplicable as a matter of fact and law where the type of activity in issue does not constitute protected conduct that is subject to the imposition of liability under any of the provisions of the New York Labor Law cited in the Complaint.

39. By reason of the foregoing, the action and all causes of action contained therein, along with any related and derivative claims seeking recovery by reason of purported violation of the New York Labor Law must be dismissed in their entirety.

**AS AND FOR A THIRD SEPARATE AFFIRMATIVE COMPLETE
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND SHORE
MEDICAL CENTER OF WESTCHESTER, ALLEGES:**

40. That the conduct of the plaintiff under the circumstances was such as to preclude application of the Labor Law for purposes of imputing liability against the defendant under any

of the provisions of "Sections 200, 240 and 241(6) of the Labor Law, the Industrial Code of the State of New York and the Occupational Safety and Health Act" as recited within the Complaint.

41. That the plaintiff's failure to employ, make use of, properly utilize, available safety equipment and devices, and/or otherwise comport with good and accepted standards of care constituted recalcitrance that precludes the imposition of liability under any of the provisions of the New York Labor Law cited in the Complaint.

42. By reason of the foregoing, the action and all causes of action contained therein, along with any related and derivative claims seeking recovery by reason of purported violation of the New York Labor Law must be dismissed in their entirety.

**AS AND FOR A FOURTH SEPARATE AFFIRMATIVE COMPLETE
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND SHORE
MEDICAL CENTER OF WESTCHESTER, ALLEGES:**

43. That the pleadings fail to recite appropriate, applicable, specific, on-point safety rules and regulations that are applicable with particularity to the facts of the case and circumstances surrounding the accident.

44. That the failure to satisfy this requirement precludes plaintiff's invocation of "Sections 200, 240 and 241(6) of the Labor Law" as set forth within the Complaint as a basis for the imposition of liability.

45. By reason of the foregoing, the action and all causes of action contained therein, along with any related and derivative claims seeking recovery by reason of purported violation of the New York Labor Law must be dismissed in their entirety.

**AS AND FOR A FIFTH SEPARATE AFFIRMATIVE COMPLETE
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND SHORE
MEDICAL CENTER OF WESTCHESTER, ALLEGES:**

46. That the defendant did not actively create any condition, and was otherwise uninvolved in the work so that the claims asserted fail to provide a supportable predicate of supervision, control and/or presence on the part of the defendant as required to impose liability under "Sections 200, 240 and 241(6) of the Labor Law" as set forth within the Complaint.

47. By reason of the foregoing, the action and all causes of action contained therein, along with any related and derivative claims seeking recovery by reason of purported violation of the New York Labor Law must be dismissed in their entirety.

**AS AND FOR A SIXTH SEPARATE AFFIRMATIVE COMPLETE
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND SHORE
MEDICAL CENTER OF WESTCHESTER, ALLEGES:**

48. That defendant conformed with, (and did not deprive plaintiff of) any rights and/or benefits established for the well-being of the plaintiff by virtue of the terms of any contract or state or federal statute, code, rule or regulation, including "Sections 200, 240 and 241(6) of the Labor Law" as set forth within the Complaint.

49. By reason of the foregoing, the action and all causes of action contained therein, along with any related and derivative claims seeking recovery by reason of purported violation of the New York Labor Law must be dismissed in their entirety.

**AS AND FOR A SEVENTH SEPARATE AFFIRMATIVE COMPLETE
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND SHORE
MEDICAL CENTER OF WESTCHESTER, ALLEGES:**

50. That defendant's alleged violation of any rights and/or benefits established for the well-being of the plaintiff by virtue of the terms of any contract or state or federal statute,

code, rule or regulation including “Sections 200, 240 and 241(6) of the Labor Law” as set forth within the Complaint” was not a proximate cause of any alleged loss and/or injury.

51. That the existence of superseding, intervening factors and conditions, including the conduct, acts and/or omissions of the plaintiff, and other parties and/or third-party tortfeasors capable of suit by plaintiff was solely responsible for any alleged losses or injuries claimed.

52. By reason of the foregoing, the action and all causes of action contained therein, along with any related and derivative claims seeking recovery by reason of purported violation of the New York Labor Law must be dismissed in their entirety.

**AS AND FOR AN EIGHTH SEPARATE AFFIRMATIVE COMPLETE
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND SHORE
MEDICAL CENTER OF WESTCHESTER, ALLEGES:**

53. That any injuries, losses, etc., alleged by plaintiff, were not brought about by any negligence and/or violation of the provisions of the Labor Law as cited within the pleadings, but rather, were due to the acts, omissions, and/or comparative negligence, assumption of risk (overt, intentional and/or implied), contributory fault and/or conduct attributable to the plaintiff, to the extent of total and/or partial diminution of damages alleged in the complaint.

54. That there was no negligence, fault or culpable conduct on the part of the defendant, causing the damages alleged in the complaint; furthermore, there was contributory negligence, assumption of risk, contributory fault and/or culpable conduct attributable to the plaintiff, to the extent of total and/or partial diminution of damages alleged in the complaint.

55. By reason of the foregoing, the action and all causes of action contained therein, along with any related and derivative claims seeking recovery by reason of purported violation of the provisions of the Labor Law must be dismissed in their entirety, or alternatively, that there be an apportionment of such injuries, losses, etc., in conformity with the facts and law.

**AS AND FOR A NINTH SEPARATE AFFIRMATIVE COMPLETE
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND SHORE
MEDICAL CENTER OF WESTCHESTER, ALLEGES:**

56. That the plaintiff's complaint fails to set forth facts sufficient upon which to base a cause of action against the defendant.

57. By reason of the foregoing, the action and all causes of action contained therein, along with any related and derivative claims seeking recovery by reason of purported violation of the New York Labor Law must be dismissed in their entirety.

**AS AND FOR AN TENTH SEPARATE AFFIRMATIVE COMPLETE AND/OR
PARTIAL DEFENSE, THE DEFENDANT, SOUND SHORE
MEDICAL CENTER OF WESTCHESTER, ALLEGES:**

58. That, at the time of trial, this answering defendant will ask the Court to charge the jury on the issues of indemnification and/or apportionment or contribution among all the responsible tort feasers - including those named as parties and those capable of suit.

59. By reason of the foregoing, defendant requests that there be an award of indemnification, contribution and/or comparative allocation of damages in conformity with the facts and law.

**AS AND FOR AN ELEVENTH SEPARATE AFFIRMATIVE COMPLETE
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND SHORE
MEDICAL CENTER OF WESTCHESTER, ALLEGES:**

60. That defendant did not create, and was unaware of any condition upon which plaintiff bases the claims, and there is an absence of notice relating to the purported condition prior to the alleged occurrence, and that no such notice in the proper form exists in satisfaction of the conditions precedent to suit against the defendant as required by the legal and/or statutory and/or local ordinance requirements.

61. By reason of the foregoing, the action and all causes of action contained therein, along with any related and derivative claims seeking recovery by reason of purported violation of the New York Labor Law must be dismissed in their entirety.

WHEREFORE, the defendant, **SOUND SHORE MEDICAL CENTER OF WESTCHESTER**, demands that it be granted judgment against plaintiff, and that this Court make the following determinations consistent with the denials, defenses, and claims reviewed above:

- (a) dismissing the plaintiff's complaint, together with the costs and disbursements of this action;
- (b) determining the respective percentages of fault on the part of each responsible defendant and determining the amount of indemnity owing respectively, if any, among the defendants each to the other, either in whole or in part as the case may be;
- (c) in the event that the plaintiffs prevail against this defendant, then it is requested that the Court direct indemnification over and against all other parties and/or non-parties capable of suit by the plaintiff, as well as apportionment of responsibility for that portion of the damages which were caused by their negligence, together with the costs and disbursements of this action.

Dated: White Plains, New York
February 12, 2013

Yours, etc.

O'CONNOR, McGUINNESS, CONTE, DOYLE,
OLESON, WATSON & LOFTUS, LLP

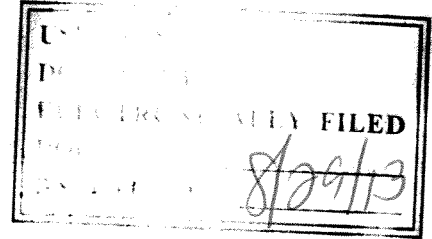
By: 
WILLIAM R. WATSON (WW6095)

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TO: JOSEPH P. NAPOLI (JP9195)
NAPOLI BERN RIPKA SHKOLNIK &
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New York, New York 10118
(212) 267-3700

MEMORANDUM ENDORSEMENT

Pelaez v. Sound Shore Medical Center of Westchester
12 CV 9107 (VB)



In accordance with the automatic stay provision of the Bankruptcy Code, this matter is stayed pending the resolution of defendant's bankruptcy proceeding, or until the automatic stay is lifted to permit this case to proceed. Counsel are directed to submit a joint letter on or before December 2, 2013, indicating the status of the bankruptcy proceeding.

Dated: August 29, 2013
White Plains, NY

SO ORDERED

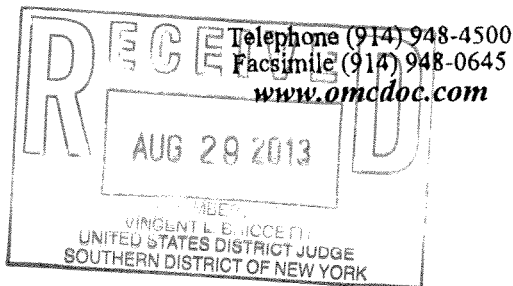
Vincent L. Briccetti
United States District Judge

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August 29, 2013

* Member of NY and CT Bars
* Member of NY and NJ Bars
Δ Member of NY, CT and DC Bars
* Member of NY, CT and FL Bars

Via Fax (914) 390-4170
Honorable Vincent L. Briccetti
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Re: Pelaez v. Sound Shore Medical Center
Docket No. *12cv9107*
Our File No. 161-52

Dear Judge Briccetti:

Pursuant to your request I have confirmed that defendant Sound Shore Medical Center of Westchester is in Bankruptcy. We will contact you once the bankruptcy is resolved to continue the matter.

Very truly yours,
Monica G. Snitily
MONICA G. SNITILY

MGS/jmc
cc: Napoli Bern Ripka & Shkolnik, LLP
350 Fifth Avenue, Suite 7413
New York, New York 10018

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re :
 : **Chapter 11**
 :
Sound Shore Medical Center of Westchester, : **Case No. 13-22840 (RDD)**
 :
 Debtor. :
 :
-----X

ORDER PURSUANT TO 11 U.S.C. § 362(d)
MODIFYING THE AUTOMATIC STAY IMPOSED BY 11 U.S.C. § 362(a)

Upon the motion, dated December 3, 2013 (the "Motion"), of ANGEL G. PELAEZ (with any subsequent successor or assign, the "Claimant"), for an order, pursuant to section 362(d) of title 11 of the United States Code (the "Bankruptcy Code"), Local Bankruptcy Rule 4001-1, and Fed. R. Bankr. P. 9014, lifting the Automatic Stay of Proceeding imposed pursuant to United States Bankruptcy Code § 362(a), to permit claimant to proceed in his action for personal injuries brought in the United States District Court for the Southern District of New York, captioned *Angel G. Pelaez v. Sound Shore Medical Center of Westchester* and assigned the civil action number 12-CV-9107 (VLB); and due and proper notice of the Motion having been made on all necessary parties; and the Court having held a hearing on the Motion on December 10, 2013; and there being no opposition to the Motion; and the Court having directed the Claimant on the record of the Hearing to settle an order on five days' notice on the Debtor; and the Claimant having settled, without objection, this form of order on the Debtor; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing, it is hereby

ORDERED that the Motion is granted as provided herein; and it is further

ORDERED that the automatic stay imposed in this case by section 362(a) of the Bankruptcy Code is vacated under section 362(d) of the Bankruptcy Code, to the extent that Claimant is permitted to proceed in his aforementioned action for personal injuries to the extent of the Debtor's available insurance coverage.

Dated: _____, 20__
White Plains, New York

UNITED STATES BANKRUPTCY JUDGE

NAPOLI BERN RIPKA SHKOLNIK, LLP
Joseph P. Napoli (JP9195)
Attorneys for Plaintiff
350 Fifth Avenue, Suite 7413
New York, New York 10022
(212) 267-3700

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In Re:

Case No.: 13-22840 (RDD)

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER,

Debtors.

-----X

**MEMORANDUM OF LAW OF ANGEL PELAEZ
IN SUPPORT OF HIS MOTION
FOR RELIEF FROM AUTOMATIC STAY**

Of counsel
Joseph P. Napoli (JP9195)

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PRELIMINARY STATEMENT

Claimant, ANGEL G. PELAEZ (hereinafter “Pelaez” or “claimant”), by and through his counsel Napoli Bern Ripka Shkolnik, LLP, respectfully submits this memorandum of law in support of his motion seeking an Order of this Honorable Court, pursuant to 11 U.S.C. § 362(d), Local Bankruptcy Rule 4001-1, and Fed. R. Bankr. P. 9014, lifting the Automatic Stay of Proceeding imposed pursuant to United States Bankruptcy Code § 362(a), to permit claimant to proceed in his action for personal injuries suffered as a result of Debtors’ statutory violations, negligence, carelessness and recklessness, to the extent of Debtors’ available liability insurance coverage, together with such other and further relief as this Honorable Court may deem just, fair and equitable.

STATEMENT OF FACTS

As discussed in the accompanying Affirmation in Support of Joseph P. Napoli (“Napoli Aff.”), claimant is the plaintiff in a meritorious action sounding in, inter alia, debtors’ violations of New York State Labor Law §§ 240(1) and 241(6), currently pending before the Honorable Vincent L. Briccetti in the United States District Court for the Southern District of New York, (hereinafter the “District Court action”). The District Court action has been captioned *Angel G. Pelaez v. Sound Shore Medical Center of Westchester*, and assigned the civil action number 12-CV-9107 (VLB). It is currently stayed pending resolution of these bankruptcy proceedings or an Order of this Honorable Court lifting the automatic stay imposed pursuant to 11 U.S.C. § 362(a).

ARGUMENT

**I. THE AUTOMATIC STAY SHOULD BE LIFTED TO PERMIT
CLAIMANT TO RECOVER FROM WITHOUT THE CORPUS
OF DEBTOR'S ESTATE AND ASSETS.**

Given the facts presented herein, claimant should be permitted to proceed with his District Court action, which will not implicate any assets protected by debtors' bankruptcy filing. A bankruptcy court must grant relief from the automatic stay triggered under 11 U.S.C. 362(a) upon a claimant's showing of good cause. 11 U.S.C. § 362(d)(1). Moreover, actions like claimant's District Court action, "which are only remotely related to the [bankruptcy proceedings], or which involve rights of third parties often will be permitted to proceed in another forum." 2 Collier on Bankruptcy § 362.07[3]. Motions by the plaintiff in a third-party action against a debtor, which seek relief from an automatic stay, should be granted upon the movant's satisfaction of the following three factors: (1) the debtor's bankruptcy estate will not suffer great prejudice if the third-party action is permitted to proceed; (2) the hardship to the movant considerably outweighs hardship to be incurred by the debtor as a result of lifting the stay; and (3) that the movant will likely prevail on the merits of his case if the stay is lifted. *See, e.g., In re Pro Football Weekly, Inc.*, 60 B.R. 824, 826 (D. N.E. Ill. 1986); *In Re Salisbury*, 123 B.R. 913, 915 (S.D. Ala. 1990); *In Re Block Laundry Machine Co.*, 37 B.R. 564, 566 (N.D. Ohio 1984). As set forth below, each of those factors is present herein, warranting immediate relief from the stay.

**A. No Prejudice Will Result To Debtors'
Bankruptcy Estate By Permitting The
District Court Action To Continue.**

There is no possibility whatsoever that granting the instant motion will result in prejudice to the bankruptcy estate of the debtors. As set forth in the Napoli Affirmation, debtors' defense

counsel in the District Court action has already represented that debtor's available insurance coverage is sufficient to defend and indemnify debtors from any potential liability for Mr. Pelaez's injury, which, while serious, was not so catastrophic as to implicate debtors' assets beyond the coverage available to them. Furthermore, claimant agrees not to pursue debtors' assets beyond the extent of their available insurance coverage. Accordingly, no prejudice will result to debtors if the stay is lifted; therefore, claimant has satisfied the first factor of the applicable test for relief from the stay.

B. In Contrast, Claimant Would Suffer Significant Prejudice If Forced To Wait Until After The Final Resolution Of Bankruptcy Proceedings To Pursue His District Court Action.

As detailed in the Napoli Affirmation, claimant suffered serious physical injury as a result of the accident giving rise to the District Court action. This caused him to lose wages, future work opportunities, and further inflicted pain and suffering which continues and will continue in the future. As set forth above, debtors would suffer no prejudice should the stay be lifted. By contrast, if the stay is not lifted, claimant and his claims will certainly suffer prejudice, as the stay has brought a halt to discovery proceedings, which were nascent at best when the stay was imposed. As the amount of discoverable evidence is inevitably eroded by time and circumstance, which cloud the memories of pertinent witnesses and cause relevant documents to be lost or go missing, prejudice must accrue to Mr. Pelaez. Accordingly, the balancing of potential prejudice required by the second factor more than supports granting relief from the stay.

**C. Claimant Has Established The Likelihood Of
Success On The Merits Of The District Court
Action, Which Sounds In Statutes That Impose
Absolute Liability On Defendants Such As Debtors.**

Claimant is more than likely to succeed on the merits of his case in the District Court action, and so must be found to have satisfied the third factor of the test for relief from the stay. As set forth in the Napoli Affirmation, Mr. Pelaez was engaged in renovation of debtors' building, and provided by debtors with a faulty ladder that caused him to fall and suffer serious physical injury. Sections 240(1) and 241(6) of the New York State Labor Law, under which Mr. Pelaez brought his diversity action in the District Court, imposes a non-delegable duty on building owners to protect workers engaged in such work for harms directly flowing from the application of the force of gravity to an object or person and/or from the violation of specific, articulable sections of the Industrial Code of New York, 12 NYCRR 23 et seq. *See, e.g., Ross v. Curtis-Palmer Hydro-Electric Co.*, 81 N.Y.2d 494, 601 N.Y.S.2d 49 (1993). An injured worker's right to recover from a building owner under such circumstances is established under those statutes "so long as a violation of the statute proximately results in injury." *Sanatass v. Consol. Inv. Co., Inc.*, 10 N.Y.3d 333, 340, 858 N.Y.S.2d 67, 72 (2008).

In this case, claimant's ability to establish his right to recover from debtors in the District Court action is clear, as he was engaged in a protected activity under the Labor Law and injured as a result of an unsafe, gravity related hazard that existed on premises owned and controlled by debtors – in violation, furthermore, of multiple provisions of 12 NYCRR 23, as set forth in the Napoli Affirmation. Liability is absolute and non-delegable in such cases. It follows that for purposes of the instant motion, claimant has established he will likely prevail on the merits in the District Court action. Therefore, claimant has satisfied the third, final factor of the applicable test for relief from the stay, and his motion should be granted.

CONCLUSION

For the foregoing reasons, this Honorable Court should find that relief from the stay is required under the circumstances, and grant the instant motion in its entirety.

Dated: New York, New York
December 3, 2013

Respectfully submitted,

NAPOLI BERN RIPKA SHKOLNIK, LLP

By: Joseph P. Napoli (JP9195)
350 Fifth Avenue, Suite 7413
New York, New York 10118
Tel: (212) 267-3700
Fax: (212) 587-0031
Email: jnapoli@napolibern.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 3, 2013, the foregoing NOTICE OF MOTION FOR RELIEF FROM AUTOMATIC STAY, AFFIRMATION IN SUPPORT, and MEMORANDUM OF LAW IN SUPPORT were sent via Email and first-class post to:

Burton S. Weston
GARFUNKEL WILD, P.C.
Attorneys for Debtor
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Great Neck, New York 11201
Tel: (516) 393-2588
Fax: (516) 466-5964
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William R. Watson
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One Barker Avenue, Suite 675
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Tel: (914) 948-4500
Fax: (914) 948-0645
Email: wwatson@omcdoc.com

Dated: December 3, 2013

NAPOLI BERN RIPKA SHKOLNIK, LLP

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