

Hearing Date: May 20, 2014

Hearing Time: 10:00 a.m.

Response Deadline: May 15, 2014 at 4:00 p.m.

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Counsel to the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**NOTICE OF HEARING ON COMMITTEE'S
MOTION TO APPROVE THE STIPULATION AND ORDER
BETWEEN THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS AND THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK**

PLEASE TAKE NOTICE that a hearing will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, on **May 20, 2014 at 10:00 a.m., Eastern Time** in Room 501 of the United States Bankruptcy for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601-4140, or as soon thereafter as counsel can be heard, to consider the Committee's Motion to Approve the Stipulation and Order Between the Official Committee of Unsecured Creditors and the Dormitory Authority of the State of New York (the "Motion").

PLEASE TAKE FURTHER NOTICE that any responses or objections to the relief requested in the Motion must (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, all General Orders, Local Bankruptcy Rules, and the Final Order Establishing Case

Management Procedures [Docket No. 143]; (c) be filed electronically with the Court, with a hard copy provided to the Clerk's Office at the Bankruptcy Court for delivery to the Chambers of the Honorable Robert D. Drain; and (d) be served so as to be actually received by **May 15, 2014 at 4:00 p.m. prevailing Eastern Time**, by (i) Alston & Bird LLP, counsel for the Creditors' Committee, 90 Park Avenue, New York, New York 10016 (Attn: Martin G. Bunin, Esq. and Craig E. Freeman); (ii) Garfunkel Wild, P.C., counsel for the Debtors and Debtors in Possession, 111 Great Neck Road, Great Neck, New York 11021 (Attn: Burton S. Weston, Esq. and Afsheen A. Shah, Esq.); (iii) Schiff Hardin LLP, counsel for the Dormitory Authority of the State of New York, 666 Fifth Avenue, New York, New York 10103 (Attn: Louis T. DeLucia, Esq. and Peter J. Kiernan, Esq.) and (iv) Office of the United States Trustee, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Susan Golden, Esq.).

Dated: April 11, 2014

ALSTON & BIRD LLP

/s/ Craig E. Freeman

Martin G. Bunin

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*Counsel to the Official Committee of Unsecured
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**COMMITTEE’S MOTION TO APPROVE THE STIPULATION AND ORDER
BETWEEN THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
AND THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK**

The Official Committee of Unsecured Creditors appointed in the above-captioned cases (the “Committee”), on behalf and with the consent of the Debtors, hereby moves that the Court approve and enter the *Stipulation and Order* (the “Stipulation and Order”) *Between the Official Committee of Unsecured Creditors and the Dormitory Authority of the State of New York* (“DASNY”) pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure. A copy of the Stipulation and Order is attached as Exhibit A. In support of this motion (the “Motion”), the Committee respectfully represents as follows:

¹ The “Debtors” are Sound Shore Medical Center of Westchester, the Mount Vernon Hospital, Howe Avenue Nursing Home, Inc., The M.V.H. Corporation, Sound Shore Health System, Inc., NRHMC Services Corporation, and New Rochelle Sound Shore Housing, LLC.

Background

1. On or about August 14, 2012, DASNY and Sound Shore Medical Center of Westchester (“SSMC”) entered into a Reimbursement Agreement (the “Reimbursement Agreement”). Pursuant to the Reimbursement Agreement, DASNY loaned SSMC \$2.9 million (the “Loan”), which SSMC was obligated to repay on January 1, 2013. In connection with the Reimbursement Agreement, SSMC granted DASNY a security interest in a grant (the “HEAL Grant”) under the Health Care Efficiency and Affordability Law for New Yorks Capital Grant Program (the “HEAL Grant Security Interest”).

2. In connection with the Reimbursement Agreement, on or about August 14, 2012, The Mount Vernon Hospital (“MVH”) executed a guaranty (the “Guaranty”) guaranteeing repayment of the Loan when due under the Reimbursement Agreement. MVH also executed a mortgage (the “Mortgage”) encumbering MVH’s property, as described more fully in the Mortgage, and securing MVH’s obligations under the Guaranty.

3. On May 29, 2013, the Debtors filed voluntary petitions for reorganization under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

4. The Debtors remain debtors in possession pursuant to section 1107(a) of the Bankruptcy Code.

5. On June 10, 2013, the United States Trustee for the Southern District of New York appointed the Committee.

6. On August 8, 2013, the Court entered the *Order Pursuant to Section 105(a), 363 and 365 of the Bankruptcy Code Approving Sale of the Debtors Real Property and Designated Personal Property Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests* (Docket No. 259; the “Sale Order”).

7. Paragraph 24 of the Sale Order provides as follows:

Challenge Rights with Respect to Assumed Secured Debts. To the extent the Debtors or the Creditors' Committee successfully challenge any of the secured debts to be assumed by the Buyer pursuant to section 2.3(a)(ii) of the Purchase Agreement, or any portions thereof, the Buyer shall not assume such successfully challenged secured debts and shall instead pay a corresponding amount of cash as part of the Purchase Price. In the event that there is a pending challenge (adversary proceeding or claim objection) as of the Closing Date to all or a part of a secured debt to be assumed by the Buyer pursuant to section 2.3(a)(ii) of the Purchase Agreement, the determination of whether the Buyer assumes such challenged secured debt or instead pays a corresponding amount of cash as part of the Purchase Price shall await the outcome of the challenge.

8. On or about September 13, 2013, DASNY filed a proof of claim against Sound Shore Medical Center of Westchester, The Mount Vernon Hospital, and Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center in the amount of "Not less than \$11,547,923.31," which claim was assigned number 969 by the Debtors' claims and noticing agent ("Claim 969"). DASNY has asserted that at least \$8,147,203 of Claim 969 is secured.

9. On or about November 3, 2013, the Committee and DASNY entered into the *Stipulation Between the Official Committee of Unsecured Creditors and the Dormitory Authority of the State of New York* (Docket No. 412; the "Prior Stipulation").

10. The Debtors and the Buyer (as defined in the Sale Order) acknowledged and agreed to the Prior Stipulation.

11. Among other things, the Prior Stipulation contemplated that, upon the closing of the sale contemplated by the Sale Order (the "Sale"), the Debtors would deposit an amount of cash equal to \$8,147,203 on account of and in consideration of DASNY's asserted liens and mortgages (including, without limitation, the Heal Grant Security Interest and the Mortgage, and collectively, the "DASNY Liens"), into an interest-bearing escrow account (the "Escrow") in

connection with the Committee's disputes regarding the DASNY Liens that were proposed to be assumed by the Buyer in connection with the Sale.

12. On or about November 6, 2013, the Sale closed, and the Debtors established the Escrow.

13. The Committee and DASNY have been in discussions regarding the amount held in Escrow and the Committee's disputes regarding the secured claims of DASNY that were proposed to be assumed by the Buyer in connection with the Sale. The Committee and DASNY, with the acknowledgement and agreement of the Debtors, now wish to resolve these disputes pursuant to the agreement embodied in the Stipulation and Order.

Jurisdiction and Venue

14. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. Venue of this case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). This Motion is based on Bankruptcy Rule 9019.

The Stipulation and Order

15. If the Stipulation and Order is approved by the Court, the Debtors will receive \$1,550,000 from the Escrow. The remainder of the funds in the Escrow (\$6,597,203 plus accrued interest) will be paid to DASNY. Claim 969 will be disallowed and expunged.

16. The Stipulation and Order also includes broad releases by DASNY, on the one hand, and the Committee, the Debtors, and the Debtors' estates, on the other, in favor of the other and certain related persons, of any matter relating to Claim 969, the DASNY Liens, the Debtors, or the Debtors' chapter 11 cases.

Standards for Approval

17. Bankruptcy Rule 9019(a) provides that the “court may approve a compromise and settlement.” Fed. R. Bankr. P. 9019(a).

18. The Court should approve a settlement that is in the best interests of a debtor’s estate. *See In re Adelphia Commc’ns Corp.*, 327 B.R. 143, 158 (Bankr. S.D.N.Y. 2005); *In re Interstate Cigar Co., Inc.*, 240 B.R. 816, 822 (Bankr. E.D.N.Y. 1999).

19. To be in the best interests of a debtor’s estate, a settlement must be “fair and equitable.” *See Adelphia*, 327 B.R. at 158 (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (“TMT”). In determining whether a settlement is “fair and equitable,” the court must consider all “factors relevant to a full and fair assessment of the wisdom of the proposed compromise,” including the probabilities of success of the ultimate claim to be litigated; the cost, complexity, and duration of any such litigation; and the possible difficulties in collecting any judgment resulting from such litigation. *See id.* (quoting *TMT*, 390 U.S. at 424-25).

20. The court should also consider the interests of creditors. *See In re Masters, Inc.*, 149 B.R. 289, 292 (E.D.N.Y. 1992) (citing *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied*, 464 U.S. 822, 104 S.Ct. 89, 78 L.Ed.2d 97 (1983)).

21. The bankruptcy court need not determine that the proposed settlement is the best possible outcome for the estate. Rather, it must “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness[.]’” *In re W.T. Grant Co.*, 699 F.2d at 608 (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972), *cert. denied sub nom, Benson v. Newman*, 409 U.S. 1039 (1972)). The bankruptcy court “may give weight to the opinions of the Trustee, the parties and their counsel in determining the reasonableness of the

proposed settlement.” *In re Bell & Beckwith*, 77 B.R. 606, 612 (Bankr. N.D. Ohio 1987), *aff’d* 87 B.R. 472 (N.D. Ohio 1987).

The Court Should Approve the Stipulation and Order.

22. Approval of the Stipulation and Order is in the best interests of the Debtors, their estates, and their creditors. The Stipulation and Order embodies a fair and equitable compromise regarding Claim 969 and the DASNY Liens. Among other things, the Stipulation and Order would result in a cash recovery to the Debtors’ estates of \$1,550,000 and would avoid potentially lengthy and costly litigation between DASNY and the Debtors’ estates. It would also fully resolve a claim filed in the amount of \$11,547,923.31.

23. The Stipulation and Order resolves the Committee’s claims and alleged causes of action asserted on behalf of the Debtors’ estates regarding the DASNY Liens. Among other things, the Committee has asserted that MVH has no obligations under the Guaranty of the \$2.9 million Loan because MVH was insolvent at the time that MVH executed the Guaranty and that, therefore, the Mortgage secures obligations in the total amount of \$0.00.² The Committee has also asserted that the HEAL Grant Security Interest provides no security for SSMC’s obligations under the Loan because SSMC no longer holds any proceeds from the HEAL Grant. In addition, the Committee has asserted that the Guaranty and the Mortgage may be avoided as fraudulent transfers and/or obligations under applicable state and/or federal law. Accordingly, the Committee has asserted that DASNY is not entitled to the approximately \$2.9 million of funds held in the Escrow related to the Loan and Guaranty.

² Section 6(C) of the Guaranty states, “Notwithstanding anything to the contrary herein, [MVH] guaranties [SSMC’s] obligations under the [Reimbursement Agreement] or so much thereof as [MVH] can guaranty without being rendered insolvent as a result thereof.” DASNY disputes the Committee’s interpretation of this language.

24. DASNY disputes all of the Committee's allegations regarding the DASNY Liens and believes that it is entitled to the full amount of the funds held in the Escrow.

25. Litigation regarding these issues would almost certainly be lengthy and costly. The Committee and DASNY would both likely require extensive discovery regarding (a) MVH's (in)solvency at the time of the execution of the Guaranty and the Mortgage and (b) the usage of the proceeds of the Loan, in order to determine what (if any) consideration MVH received in exchange for executing the Guaranty and the Mortgage. A full evidentiary hearing regarding these same issues would almost certainly follow.

26. Such litigation could only conceivably result in recovery of approximately \$1.35 million over the amount to be received by the Debtors' estates in conjunction with the Stipulation and Order.³ However, the Debtors' estates could also receive nothing if the litigation were unsuccessful, and, either way, the Debtors' estates would be responsible for the Committee's (likely substantial) legal fees. Such fees would materially decrease the net proceeds of such litigation, if any.

27. In addition to the positive resolution of the Committee's disputes regarding the DASNY Liens, the Stipulation and Order would also result in expunging and disallowing DASNY's Claim 969. Claim 969 was filed in the amount of \$11,547,923.31 (of which DASNY has asserted that at least \$8,147,203 is secured), and DASNY would effectively receive \$6,597,203 (plus accrued interest) in full satisfaction of that claim. This is a beneficial outcome for the Debtors, their estates, and their other creditors.

³ The Committee has disputed an amount equal to approximately \$2,900,000, and the Debtors' estates would receive \$1,550,000 as a result of the Stipulation and Order. $\$2,900,000 - \$1,550,000 = \$1,350,000$.

WHEREFORE, for all of the foregoing reasons, the Committee respectfully requests that the Court enter and approve the Stipulation and Order and grant such other relief as may be appropriate under the circumstances.

Dated: April 11, 2014

ALSTON & BIRD LLP

By: /s/ Craig E. Freeman
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Craig E. Freeman
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*Counsel to the Official Committee of Unsecured
Creditors*

EXHIBIT A

ALSTON & BIRD LLP
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Counsel to the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
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WESTCHESTER, <u>et al.</u> ,	:	(Jointly Administered)
	:	
Debtors. ¹	:	
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**STIPULATION AND ORDER BETWEEN THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS AND THE
DORMITORY AUTHORITY OF THE STATE OF NEW YORK**

Recitals:

A. On May 29, 2013, the Debtors filed voluntary petitions for reorganization under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

B. The Debtors remain debtors in possession pursuant to section 1107(a) of the Bankruptcy Code.

C. On June 10, 2013, the United States Trustee for the Southern District of New York appointed the official committee of unsecured creditors in the Debtors’ cases (the “Committee”).

¹ The “Debtors” are Sound Shore Medical Center of Westchester, the Mount Vernon Hospital, Howe Avenue Nursing Home, Inc., The M.V.H. Corporation, Sound Shore Health System, Inc., NRHMC Services Corporation, and New Rochelle Sound Shore Housing, LLC.

D. On August 8, 2013, the Court entered the *Order Pursuant to Section 105(a), 363 and 365 of the Bankruptcy Code Approving Sale of the Debtors Real Property and Designated Personal Property Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests* (Docket No. 259; the “Sale Order”).

E. Paragraph 24 of the Sale Order provides as follows:

Challenge Rights with Respect to Assumed Secured Debts. To the extent the Debtors or the Creditors’ Committee successfully challenge any of the secured debts to be assumed by the Buyer pursuant to section 2.3(a)(ii) of the Purchase Agreement, or any portions thereof, the Buyer shall not assume such successfully challenged secured debts and shall instead pay a corresponding amount of cash as part of the Purchase Price. In the event that there is a pending challenge (adversary proceeding or claim objection) as of the Closing Date to all or a part of a secured debt to be assumed by the Buyer pursuant to section 2.3(a)(ii) of the Purchase Agreement, the determination of whether the Buyer assumes such challenged secured debt or instead pays a corresponding amount of cash as part of the Purchase Price shall await the outcome of the challenge.

F. On or about September 13, 2013, the Dormitory Authority of the State of New York (“DASNY”) filed a proof of claim against Sound Shore Medical Center of Westchester, The Mount Vernon Hospital, and Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center in the amount of “not less than \$11,547,923.31,” which claim was assigned number 969 by the Debtors’ claims and noticing agent (“Claim 969”).

G. On or about November 3, 2013, the Committee and DASNY entered into the *Stipulation Between the Official Committee of Unsecured Creditors and the Dormitory Authority of the State of New York* (Docket No. 412; the “Prior Stipulation”).

H. The Debtors and the Buyer (as defined in the Sale Order) acknowledged and agreed to the Prior Stipulation.

I. Among other things, the Prior Stipulation contemplated that, upon the closing of the sale contemplated by the Sale Order (the “Sale”), the Debtors would deposit an amount of

cash equal to \$8,147,203 on account of and in consideration of DASNY's asserted liens and mortgages (the "DASNY Liens"), into an interest-bearing escrow account (the "Escrow") in connection with the Committee's disputes regarding the DASNY Liens that were proposed to be assumed by the Buyer in connection with the Sale.

J. On or about November 6, 2013, the Sale closed, and the Debtors established the Escrow.

K. The Committee and DASNY have been in discussions regarding the amount held in Escrow and the Committee's disputes regarding the secured claims of DASNY that were proposed to be assumed by the Buyer in connection with the Sale. The Committee and DASNY wish to resolve these disputes without litigation.

Stipulation and Order:

NOW, THEREFORE, the Committee and DASNY agree as follows, and

IT IS HEREBY ORDERED that:

1. Within fourteen (14) days of this Stipulation and Order becoming a final order no longer subject to appeal, the Debtors shall receive \$1,550,000 from the Escrow (the "Debtor Distribution"). The remainder of the funds in the Escrow, including all accrued interest (the "DASNY Distribution"), shall be released and contemporaneously paid to DASNY.

2. Within five (5) business days after actual receipt by DASNY of the DASNY Distribution in immediately available funds, Claim 969 shall be expunged and disallowed in its entirety.

3. Except for DASNY's right to receive the DASNY Distribution, this Stipulation and Order shall constitute a full release and waiver by DASNY in favor of the Committee, the

Debtors, and the Debtors' estates and each of their respective members, officers, directors, employees, agents, attorneys and representatives, solely in their capacities as such (collectively, the "Estate Releasees"), from any and all claims, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions and demands, whether in law, admiralty, or equity, which against the Estate Releasees DASNY ever had, now has or hereafter can, shall, or may have, for, upon, or by reason of any matter relating to Claim 969, the DASNY Liens, the Debtors, or the Debtors' chapter 11 cases. It is the purpose and intent of the parties that this release and waiver shall have the broadest possible application under applicable law.

4. Except for the Debtors' right to receive the Debtor Distribution, this Stipulation and Order shall constitute a full release and waiver by the Committee, the Debtors, and the Debtors' estates in favor of DASNY and all of its officers, directors, employees, agents, attorneys and representatives, solely in their capacities as such (collectively, the "DASNY Releasees"), from any and all claims, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions and demands, whether in law, admiralty, or equity, which against the DASNY Releasees the Committee, the Debtors, and the Debtors' estates now have or hereafter can, shall, or may have, for, upon, or by reason of any matter relating to Claim 969, the DASNY Liens, the Debtors, or the Debtors' chapter 11 cases. It is the purpose and intent of the parties that this release and waiver shall have the broadest possible application under applicable law.

5. This Stipulation and Order contains the entire agreement between the Committee and DASNY and supersedes all prior agreements or undertakings between the Committee and DASNY regarding the subject matter hereof.

6. Each person who executes this Stipulation and Order represents that he or she has the authority to execute this document on behalf of his or her respective client(s).

7. This Stipulation and Order may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation and Order to present any copy, copies, or other reproduction signed by the party hereto to be charged. A signature transmitted by facsimile or email shall be deemed an original, valid, and binding signature to this Stipulation and Order.

8. In the event that this Stipulation and Order is not “so ordered” by the Court or does not become a final order no longer subject to appeal, this Stipulation and Order shall be of no force and effect and nothing contained in this Stipulation and Order shall constitute an admission.

9. The Court shall retain jurisdiction to determine any dispute concerning this Stipulation and Order.

[The signature page follows.]

Dated: April 10, 2014

ALSTON & BIRD LLP

By: /s/ Craig E. Freeman

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*Counsel to the Dormitory Authority of the State of
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Acknowledged and Agreed to by:

GARFUNKEL WILD, P.C.

By: /s/ Afsheen A. Shah

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Counsel to the Debtors

SO ORDERED this ____ day of _____, 2014.

HON. ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE