

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**

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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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**MOTION OF DEBTORS PURSUANT TO 11 U.S.C. § 1121(D) TO  
FURTHER EXTEND EXCLUSIVITY PERIODS IN WHICH THE DEBTORS  
MAY FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THERETO**

Sound Shore Medical Center of Westchester ("**SSMC**"), and its debtor affiliates (each a "**Debtor**" and together, the "**Debtors**") in the above chapter 11 cases (the "**Chapter 11 Cases**"), hereby file this Motion (the "**Motion**") for the entry of an Order, substantially in the form attached hereto as Exhibit A, pursuant to 11 U.S.C. § 1121(d) further extending the exclusivity periods in which the Debtors may file a Chapter 11 plan and solicit acceptances thereto, to April 24, 2014 and June 23, 2014 respectively. In support of the Motion, the Debtors respectfully represent as follows:

**SUMMARY OF RELIEF REQUESTED**

1. By this Motion, the Debtors seeks the entry of an Order, pursuant to Section 1121(d) of Title 11, United States Code (the "**Bankruptcy Code**"), further extending for ninety

(90) days both: (i) the exclusive period within which the Debtors may file a Chapter 11 plan (the “**Exclusive Filing Period**”) through and including April 24, 2014, and (ii) the exclusive period within which the Debtors may solicit acceptances to any such plan (the “**Exclusive Solicitation Period**,” which, together with the Exclusive Filing Period, are collectively referred to as the “**Exclusivity Periods**”) through and including June 23, 2014.

2. While the Debtors’ efforts thus far have been well conducted and led to substantial progress in these Chapter 11 Cases, including the expedient consummation of the sale of substantially all of their assets (the “**Sale**”), the filing of a plan of reorganization would be premature at this time. Currently, the Debtors’ focus remains on addressing and resolving emergent matters arising in connection with the closing of the Sale. Simultaneously, the Debtors must attend to the ongoing administration of their estates and these cases and complying with their requirements under the Bankruptcy Code. Thus, the Debtors require additional time to effectively negotiate and file a plan of reorganization and develop a strategy for the successful confirmation of these cases. This is the Debtors’ second request for an extension of the Exclusivity Periods. The Debtors submit that the extension is reasonable under the circumstances of these cases.

### **JURISDICTION**

3. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **BACKGROUND**

### **General Background**

4. On May 29, 2013 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors’ cases are being jointly administered for procedural purposes only. The Debtors remain in possession of their assets and continue to manage their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. 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 “**Committee**”) pursuant to section 1102 of the Bankruptcy Code. The Committee has engaged Alston & Bird LLP as its counsel. No trustee or examiner has yet been appointed in these cases.

6. 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.

### **First Exclusivity Motion**

7. On September 17, 2013, the Debtors filed the first Motion of the Debtors Pursuant to 11 U.S.C. § 1121(d) To Extend the Exclusivity Periods in Which the Debtors May file a Chapter 11 Plan and Solicit Acceptances Thereto (the “**First Exclusivity Motion**”). [Docket No. 334] The First Exclusivity Motion was granted by Order dated December 12, 2013 (the “**Initial**

**Exclusivity Order**”). [Docket No. 486] Pursuant to the Initial Exclusivity Order, the exclusivity periods for the filing of a Chapter 11 Plan and soliciting acceptances thereto were extended to January 24, 2014 and March 25, 2014, respectively.

### **RELIEF REQUESTED**

8. By this Motion, the Debtors request an extension of the Exclusive Filing Period pursuant to section 1121(d) of the Bankruptcy Code, through and including April 24, 2014, and the Exclusive Solicitation Period through and including June 23, 2014, without prejudice to the Debtors’ rights to seek additional extension of such periods.

9. Section 1121 of the Bankruptcy Code provides a debtor with the exclusive right to file a Chapter 11 plan for an initial period of 120 days after the commencement of a chapter 11 case. *See* 11 U.S.C. § 1121(b). Section 1121(c)(3) of the Bankruptcy Code provides that if a debtor files a plan within the 120 day Exclusive Filing Period, it then has an exclusive period of 180 days from the commencement date to solicit acceptances for its plan. During these exclusive periods, no other party in interest may file a competing chapter 11 plan. *See* 11 U.S.C. § 1121(c)(3). The Debtors’ Exclusive Filing Period and Exclusive Solicitation Period are currently set to expire on January 24, 2013 and March 25, 2014, respectively.

10. An extension of the Exclusivity Periods is warranted and appropriate herein given the size and complexity of these cases. The relief sought will allow the Debtors to focus on the continued administration of the Debtor’s estates while also addressing essential post-closing issues arising from the closing of the Sale. Through the requested extensions, the Debtors will be afforded a full and fair opportunity, as contemplated by the Bankruptcy Code, to develop a viable, comprehensive and fair plan of reorganization or liquidation, in conjunction with the Committee

and other relevant parties in these cases. The extensions will permit sufficient time to negotiate, propose and solicit acceptances for a plan which will maximize value and benefit the interests of all creditors and parties in interest.

### **Legal Basis for Relief Requested**

11. Section 1121(d) of the Bankruptcy Code empowers a Bankruptcy Court to extend the Exclusivity Periods “for cause. Section 1121(d) provides that “on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.” 11 U.S.C. § 1121(d). Although the term “cause” is not defined in the statute, legislative history indicates that it is a flexible standard intended to balance competing interests of a debtor and its creditors. *See* H.R. Rep. No. 95-595, at 231-32 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963; *see also Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 297 (W.D. Tenn. 1987) (“The hallmark of [section 1121(d) of the Bankruptcy Code] is flexibility.”).

12. This flexibility is intended to give Bankruptcy Courts significant discretion in protecting a debtor’s interests by allowing a debtor unimpeded opportunity to negotiate settlement of debts without interference from other parties in interest. It also provides debtors with an adequate opportunity to stabilize their business operations at the outset of the case and to negotiate with creditors an effective plan of reorganization. *See In re McLean Indus., Inc.*, 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987); *In re Texaco, Inc.*, 81 B.R. 806, 809 (Bankr. S.D.N.Y. 1987). Here, ample cause exists to extend the Exclusivity Periods.

13. In determining whether cause exists to extend the Exclusivity Periods, courts may consider a variety of factors to assess the totality of the circumstances in each case. *See In re*

*Borders Group, Inc.*, 460 B.R. 818, 821-22 (Bankr. S.D.N.Y. 2011) (“The determination of cause under section 1121(d) is a fact-specific inquiry and the court has broad discretion in extending or terminating exclusivity.”); *In re Adelphia Commc’ns Corp.*, 352 B.R. 578, 687 (Bankr. S.D.N.Y. 2006) (identifying objective factors courts historically have considered in determining whether cause exists to extend or terminate exclusivity); see also *In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997); *In re Express One Int’l Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re McLean Indus.*, 87 B.R. at 834 (identifying factors used by courts to determine whether cause exists to extend exclusivity).

14. Among the factors utilized by courts to determine whether “cause” exists for the purpose of extending a debtor’s exclusive periods include:

- (a) the size and complexity of the debtor’s case;
- (b) the existence of good faith progress towards reorganization;
- (c) a finding that the debtor is not seeking to extend exclusivity merely for the purpose of pressuring creditors to consent to the debtor’s reorganization demands;
- (d) the existence of an unresolved contingency; and
- (e) the fact that the debtor is paying its bills as they become due.

*Adelphia Commc’ns*, 352 B.R. at 587 (noting that nine factors listed above are “objective factors which courts historically have considered in making determinations of this character”); see also *Borders*, 460 B.R. at 822 (evaluating the nine factors set forth in *Adelphia* to hold that debtor established cause to extend exclusivity); *McLean Indus. Inc.*, 87 B.R. at 834; accord *In re Express One Int’l*, 194 B.R. at 100 (identifying all of the nine factors as relevant in determining whether “cause” exists to extend exclusivity); *In re United Press Int’l, Inc.*, 60 B.R. 265, 269 (Bankr.D.C. 1986) (holding that debtor showed cause to extend exclusive period based upon certain of the nine factors). The exercise of the Court’s discretion is not simply a check-off process but is based on

the totality of circumstances. In addition, the above factors are not exclusive bases for the exercise of such discretion.

15. Other courts have examined whether the debtor has sufficient time to negotiate a chapter 11 plan and prepare a disclosure statement containing adequate information as required by the Bankruptcy Code. Also considered is the extent of any harm to the debtor's creditors. *See, e.g. In re Adelphia Communications Corp.*, 336 B.R. at 674-75 (Bankr.S.D.N.Y. 2006) (considering harm to creditors as well as factors mentioned in *McLean*); *In re Gen. Bearing Corp.*, 136 B.R. 361, 367 (Bankr.S.D.N.Y. 1992); *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409-10 (Bankr. E.D.N.Y. 1989).

16. The Debtor submits that adequate cause exists for a further extension of the Exclusivity Periods under the aforementioned standards. The extensions are necessary and appropriate in order for the Debtors to have the opportunity contemplated by the Bankruptcy Code to propose a chapter 11 plan and solicit acceptances of that plan. The Debtors' cases are relatively complex and involve an interplay between the satisfaction of the Debtors' outstanding obligations with respect to the Sale and the resolution of complex transitional issues which the Debtor, with third party decision making, must resolve prior to a plan being filed. To terminate the Exclusivity Periods in these chapter 11 cases before the Debtors are able to resolve such pertinent sale related and administrative matters will place an undue stress on the Debtors and their management. Additionally, denying the Debtors the ability to negotiate a consensual plan with all creditor constituencies will deprive them of their entitlement to a full and fair opportunity to formulate and prosecute a viable chapter 11 plan.

17. Further, the intent behind the Debtors' request for an extension is not improper in any manner and is instead designed to provide the Debtors with sufficient time to resolve the remaining open issues stemming from the Sale, each of which must be concluded before any meaningful negotiations can be conducted with respect to a proposed Plan.

18. As is evident, the nature and complexity of the Debtors' Chapter 11 cases alone justifies granting the relief requested in this Motion. The number and intricacy of the tasks that must be completed and the diversity of interests which must be taken into account before formulating a plan of reorganization are far greater than what one encounters in ordinary for-profit Chapter 11 cases. The brief extension requested is reasonable under the circumstances and warranted since the Debtor must balance the dual requirements of maximizing the value of their estates with a concurrent duty to comply with their regulatory and not-for-profit obligations. Notwithstanding, additional factors also exist which favor the granting of the requested extension. The extensions are thus necessary and appropriate in order for the Debtors to have the opportunity contemplated by the Bankruptcy Code to propose a chapter 11 plan and solicit acceptances thereto.

19. Bankruptcy courts in this district have, on numerous occasions, granted second requests by debtors to extend their exclusive periods, often for much longer periods than requested here and based on less compelling facts. *See, e.g., In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. July 19, 2012) [Dkt. No. 3635] (second extension of 3 months); *In re Tronox Inc., et al.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Sept. 16, 2009) [Docket No. 706] (second extension of 5 months); *In re Frontier Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. Jan. 21, 2009) (second extension of 120 days); *In re Lehman Brothers Holdings Inc., et al.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Jan. 15, 2009) [Docket No. 4449] (second extension of 8 months);



*In re Delta Air Lines, Inc.*, No. 05-17923 (ASH) (Bankr. S.D.N.Y. Jan. 12, 2006) (second extension of 120 days). Here, cause exists to further extend the Exclusivity Periods since (i) the Debtors have made substantial progress in these case, (ii) the requested extensions will not harm any party-in-interest; and (iii) the Debtors have the ability to propose a viable Chapter 11 Plan.

20. In ruling on a motion to extend the Exclusive Periods, the Court should analyze the practical consequences of granting the extension requested as compared to consequences of terminating a debtor's exclusive right to file a plan. "When the Court is determining whether to terminate a debtor's exclusivity, the primary consideration should be whether or not doing so would facilitate moving the case forward. And that is a practical call that can override a mere totting up of the factors." *In re Dow Corning Corp.*, 208 B.R. 661, 670 (Bankr. E. D. Mich.1997); *see also Adelphia*, 352 B.R. at 590 (agreeing with Dow Corning, but reasoning that "the test is better expressed as determining whether terminating exclusivity would move the case forward materially, to a degree that wouldn't otherwise be the case").

(a) **The Debtors Have Made Substantial Progress in this Case**

21. As set forth above, the Debtors' have made significant progress in these cases to date and are well on their way towards the filing of a viable plan. The Debtors efforts thus far have already culminated in the prompt and efficient Sale of their assets. Indeed the entire sale process was concluded on a fairly expedited basis and in a relatively short time frame, enabling the Debtors from avoiding a potential cash shortage.

22. There can be no doubt that the Debtors have acted diligently in this case. The Debtors have continuously consulted with and worked cooperatively with the Committee on all major issues, and intend to do so in finalizing and filing a plan of liquidation. The Debtors submit

that their progress to date and the nature and extent of activities contemplated for the next [90] days provides ample cause to extend the Exclusive Periods.

23. The extension requested by this Motion brings the aggregate requested extension to 210 days and would not unduly prolong the Chapter 11 Cases. The Debtors' initial extension of the Exclusive Periods requested an additional 120 days. Given the enormous effort that was subsequently required and undertaken to promptly consummate the Sale, the initial extension has not afforded the Debtors with a meaningful opportunity to propose and file a chapter 11 plan. This second request for a 90-day extension is comparatively short and reasonable given the size and complexity of these cases. A reasonable time in light of the bankruptcy case in its entirety is the root consideration." *McLean Indus.*, 87 B.R. at 834. Since the Debtors have completed the sale process and are already moving towards formulating a viable plan, extending the Exclusive Periods as requested will clearly move these cases forward and will not delay the progress of these cases.

(b) **The Extension Will Not Harm Any Party in Interest Size**

24. The requested extensions of the Exclusivity Periods will not prejudice parties in interest. To the contrary, the time will be used to develop and build consensus for a feasible chapter 11 plan. To terminate the Exclusive Periods at this point would deny the Debtors a meaningful opportunity to finalize their negotiations with the Committee and parties in interest and to propose a confirmable plan and, thus, would be antithetical to the purpose of chapter 11. Given that the remaining issues that must be resolved before a plan can be finalized are not overly complex, the Debtors believe that continued exclusivity for 90 days will help keep the focus of this case where it belongs.

25. In addition, termination of the Exclusive Periods at this time might give rise to multiple plans and a costly confirmation process. This could result in an extreme waste of the resources of the estate in possibly dealing with multiple plans, resources which should more properly be devoted toward attempting to come to terms on a consensual plan with the Creditors' Committee and other significant constituents in these cases. .

26. Importantly, the Debtor is not seeking an extension of the Exclusive Periods to unduly pressure the Debtor's creditors. Instead, the extension requested herein will facilitate the Debtor's efforts by creating value for the estate, providing the Debtor with a full and fair opportunity to formulate a plan of liquidation, and to then negotiate, propose, and seek acceptances of a chapter 11 plan that provides for an equitable distribution of the Debtors' assets to the holders of valid claims against the Debtor's estate.

27. In sum, the Debtor submits that the extension requested herein is consistent with the purpose of chapter 11, will increase the likelihood of a greater distribution to creditors than would be possible if the Exclusive Periods were not extended, and will not prejudice or pressure any party in interest. Accordingly, the Debtor believes that the requested extension is warranted and appropriate under the circumstances.

(c) **The Debtor is Not Seeking to Extend the Exclusive Period to Impose Undue Pressure Upon its Creditors to Accede to Their Demands**

28. This is the Debtors' second request for extensions of the Exclusivity Periods. The Debtors are not seeking these extensions to artificially delay the conclusion of these Chapter 11 cases or for the purposes of coercing creditor consent or for any other improper motive. Rather, the Debtors desire to maintain the status quo until such time as a consensual plan can be negotiated. An extension of the Exclusivity Period will provide the Debtors with an adequate

opportunity to negotiate, propose and file a viable plan, which will provide a meaningful recovery to the Debtors' creditors.

(d) **The Existence of Unresolved Contingencies  
Prevents the Filing of a Plan at the Present time**

29. Substantive discussions and negotiations relating to the proposed plan cannot be held until all outstanding issues and closing conditions pertaining to the Sale have been satisfied. A resolution of the open issues stemming from the Sale will allow the Debtors to assess the extent of their available funds and resources with which to fund the proposed plan of reorganization. In addition, since the Debtors have not yet fully ascertained the universe of claims filed against their estates, many of which still remain unliquidated the full extent of their outstanding pre-petition liabilities has not yet been determined.

(e) **The Debtors are Paying Their Debts as They Become Due**

30. Courts considering whether to extend a debtor's exclusivity periods may also assess whether the debtor is paying its debts when they come due. *See In re McLean Indus.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987). The Debtors are largely paying all undisputed postpetition obligations as they come due in accordance with their agreements with their creditors. The Debtors continue to manage their businesses effectively and are preserving the value of their assets for the benefit of creditors

**CONCLUSION**

31. As described above, the Exclusivity Periods are designed to provide a debtor with a full and fair opportunity to rehabilitate its business and to negotiate, develop, propose, confirm and consummate a plan of reorganization. The Debtors have been diligently working towards this goal since the Petition Date. While the Debtors have made substantial progress in responding to the

exigent demands of these cases, the filing of a plan at the current time is neither viable nor feasible. However, the Debtors believe that by extending the Exclusivity Periods, they will be able to implement a viable plan with the consensus of their major creditor constituencies. Indeed, the requested extension will allow the plan process to proceed in a rational and thoughtful manner while simultaneously maximizing value for all parties.

32. Given the foregoing, it is submitted that the extension of the Exclusivity Periods requested in this Motion is warranted and entirely consistent with the intent and purpose of the Bankruptcy Code. The extension will provide the Debtors with a meaningful opportunity to negotiate, propose, file and solicit acceptances for a chapter 11 plan. Therefore, it is requested that the Exclusive Filing Period be extended through and including April 24, 2014 and the Exclusive Solicitation Period be extended through and including June 23, 2014.

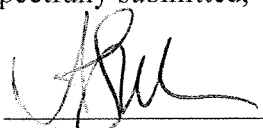
### **NOTICE**

33. Notice of this Motion has been provided to all parties in interests in accordance with the Administrative Order Establishing Case Management and Scheduling Procedures (the “**Case Management Order**”), entered on June 4, 2013, notice of this Motion has been given to 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 submit that no other or further notice need be provided.

**WHEREFORE**, the Debtors respectfully request entry of the attached Order granting the relief requested herein and that the Court grant such other and further relief as is just and proper.

Dated: January 16, 2014  
Great Neck, New York

Respectfully submitted,

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