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Memorandum

TO:	Board of Trustees Industry and Local 338 Pension Fund	FILE NO.:	11879.2000
CC:	Anne-Marie Sims Alicia Cochran		
FROM:	Erica E. Frank, Esq.		
DATE:	October 31, 2014		
RE:	Sound Shore Medical Center Bankruptcy		

This memorandum provides an update on the bankruptcy proceedings for Sound Shore Medical Center of Westchester ("Sound Shore") and its withdrawal from the Industry and Local 338 Pension Fund (the "Fund") as a result of the sale of Sound Shore's assets during the course of those proceedings.

As previously reported, Sound Shore filed a Chapter 11 bankruptcy petition on May 29, 2013. Concurrently with its petition, Sound Shore requested that the Court set a hearing to approve the sale and auction of substantially all of its assets. Prior to entering into Chapter 11 bankruptcy, Sound Shore had negotiated a purchase agreement with various holding companies for Montefiore Medical Center ("MMC" or the "Buyer") for the sale of Sound Shore's assets (the "Purchase Agreement"). Sound Shore asked the Court to approve the sale of its assets to MMC, or to any other successful, higher bidder at an auction to be determined by the Court. The money received from the sale would be used to pay Sound Shore's creditors in the bankruptcy proceeding.

On August 8, 2013, the Court entered an order (the "Sale Order") approving the sale of substantially all of Sound Shore's assets pursuant to the Purchase Agreement, subject to the continued rights of certain creditors to object to the terms of the sale. On or about November 6, 2013, following the resolution of any objections, the closing of the Sale occurred and the Sale became effective (the "Closing Date"). As of the Closing Date, Sound Shore permanently ceased to have an obligation to contribute to the Fund and incurred a complete withdrawal from the Fund pursuant to Section 4203(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §1383(a).

On September 14, 2013, prior to the closing of the Sale, the Fund timely filed a proof of claim for any withdrawal liability Sound Shore would incur upon the Closing Date, in the estimated amount of $2,253,186.[1] As part of its proof of claim, the

[1] The amount of Sound Shore's withdrawal liability was initially estimated because, at that time, Segal had yet to finish its actuarial valuation for the plan year ending June 30, 2013.

Fund noted that a portion of Sound Shore's withdrawal liability should be treated as an administrative expense (although the Court had yet to set a date for filing of administrative claims). As explained in our prior memorandum dated August 6, 2013, although withdrawal liability is typically considered a general, unsecured claim during bankruptcy, a small portion of Sound Shore's withdrawal liability will have accrued "post-petition," *i.e.*, after Sound Shore filed for bankruptcy, and is therefore entitled to priority as an administrative expense in the bankruptcy proceeding.[2] On January 28, 2014, the Fund timely filed an Administrative Claim for the amount of Sound Shore's withdrawal liability that had accrued after Sound Shore filed for bankruptcy and prior to the end of the then most recently ended plan year (*i.e.*, May 29, 2013 to June 30, 2013). At the time, Segal estimated the amount of Sound Shore's withdrawal liability that would be entitled to administrative priority as approximately $43,169.00.

Counsel for the Creditor's Committee in the Sound Shore bankruptcy subsequently requested additional information regarding the Fund's proof of claim for withdrawal liability. On September 9, 2014, we provided the requested information as well as updated, finalized numbers for Sound Shore's withdrawal liability since Segal had completed its actuarial valuation and review. Based on the revised calculation, the Fund's claim for withdrawal liability was increased to $2,411,832, and the portion entitled to administrative priority was increased to $46,208.

By letter dated October 17, 2014, counsel for the Creditor's Committee raised objections regarding the interest rates used by Segal in calculating Sound Shore's withdrawal liability and the classification of a portion of the withdrawal liability as a post-petition administrative expense, and further requested application of ERISA Section 4225(b), 29 U.S.C. § 1405(b), to reduce Sound Shore's withdrawal liability by 50%. Section 4225(b) provides a limitation on withdrawal liability for any employer that is insolvent and undergoing liquidation or dissolution. Pursuant to Section 4225(b), an insolvent employer like Sound Shore is only liable for approximately 50% of its withdrawal liability and the remaining 50% may only be collected if any additional funds remain after the employer has paid other creditors.

We have drafted the attached letter responding to the objections and issues raised by counsel for Sound Shore's Creditor's Committee and will be sending it to counsel for Creditor's Committee next week. Our letter rejects Sound Shore's objections to the interest rate and administrative expense issues but agrees, in accordance with ERISA Section 4225(b) and established case law, to subordinate 50% of the Fund's pre-petition portion of its claim (*i.e.*, $1,182,812) to all other general, unsecured creditor claims. Unfortunately, the case law is fairly clear Section 4225(b) applies to Sound Shore's withdrawal liability and it is likely that the Fund would lose

[2] In a bankruptcy proceeding, general unsecured creditors only receive money after all secured and/or priority creditors have been paid. However, administrative claims are entitled to first priority ahead of all other general unsecured claims (but not secured claims) and, therefore, they are paid in full before all other unsecured claims to the extent there are available, unencumbered funds in the debtor's bankruptcy estate.

this argument if it was litigated. However, we believe we have strong arguments supporting both the Segal Blend interest rate that was used in the calculation and the classification of a portion of the claim as an administrative expense. Because the Fund will be rejecting two of the Creditor's Committee's objections, it is possible that the Creditor's Committee will file formal objections to the Fund's claim for withdrawal liability with the Bankruptcy Court. If this occurs, the Fund will be required to respond and will likely have to brief the issue for the Court; the Court will then make a determination whether to allow the claim and for how much.

Separately, in September and October 2014, Sound Shore circulated a proposed plan for liquidating the debtor estate and using the proceeds from the Sale to satisfy creditors' claims (the "Plan"). The Plan follows the Bankruptcy Code in establishing certain categories and classes of claims. In general, administrative claims, claims for professional fees, priority tax claims and secured claims will all be paid in full, to the extent that they are accepted and allowed by the Court. After that, general unsecured claims will be paid on a pro-rata basis. At this time, the Creditor's Committee estimates that holders of general unsecured claims will receive approximately 3-6% of the amount of their claim. Please note that this percentage range is based on estimates of the amount of claims that will ultimately be allowed, and could decrease significantly depending on the resolution of objections to claims and other mitigating factors. The Plan must still be approved by the Court but the approval process is underway and we expect the Court to confirm the Plan. Once the Plan is confirmed, a Plan Administrator will be appointed to effectuate the Plan and make distributions to creditors in accordance with the Plan. We currently do not know when that will begin or how long it may take for the Fund to receive any distributions with respect to its claim for withdrawal liability.

Please contact us with any questions.