

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

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| In Re: SOUND SHORE MEDICAL CENTER OF WESTCHESTER, <i>et al.</i> , ¹ Debtors. | Bankruptcy No. 13-22840 (RDD) Chapter 11 (Jointly Administered) |
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**LIMITED OBJECTION OF BECKMAN COULTER, INC. TO DEBTORS' MOTION
FOR ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF THE
DEBTORS' REAL ESTATE AND DESIGNATED PERSONAL PROPERTY ASSETS, (B)
SCHEDULING AN AUCTION AND A SALE HEARING RELATED THERETO,
(C) APPROVING THE FORM OF NOTICE OF THE AUCTION AND SALE HEARING,
AND (D) APPROVING A BREAK-UP FEE**

AND NOW, comes Beckman Coulter, Inc. (hereinafter "Beckman"), by and through its attorneys, Bernstein-Burkley, P.C., and files this Limited Objection to Debtors' Motion for Order (A) Approving Bidding Procedures for the Sale of the Debtors' Real Estate and Designated Personal Property Assets, (B) Scheduling an Auction and a Sale Hearing Related thereto, (C) Approving the Form of Notice of the Auction and Sale Hearing, and (D) Approving a Break-Up Fee (hereinafter "Objection"), and respectfully represents as follows:

1. This case was commenced on May 29, 2013, when Sound Shore Medical Center of Westchester and certain affiliates (each a "Debtor" and herein collectively referred to as "Debtors") filed Voluntary Petitions for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 et. Seq. (hereinafter "Filing Date").

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

2. On June 3, 2013, the Court entered an Order Directing Joint Administration of the Debtors' cases [Doc. No. 3].

3. On May 29, 2013, as part of the Debtors' First Day Motions, the Debtors' filed an Motion for Order (A) Approving Bidding Procedures for the Sale of the Debtors' Real Estate and Designated Personal Property Assets, (B) Scheduling an Auction and a Sale Hearing Related thereto, (C) Approving the Form of Notice of the Auction and Sale Hearing, and (D) Approving a Break-Up Fee and application for a scheduling Order [Doc. No. 17] (the "Bid Procedures Motion").

4. Pursuant to Order scheduling hearing on the Bid Procedures Motion, responses were to be filed by June 18, 2013 at 4:00 p.m. and a hearing is scheduled for June 25, 2013 at 10:00 a.m.

5. Prior to the deadline to file objections, counsel for Beckman sought and received an extension from Debtors' counsel to permit Beckman to file the instant Objection by June 20, 2013.

6. For the reasons set forth herein, Beckman objects to the approval of the Bid Procedures Motion as they relate to the procedures related to the assumption and assignment of the Debtors' executory contracts.

LIMITED OBJECTION TO ASSIGNMENT PROCEDURES

7. Prior to the Filing Date, one or more of the Debtors entered into certain equipment leases with Beckman for use of certain blood-analysis equipment and chemical reagents for use with the leased equipment (hereinafter the "Beckman Leases").

8. The equipment leased under the Beckman Leases is hereinafter referred to as the "Equipment".

9. Beckman has not yet filed a proof of claim in this case, but estimates that it was owed in excess of \$250,000.00 as of the Filing Date.

10. The Beckman Leases are unexpired executory contracts which are subject to the assumption and rejection provisions of 11 U.S.C. § 365.

11. According to the Bid Procedures Motion, the Debtors and Montefiore SS Operations, Inc., Montefiore MV Holdings, LLC, and Montefiore HA Holdings, LLC, (collectively referred to as “MMC” or “Buyer”) entered into an Asset Purchase Agreement (the “APA”) whereby the Debtors would sell substantially all assets, including real property and assigned contracts, as a going concern.

12. According to the Bid Procedures Motion, the Debtors expect to continue day to day operations pending consummation of the sale, to occur no later than October 31, 2013. Bid Procedures Motion ¶ 48.

13. According to Schedule 2.1(d) of the APA, “Assigned Contracts” are those executory contracts and unexpired leases which have been designated to be assumed by the Debtors and assigned to the Buyer pursuant to § 365 and the Cure Amounts will be paid at closing.

14. The proposed Bid Procedures would require the Debtor to file an “Assumption Schedule” of Assigned Contracts no later than 15 days prior to the (yet to be established) deadline for parties to object to the sale. The Assumption Schedule will include proposed cure amounts for the Assigned Contracts pursuant to § 365(b).

15. Counter-parties to the Assigned Contracts will have an opportunity to object to either the Cure Amounts or the assumption and assignment of the leases, or will be otherwise bound by the assumption and assignment and the Cure Amounts set forth in the Assumption Schedule.

16. An unresolved objection to the Cure Amount will be resolved by a hearing with “the appropriate amount to be held in escrow” from the sale proceeds pending further Order of Court.

17. The Bid Procedures further provides that the Debtors (with the consent of the Buyer) may amend the Assumption Schedule at any time prior to 30 days before the Closing Date to add or remove contracts.

18. Further, the Cure Amounts set forth in the Assumption Schedule may be amended and shall be controlling, notwithstanding anything in the contracts.

19. The Bid Procedures Motion asks the Court to approve the foregoing procedures for assumption and assignment of Assigned Contracts as these contracts will have no value to the estate after the sale, and because the Assignment Procedures for determining the Cure Amounts provide adequate notice to counterparties of the Assigned Contracts and are fair to all parties.

20. Beckman disagrees that the Assignment Procedures are fair and equitable for lease counterparties, many of which are owed substantial cure amounts.

21. The Debtors will clearly benefit from these contracts, as they will be necessary for the Buyer's acquisition of the sale as a going concern.

22. Beckman understands that the Buyer will need time to review and evaluate the Assumption Schedule, but Beckman objects to a rolling deadline to add and remove contracts from that Schedule.

23. Beckman further objects to the Debtors' unbridled ability to amend the Cure Amounts.

24. According to the motion, the Debtors were engaged in a voluntary restructure of vendor payables to reduce the unsecured indebtedness as early as October 2011.

25. The Debtors were exploring a sale or merger as early as August 2012 and by November 2012 had entered into a memorandum of understanding with another entity, although never finalized.

26. Under these circumstances, the Debtors should have a solid understanding of the universe of potential Assigned Contracts and the respective Cure Amounts that are due and owing under each contracts.

27. The Debtors' Schedules are not yet filed in this case and the Bid Procedures Motion (and sale motion) was brought as a First Day Motion.

28. The Debtors ask the Court to approve procedures for a sale on a fast-track that will necessarily impact the rights and remedies of the lease counterparties, and the rights of those counterparties should be given due consideration.

29. Beckman does not object to the sale generally, but Beckman requests that the proposed Assignment Procedures be revised to eliminate pitfalls that it has experienced in multiple cases involving sales with similar provisions for the assumption and assignment of its leases.

30. The typical result, unintended or otherwise, is that Beckman is essentially held in limbo during the sale process with no assurance of future payment or that its cure amounts will be paid.

31. In this case, the Debtors plan to continue operations until the closing date but the Assignment Procedures and the APA are silent as to the Debtors' obligations to maintain adequate assurance payments until Closing.

32. Beckman requests the proposed Assignment Procedures should be revised to eliminate the Debtors' ability to *remove* Assigned Contracts from the Assumption Schedule, without the consent of the lease counter-party.

33. Once the Assumption Schedule is filed, counterparties should be able to rely on it.

34. Allowing an Assumed Contract to be removed from the Assumption Schedule at a subsequent date amounts to negative notice, and this is not sufficient notice under the rules.

35. Limiting the Debtors' ability to remove Assigned Contracts from the Assignment Schedule will enable counterparties to leases to rely on the filed Assumption Schedule.

36. If the Debtors wish to remove a contract from the Assumption Schedule after the Objection Deadline, it should only be removed with the consent of the counterparty.

37. Beckman further requests that the provision of the proposed Assignment Procedures that would allow the Debtors to amend the Cure Amounts be stricken, as it places an undue burden on lease counterparties to be on guard for subsequent revisions to the Cure Amounts.

38. Additionally, the Bid Procedures should be revised to make it clear that contracts not listed on the Assumption Schedule are deemed rejected by a fixed point in time, unless extended with the consent of the parties.

39. Alternatively, the Debtors should be required to file a separate list of rejected contracts by a fixed date and provide noticed to the affected lease counterparties.

40. Finally, Assignment Procedures are ambiguous about the amount the Debtors are required to hold in escrow pending resolution of disputed Cure Amounts.

41. To remedy this, the Assumption Procedures should be revised to clarify that if an unresolved dispute exists as to the Cure amount at closing, the amount asserted by the disputing counterparty should be held in escrow from the sale proceeds pending resolution of the dispute.

WHEREFORE, Beckman requests an Order from this Honorable Court amending the Assignment Procedures of the proposed Bid Procedures Order, and granting other relief as the Court deems appropriate.

Respectfully submitted,

BERNSTEIN-BURKLEY, P.C.

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Dated: 6/20/2013