

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

Hearing date: August, 2, 2013
Hearing Time: 10:00 a. m.
Objections due: July 26, 2013 at 4:00 p.m.

*Proposed Counsel for Debtors
And Debtors in Possession*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:
SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.,

Chapter 11 Case
Case No. 13- 22840 (RDD)

Debtors.

(Joint Administration Pending)

-----X
**MOTION FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS
105 (a) AND 363(b) AUTHORIZING THE DEBTORS TO HONOR AND
CONTINUE TO PERFORM UNDER THEIR PREPETITION AGREEMENT WITH
THE STATE OF NEW YORK AND THE MEDICAID FRAUD CONTROL UNIT**

Sound Shore Medical Center of Westchester ("SSMC") and certain of its debtor affiliates, as debtors and debtors-in-possession (each a "Debtor" and collectively the "Debtors")¹ in the above captioned chapter 11 cases (the "Chapter 11 Cases"), by and through their proposed attorneys, Garfunkel Wild, P.C., hereby move (the "Motion") for entry of an Order, pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code"), substantially in the form of Exhibit B hereto, authorizing, but not directing, SSMC to honor and perform under a settlement agreement entered into with the State

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.

of New York (the "State") and the Medicaid Fraud Control Unit ("MFCU"). In support of the Motion, the Debtors respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are sections 105(a) and 363(b) of the Bankruptcy Code, and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

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.
5. The Debtors are operating their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.
6. 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 proposed counsel. No trustee or examiner has been appointed.

SUMMARY OF RELIEF REQUESTED

7. By this Motion, SSMC is seeking authority to continue its monthly payment obligations under a settlement agreement (the "**Settlement Agreement**") with the State and MFCU governing the repayment of certain Medicaid overpayments made to SSMC prior to the Petition Date. As a safety net provider, the Debtors provide significant services to an indigent and underserved population and receive a substantial portion of their reimbursement from Medicaid. Any failure by SSMC to perform under the Settlement Agreement could result in a holdback of future Medicaid payments to SSMC, which would impact the Debtors' overall liquidity and ability to effectuate a plan in these cases. By continuing to make the required payments under the Settlement Agreement, SSMC can ensure that it will receive continued Medicaid funding without interruption. Additionally, while SSMC and the remaining Debtors do not concede that a valid and enforceable right to setoff or recoupment exists, by continuing to make the required payments, any potential recoupment and/or setoff of the payments by the State and/or MFCU can be avoided.

8. Under the terms of the Settlement Agreement, SSMC is required to remit monthly installment payments of \$67,600.40. The aggregate amount remaining to be paid under the Settlement Agreement is \$1,423,212.62. The minimal amount which is required to be paid on a monthly basis will not hinder ongoing operations whereas the immediate recoupment of all remaining amounts may otherwise cripple reorganization efforts. The relief requested is thus critical to ensuring continuity of the Debtors' ongoing operations.

DEBTORS HISTORY AND BUSINESS

9. A significant portion of the Debtors' core business is focused around Sound Shore Medical Center of Westchester ("**SSMC**"). SSMC is a not-for-profit 242-bed, community-based

teaching hospital offering primary, acute, emergency and long-term health care to the working class residents of southern Westchester. SSMC's affiliate, Mount Vernon Hospital ("MVH"), is a voluntary, not-for-profit, 176-bed hospital located in Mount Vernon, New York. MVH also operates the Dorothea Hopfer School of Nursing, chartered by New York State since 1901. Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center ("SECC"), the third operating Debtor, is a 150-bed, comprehensive facility offering short-term rehabilitation/sub-acute care, as well as skilled long-term care. (SSMC, MVH and SECC are sometimes collectively referred to as the "Medical Centers")

10. SSMC, MVH and SECC (with their affiliated Debtors) together comprise the Sound Shore Health System, Inc. ("SSHS" or the "System") which was formed in 1997 when the three affiliated healthcare institutions joined together to create one of the largest regional healthcare systems between New York City and Albany. Today, the System provides a range of specialized services, including orthopedic surgery, behavioral health, pediatrics, OB/GYN, continuing care facilities, a nursing home and community care clinics providing primary care services for the indigent and uninsured. Their affiliation with the New York College of Medicine also enables the Debtors to provide a teaching environment in multiple disciplines to their community and patients.

11. As the largest "safety net" providers for southern Westchester County, the Medical Centers serve a disproportionate share of patients in the Medicaid and uninsured populations. Annually, they are responsible for approximately 13,000 acute discharges, 55,000 emergency department visits and 60,000 indigent care clinic visits.

12. The Debtors' financial decline dates back several years and is attributable in largest measure to consistent cuts in Medicare and Medicaid funding, declining indigent pool

payments, and a change in demographics. Commencing in 2006 and increasingly each year thereafter, the Debtors experienced a progressive decline in patient volume and discharges and a change in case mix. The Debtors' efforts to address consistent liquidity pressures have had periodic success, but no long term resolution.

13. A recent conversion to a new electronic medical record and billing system in 2012, intended to increase efficiencies, resulted in major billing and collection delays, increased patient account denials and bad-debt write offs. As a consequence, liquidity again became a pressing issue, this time preventing the Debtors from implementing critical system updates vital to improving its infrastructure and physical plant. It also has led to mounting trade payables and, in some cases, the termination of necessary service relationships.

14. As the Debtors' financial condition continued to deteriorate, the Debtors began to actively search for a viable healthcare partner or other affiliation for the Medical Centers. A proposed transaction was discussed with several major hospitals and healthcare institutions, including Montefiore Medical Center ("**MMC**"). Immediately prior to the filing, the Debtors and MMC entered into an asset purchase agreement (the "**Purchase Agreement**") providing for the sale of all of their Owned Real Property, Furniture, Fixtures, Inventory, Assigned Contracts and related operating assets, which collectively comprise the Acquired Assets (all as therein defined), to MMC which will thereafter continue operations at the Debtors' former facilities under their own auspices. On the Petition Date, a motion to approve the Sale to MMC or any other party making a higher or better offer was filed.

THE SETTLEMENT AGREEMENT

15. Pursuant to New York Social Services Law 367-a 9(a), SSMC is required to submit all claims relating to drugs administered to Medicaid recipients directly to the Medicaid

program. The State and MFCU are permitted to conduct periodic audits and investigations to ensure the proper billing and reimbursements of the claims.

16. Prior to the Petition Date, an audit and investigation (the "**Audit**") was conducted by MFCU in connection with the drug related claims submitted by SSMC for dates of service covering October 3, 2004 through January 31, 2011 (the "**Audit Period**"). As a result of the Audit, the State and MFCU determined that approximately \$2.2 million in overpayments (the "**Overpayments**") had been made to SSMC in connection with drug related claim reimbursements. Under applicable laws and regulations, SSMC is required to refund the Overpayments to the State.

17. Accordingly, on April 16, 2012, SSMC and the State, through MFCU, entered into a Settlement Agreement providing for the repayment of \$2,241,760.35 in Overpayments (the "**Settlement Amount**") and resolving the issues raised by the State in connection with the Audit. Specifically, the Settlement Agreement provided for an initial payment of \$100,000 to be paid upon execution of the Settlement Agreement, with equal monthly installments of \$67,600.40 to be paid each month thereafter until the Settlement Amount is paid in full. There is presently due and owing the amount of \$1,366,286.31 under the Settlement Agreement. As set forth above, absent continued payment under the Settlement Agreement, MFCU and the State may seek to recoup or otherwise offset the outstanding amount due. Any such efforts on the part of the State and MFCU would significantly impede the progress of the Chapter 11 Cases and potentially jeopardize the Debtors' reorganization process. Accordingly, continued payment under the Settlement Agreement is in the best interests of the Debtors' estates, and all parties in interest.

RELIEF REQUESTED

18. By this Motion, SSMC seeks authority pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, and the “doctrine of necessity,” where applicable, to honor and continue performance under the terms of the Settlement Agreement and to pay timely the continuing obligations owed thereunder in the ordinary course of business. It is crucial to the preservation of the estate and the ongoing operations of the Debtors that SSMC continue to receive Medicaid reimbursement for patient services on an uninterrupted basis. These payments constitute a significant portion of the Debtors’ aggregate revenue and any interruption would result in further constraint on the Debtors’ liquidity. Continuity of the Settlement Agreement, with the consent of the State and MFCU, would avoid a potential holdback by MFCU that could otherwise be asserted during the initial stages of these Chapter 11 Cases.

BASIS FOR RELIEF

19. Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provisions of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. 11 U.S.C. § 105(a).

20. Pursuant to section 105(a) of the Bankruptcy Code, orders are appropriate where they are essential to the debtor’s reorganization efforts and do not pose a burden on the debtor’s creditors. Accordingly, Courts frequently apply section 105(a) to authorize relief in chapter 11 cases, similar to that sought herein, where the debtor seeks authority to satisfy certain prepetition obligations. A bankruptcy court may use its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); see Michigan Bureau of

Workers' Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 286 (S.D.N.Y. 1987) (affirming a bankruptcy court order authorizing the debtor to pay pre-bankruptcy wages, salaries, employee benefits, reimbursements); In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (reasoning that because debtor in possession has fiduciary duties it must meet, it is logical that the bankruptcy court may "authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate" under section 105(a)).

21. The Court may also grant the relief requested herein pursuant to section 363 of the Bankruptcy Code, which provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In order to do so, "the debtor must articulate some business justification, other than the mere appeasement of major creditors." In re Ionosphere Clubs, Inc., 98 B.R. at 175; see Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003).

22. Courts in this district also rely on the "necessity of payment" doctrine, first enunciated by the Supreme Court in Miltenberger v. Logansport C. & S.W. Ry. Co., 106 U.S. 286 (1882), by which courts may authorize a debtor to make postpetition payments with respect to prepetition claims where such payments are necessary for the preservation of the estate. See, e.g., (In re Chateaugay Corp.), 80 B.R. at 285-87 (finding that a court's equitable powers include authorizing a debtor to pay prepetition debts); In re Ionosphere Clubs, Inc., 98 B.R. at 176 ("The 'necessity of payment' doctrine . . . 'permits immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid.'").

23. Although the obligations related to the Settlement Agreement arose prior to the Petition Date, the continued payment of the amounts due thereunder are designed to ensure continuity of operations and preservation of the sale process. The funds being paid under the Settlement Agreement relate to reimbursement of prepetition Medicaid overpayments. To the extent continued payments are not made to MFCU, it is anticipated that MFCU would attempt to recoup the remaining balance through immediate and sizeable take-backs under section 553 and 506 of the Bankruptcy Code. As indicated above, any disruption in the Debtors' revenue stream as a result of such recoupment and/or offset efforts on the part of MFCU would severely impact the Debtors' liquidity and prospects and could potentially jeopardize the proposed sale of the Debtors' assets to MMC.

24. The monthly amount payable under the Settlement Agreement is \$67,600.40 and minimal in comparison to the potential litigation costs and the sizeable sums the Debtors could be deprived of if MFCU attempted to assert rights of recoupment and/or offset. MFCU has agreed to abide by the Settlement Agreement and forbear for any additional takings so long as the required monthly payments are made.

25. Accordingly, SSMC submits that the decision to honor and continue to perform under the Settlement Agreement contemplated by this Motion is the product of SSMC's sound business judgment. In light of the potential harm to the Debtors' estate and creditors in the event that MFCU were to freeze payments during the Chapter 11 Cases, the Debtors believe that they will maximize the value of their estates for the benefit of creditors and patients by honoring all amounts due under the Settlement Agreement.

26. For the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interests of all parties in interest.

RESERVATION OF RIGHTS

27. Notwithstanding anything in this Motion or the Order to the contrary, the payment of any claims pursuant to the Order (if entered by the Court) and other honoring of the obligations covered by this Motion shall not make such obligations administrative expenses of the estates entitled to priority status under sections 503 and 507 of the Bankruptcy Code.

28. The Debtors do not to seek to assume any executory contracts or obligations at this time and, therefore, nothing contained in this Motion should be deemed to be an assumption or adoption of any policy, procedure or executory contract that may be described or referenced herein.

29. Additionally, by seeking to comply with the terms of the Settlement Agreement, the Debtors do not concede that the State or MFCU possesses a valid and enforceable right of set-off or recoupment of the prepetition overpayments against the Debtors.

REQUEST FOR IMMEDIATE RELIEF AND WAIVER OF STAY

30. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." As set forth above, the immediate payment of the amounts contemplated by this Motion are essential to prevent immediate and potentially irreparable damage to the Debtors' services and patient care generally, and to maximize the value of the Debtors' assets available to stakeholders. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14 day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

NOTICE

31. 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.

NO PRIOR REQUEST

32. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE the Debtors respectfully request that the Court enter an order substantially similar to the proposed order, attached hereto as Exhibit B, granting the relief requested herein, and granting the Debtors such other and further relief as is just and proper.

Dated: June 14, 2013
Great Neck, New York

GARFUNKEL WILD, P.C.

By: 

Bursten S. Weston
Afsheen A. Shah
111 Great Neck Road
Great Neck, NY 11021
Telephone: (516) 393-2200
Facsimile: (516) 466-5964

*Proposed Counsel for the Debtors
and Debtors in Possession*

GARFUNKEL WILD, P.C.
111 Great Neck Road
Great Neck, New York 11021
Telephone: (516) 393-2588
Facsimile: (516) 466-5964
Burton S. Weston
Afsheen A. Shah

Hearing Date: August 2, 2013 at 10:00 a.m.
Objection Deadline: July 26, 2013 at 4:00 p.m.

*Proposed Counsel for the Debtor
and Debtor-in-Possession*

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

-----X
In re:

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.

Debtors.

Chapter 11
Case No. 13-22840 (RDD)

(Joint Administration)

-----X

**NOTICE OF HEARING ON MOTION FOR ENTRY OF AN ORDER PURSUANT TO
SECTIONS 105(A) AND 363 (B) AUTHORIZING THE DEBTORS TO HONOR AND
CONTINUE TO PERFORM UNDER THEIR PREPETITION AGREEMENT WITH
THE STATE OF NEW YORK AND THE MEDICAID FRAUD CONTROL UNIT**

PLEASE TAKE NOTICE that upon the annexed Motion of Sound Shore Medical Center of Westchester ("SSMC" or "Debtor") and certain of its affiliates, as Chapter 11 debtors and debtors in possession herein (each a "Debtor" and collectively the "Debtors")¹, dated June 14, 2013, a hearing will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge for the Southern District of New York, at the United States Bankruptcy Court, Southern District of New York, 300 Quarropas Street, White Plains, New York 10601, on the 2nd day of August, 2013 at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, to consider the entry of an Order, pursuant to Bankruptcy Code Sections 105(a) and 331

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtors' 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 Schaeffer 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.

Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, and granting such other and further relief as is just and proper.

PLEASE TAKE FURTHER NOTICE, that objections to the relief requested shall be made in writing, shall state with particularity the grounds for the objection, and shall be and filed with the Bankruptcy Court, in electronic format, by utilizing the Court's electronic case filing system at www.nysb.uscourts.gov, or if the same cannot be filed electronically, by manually filing same with the Clerk of the Court together with a cd-rom containing same in Word, Wordperfect or pdf format, 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 upon (i) Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, New York 11021, attention Burton S. Weston, Esq., and Afsheen A. Shah, Esq., counsel for the Debtors; (ii) Alston & Bird, LLP, 90 Park Avenue, New York, New York 10016, Attn: Martin G. Bunin, Esq., counsel to the official committee of unsecured creditors; and (iii) Office of the United States Trustee, 33 Whitehall Street, New York, New York 10004, Attn: Susan Golden, Esq., so as to be received no later than July 26, 2013 at 4:00 p.m.

PLEASE TAKE FURTHER NOTICE that the hearing on the Motion may be
adjourned without further notice except as announced in open court on the Hearing Date, or at
any adjourned hearing.

Dated: Great Neck, New York
June 17, 2013

Respectfully submitted,

By: 

Burton S. Weston

Afsheen A. Shah

GARFUNKEL WILD, P.C.

111 Great Neck Road

Great Neck, New York 11021

Telephone: (516) 393-2200

Facsimile: (516) 466-5964

*Proposed Attorneys For Debtor
and Debtor in Possession*

EXHIBIT A

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

AGREEMENT dated the ~~15~~ day of April, 2012, by and between the STATE OF NEW YORK (hereinafter "STATE"), by the Office of the Attorney General, Medicaid Fraud Control Unit (hereinafter "MFCU"), and SOUND SHORE MEDICAL CENTER OF WESTCHESTER (hereinafter "SSMC") (collectively referred to as the "Parties"),

WHEREAS, SSMC, a hospital with its main campus located at 16 Guion Place, New Rochelle, New York, was enrolled in the Medicaid program, under provider number 00274126, as a provider, among other things, of ambulatory services during the period, during the period October 3, 2004 through January 31, 2011; and

WHEREAS, SSMC is required, pursuant to New York Social Services Law 367-a 9(a), to submit any claims to the Medicaid program for drugs administered to Medicaid recipients at their respective acquisition cost; and

WHEREAS, the MFCU conducted an investigation of claims submitted by SSMC to the Medicaid program for drugs administered to Medicaid recipients and conducted an audit of such claims for dates of service from October 3, 2004 through January 31, 2011 (hereinafter the "Audit Period"); and

WHEREAS, the STATE has certain civil and administrative causes of action against SSMC for the following conduct (hereinafter the "Covered Conduct"):

During the Audit Period, SSMC in violation of New York State Finance Law § 189, *et seq.*, and New York Social Services Law § 367-a 9(a) submitted claims to Medicaid and secured payment thereon for drugs

administered to Medicaid recipients at amounts in excess of SSMC's actual cost of said drugs, and the New York State Medicaid program was thereby overbilled.

WHEREAS, SSMC cooperated fully with the MFCU throughout the audit process;

WHEREAS, SSMC and its affiliated entities, Howe Avenue Nursing Home, Inc. (the "nursing home") and New Rochelle Sound Shore Housing, LLC (the "housing company"), are currently seeking to refinance the existing mortgages on their on-campus real estate, and specifically mortgages on SSMC itself, the nursing home, and the housing company's apartments (a "Refinancing Event");

WHEREAS, SSMC and the STATE have agreed to resolve the issues raised by the STATE'S investigation;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, SSMC and the STATE agree as follows:

1. The STATE represents that it has the authority to enter into this settlement and to effectuate a final resolution with regard to the alleged Medicaid overpayments and civil claims on behalf of the State of New York. It is understood that SSMC is entering into this settlement in reliance on this representation.
2. SSMC agrees to pay the STATE the sum of TWO MILLION TWO HUNDRED FORTY-ONE THOUSAND SEVEN HUNDRED SIXTY DOLLARS AND THIRTY-FIVE CENTS (\$2,241,760.35) in principal and pre-settlement interest pursuant to the following schedule (hereinafter, "SCHEDULED PAYMENTS");

- (a) An initial SCHEDULED PAYMENT of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), to be made upon the execution of this agreement on or before April 13, 2012; and,
- (b) The balance of TWO MILLION ONE HUNDRED FORTY-ONE THOUSAND SEVEN HUNDRED SIXTY DOLLARS AND THIRTY-FIVE CENTS (\$2,141,760.35), and interest calculated thereon at the rate of Nine Percent (9%) per annum, for a total of TWO MILLION FOUR HUNDRED FORTY-THREE THOUSAND SIX HUNDRED FOURTEEN DOLLARS AND FIFTY-THREE CENTS (\$2,443,614.53) to be paid pursuant to a schedule of the principal and interest payments due hereunder ("Scheduled Payments") as set forth on Exhibit "A";
- (c) The first of the SCHEDULED PAYMENTS shall be made on or before May 1, 2012. All subsequent SCHEDULED PAYMENTS shall be made on or before the 1st day of each succeeding month.
- (d) Upon the occurrence of a Refinancing Event, all Scheduled Payments shall be immediately due and payable, and SSMC shall pay the STATE, at the closing of the Refinancing Event, the remaining principal then due, together with any interest accrued thereon, in full satisfaction of this agreement. SSMC further states and agrees that at such closing, other than the holders of the mortgages referred to in the recitals to this Agreement, no other creditor will be paid ahead of the STATE. This term is a material term of this Agreement.

(e) Notwithstanding paragraph 2(b) and 2(d) above, SSMC may at anytime, and without penalty, pay the remaining principal then due, together with any interest accrued thereon, in full satisfaction of this agreement.

3. All SCHEDULED PAYMENTS due hereunder shall be by check payable to the "NYS Attorney General Medicaid Fraud Control Restitution Fund" delivered to the Office of the Attorney General, MFCU, Special Projects Unit, One Blue Hill Plaza, 6th Floor, Pearl River, New York 10965-1747, or by electronic funds transfer pursuant to written instructions to be provided by the Attorney General.
4. In the event of the commencement of a bankruptcy proceeding by or against SSMC, or the withdrawal or disqualification of SSMC from participation in the Medicaid program (the "Acceleration Events"), SSMC shall give notice of such Acceleration Event to MFCU by overnight courier service by the earlier of (a) any determination by SSMC to participate in such Acceleration Event or upon receipt of notice from any third-party that such Acceleration Event may occur; or (b) no later than twenty-four (24) hours after the Acceleration Event if SSMC lacked advance notice of such Acceleration Event. If such an Acceleration Event occurs, the entire unpaid balance, including interest, due to the STATE under the terms of this Agreement shall become immediately due and payable.
5. In return for MFCU's agreement to accept installment payments for the amounts due under this Agreement, SSMC shall provide the STATE, upon execution of this Agreement, a signed confession of judgment in the form annexed as Exhibit "B" hereto in the amount of TWO MILLION ONE HUNDRED FORTY-ONE THOUSAND SEVEN HUNDRED SIXTY DOLLARS AND THIRTY-FIVE CENTS

(\$2,141,760.35) plus interest calculated as set forth in "2b" above. If SSMC fails to make a payment by the first day of the month, then the STATE shall provide SSMC five (5) business days written notice to cure the default. If payment is not made by the expiration of said five (5) business days, the STATE may file the Confession of Judgment without further notice to SSMC. Upon the occurrence of any other circumstance which would give the STATE good cause to believe that SSMC will default upon its obligation, including but not limited to the occurrence of an Acceleration Event, the STATE may file said Confession of Judgment without notice to SSMC. In such event, the STATE may execute upon the Judgment without notice to SSMC, in the full amount of the unpaid balance due under this Agreement.

6. In consideration of the foregoing payment by SSMC, the payments made hereunder shall be received in full satisfaction of the obligations of SSMC for the Covered Conduct during the Audit Period, and the STATE shall not seek to impose any other financial obligation due to the Covered Conduct and the STATE further agrees to release and discharge SSMC and its respective employees, agents, officers and directors, from, any and all claims for repayment of Medicaid funds, including interest and monetary penalties thereon, by the STATE against SSMC which arose or could have arisen as a result of the Covered Conduct.
7. The making of this Agreement is not intended, and shall not be construed as an admission that SSMC knowingly or intentionally overbilled the Medicaid program or violated any law, ordinance or regulation, but SSMC admits that SSMC received Medicaid overpayments due to the Covered Conduct.

8. This Agreement is intended to be for the benefit of the Parties only, and, by this instrument, the Parties do not release any claims against any other person or entity.
9. SSMC will not submit additional or adjusted claims for the Covered Conduct.
10. SSMC agrees not to further contest MFCU's determinations concerning the Covered Conduct and hereby waives all administrative and procedural rights, if any, with respect to the MFCU investigation.
11. Notwithstanding any terms of the Agreement, the relief provided for herein relates solely to Medicaid compensation paid to or claimed by SSMC pursuant to any statutes, rules, regulations and official directives governing Medicaid payment with respect to the Covered Conduct and not to any other relationship between SSMC and STATE.
12. Nothing in this Agreement shall relieve SSMC from obligations imposed by any applicable state or federal law or regulation or other applicable law, except as specifically set forth herein.
13. SSMC agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects SSMC's (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.
14. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to choice of law or conflict of laws principles.

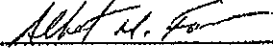
- The Parties consent to the jurisdiction of the Supreme Court of the State of New York, New York County, in any action to enforce or interpret this Agreement.
15. Any failure by the STATE to insist upon the strict performance by SSMC of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the STATE, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement by SSMC.
 16. If this Agreement is cancelled or voided for any reason, all payments made by SSMC pursuant to this Agreement, and any interest and income accrued thereon, shall be retained by the STATE and credited against any potential cause of action concerning the Covered Conduct. The STATE shall retain full rights to assert any and all causes of action against SSMC, and SSMC shall retain any and all defenses thereto.
 17. This Agreement is binding upon all parties and upon the assigns, transferees, purchasers and any successors-in-interest of SSMC.
 18. The Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.
 19. SSMC acknowledges that it has entered into this Agreement freely and voluntarily and upon due deliberation, with the advice of counsel, and without coercion or duress.
 20. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.
 21. This Agreement constitutes the complete and full agreement reached by the STATE and SSMC, and may not be changed in any respect, except by a writing duly executed by the parties or their authorized representatives.

WHEREFORE, the Parties have read the foregoing Agreement and accept and agree to the provisions contained therein and hereby have caused this Agreement to be signed as of the date set forth above.

AGREED TO:

SOUND SHORE MEDICAL CENTER
OF WESTCHESTER

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT

By: 
Albert M. Farina
Chief Financial Officer
Sound Shore Medical Center of Westchester
16 Guion Place
New Rochelle, New York 10802


By: 
Laura J. Meehan
Special Assistant Attorney General
Office of the Attorney General
Medicaid Fraud Control Unit
One Blue Hill Plaza, 6th Floor
Pearl River, New York 10965

EXHIBIT A					
TO THE SOUND SHORE MC WESTCHESTER SETTLEMENT AGREEMENT					
Total Restitution Amount		\$2,241,760.35			
Less: Downpayment		(\$100,000.00)			
Paydown Principal		\$2,141,760.35			
Annual Interest		9%			
Periods per Year		12			
Period Interest		0.75%			
Number of Years		3			
Number of Periods		36			
Period Payment Amount		\$67,600.40			
Payment Number	Payment Date	Period Payment	Period Interest	Period Principal	Remaining Balance
1	5/1/2012	\$67,600.40	\$0.00	\$67,600.40	\$2,074,159.95
2	6/1/2012	\$67,600.40	\$15,556.20	\$52,044.20	\$2,022,115.75
3	7/1/2012	\$67,600.40	\$15,165.87	\$52,434.53	\$1,969,681.22
4	8/1/2012	\$67,600.40	\$14,772.61	\$52,827.79	\$1,916,853.43
5	9/1/2012	\$67,600.40	\$14,376.40	\$53,224.00	\$1,863,629.43
6	10/1/2012	\$67,600.40	\$13,977.22	\$53,623.18	\$1,810,006.25
7	11/1/2012	\$67,600.40	\$13,575.05	\$54,025.35	\$1,755,980.90
8	12/1/2012	\$67,600.40	\$13,169.86	\$54,430.54	\$1,701,550.35
9	1/1/2013	\$67,600.40	\$12,761.63	\$54,838.77	\$1,646,711.58
10	2/1/2013	\$67,600.40	\$12,350.34	\$55,250.06	\$1,591,461.52
11	3/1/2013	\$67,600.40	\$11,935.96	\$55,664.44	\$1,535,797.08
12	4/1/2013	\$67,600.40	\$11,518.48	\$56,081.92	\$1,479,715.16
13	5/1/2013	\$67,600.40	\$11,097.86	\$56,502.54	\$1,423,212.62
14	6/1/2013	\$67,600.40	\$10,674.09	\$56,926.31	\$1,366,286.31
15	7/1/2013	\$67,600.40	\$10,247.15	\$57,353.25	\$1,308,933.06
16	8/1/2013	\$67,600.40	\$9,817.00	\$57,783.40	\$1,251,149.66
17	9/1/2013	\$67,600.40	\$9,383.62	\$58,216.78	\$1,192,932.88
18	10/1/2013	\$67,600.40	\$8,947.00	\$58,653.40	\$1,134,279.48
19	11/1/2013	\$67,600.40	\$8,507.10	\$59,093.30	\$1,075,186.17
20	12/1/2013	\$67,600.40	\$8,063.90	\$59,536.50	\$1,015,649.67
21	1/1/2014	\$67,600.40	\$7,617.37	\$59,983.03	\$955,666.64
22	2/1/2014	\$67,600.40	\$7,167.50	\$60,432.90	\$895,233.74
23	3/1/2014	\$67,600.40	\$6,714.25	\$60,886.15	\$834,347.60
24	4/1/2014	\$67,600.40	\$6,257.61	\$61,342.79	\$773,004.80
25	5/1/2014	\$67,600.40	\$5,797.54	\$61,802.86	\$711,201.94
26	6/1/2014	\$67,600.40	\$5,334.01	\$62,266.39	\$648,935.55
27	7/1/2014	\$67,600.40	\$4,867.02	\$62,733.38	\$586,202.17
28	8/1/2014	\$67,600.40	\$4,396.52	\$63,203.88	\$522,998.29
29	9/1/2014	\$67,600.40	\$3,922.49	\$63,677.91	\$459,320.37
30	10/1/2014	\$67,600.40	\$3,444.90	\$64,155.50	\$395,164.88
31	11/1/2014	\$67,600.40	\$2,963.74	\$64,636.66	\$330,528.21
32	12/1/2014	\$67,600.40	\$2,478.96	\$65,121.44	\$265,406.77
33	1/1/2015	\$67,600.40	\$1,990.55	\$65,609.85	\$199,796.93
34	2/1/2015	\$67,600.40	\$1,498.48	\$66,101.92	\$133,695.00
35	3/1/2015	\$67,600.40	\$1,002.71	\$66,597.69	\$67,097.32
36	4/1/2015	\$67,600.55	\$503.23	\$67,097.32	(\$0.00)
Totals		\$2,433,614.55	\$291,854.20	\$2,141,760.35	

EXHIBIT B

PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In re:

Chapter 11

SOUND SHORE MEDICAL CENTER
OF WESTCHESTER, et al.

Case No. 13-22840(RDD)

Debtors.

-----x

**ORDER AUTHORIZING THE HONORING AND CONTINUATION OF
PERFORMANCE UNDER PREPETITION AGREEMENTS WITH
THE STATE OF NEW YORK AND MEDICAID FRAUD CONTROL UNIT**

Upon the Motion (the "**Motion**") of Sound Shore Medical Center of Westchester ("**SSMC**") and certain of its affiliates, as Chapter 11 debtors and debtors in possession (each a "**Debtor**" and collectively, the "**Debtors**") in the above-referenced Chapter 11 cases (the "**Chapter 11 Cases**") for entry of an Order authorizing, but not directing, SSMC to honor and to continue to perform under its settlement agreement with the State of New York (the "**State**") and the Medicaid Fraud Control Unit ("**MFCU**"), all as more fully set forth in the Motion; and the Court having subject matter jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided as set forth in the Motion; and no other or further notice needing to be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion, and having heard the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion, and at the Hearing, establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. Pursuant to sections 105 and 363 of the Bankruptcy Code, SSMC is authorized, but not directed, to honor and continue to perform under the Settlement Agreement as described more specifically in the Motion.
3. Nothing herein shall be deemed a finding as to whether MFCU's offset is in the nature of recoupment or setoff.
4. The Debtors are authorized, but not directed, to take all actions necessary to implement the relief granted in this Order.
5. Notwithstanding anything in this Order to the contrary, the payment of any claims pursuant to this Order and other honoring of the Settlement Agreement shall not make such obligations administrative expenses of the estates entitled to priority status under sections 503 and 507 of the Bankruptcy Code.
6. Nothing contained in this Order shall be deemed to be an assumption or adoption of any policy, procedure or executory contract that may be described or referenced herein or in the Motion.
7. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry pursuant to Bankruptcy Rule 6004(h).
8. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.
9. The Bankruptcy Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: White Plains, New York
June __, 2013

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE