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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
SAINT VINCENTS CATHOLIC MEDICAL CENTERS OF NEW YORK, et al.,	:	Case No. 05-14945 (CGM)
Debtors.	:	Jointly Administered

OBJECTION OF POST-EFFECTIVE DATE SAINT VINCENTS CATHOLIC MEDICAL CENTERS AND MEDMAL TRUST MONITOR TO MOTION OF CREDITOR PAOLA ROJAS TO EXTEND THE TIME TO FILE PROOF OF CLAIM AGAINST DEBTORS

TO THE HONORABLE CECELIA G. MORRIS,
CHIEF UNITED STATES BANKRUPTCY JUDGE:

The Post-Effective Date Saint Vincents Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers ("SVCMC")[1] and its affiliated debtors and Michael E. Katzenstein, in his capacity as the MedMal Trust Monitor of SVCMC and its affiliated debtors, hereby submit this objection (the "Objection") to the Motion of Creditor Paola Rojas ("Movant") to File Proof of Claim After Claims Bar Date (the "Motion") [Docket No. 4344], and respectfully represent as follows:

[1] The Post-Effective Date Saint Vincents Catholic Medical Centers is the entity with responsibility to administer the estates in these Chapter 11 Cases pursuant to the terms of the SV2 Plan (as such term is defined herein).

PRELIMINARY STATEMENT[2]

Movant seeks permission from the Court to late-file a medical malpractice claim more than eleven years after the applicable Bar Date, and more than ten years after SVCMC confirmed its first chapter 11 plan of reorganization. Although the Bar Date was published in the national edition of *The New York Times* and local newspapers in four of the New York City boroughs, Movant asserts she was unaware of the Debtors' bankruptcy cases until she commenced a state court action with respect to her claim over three years after the Bar Date. Movant states that she should be permitted to file an untimely claim at this late juncture because she did not receive actual notice of the Bar Date and she was unaware until recently that the Bankruptcy Rules allow a claimant to seek bankruptcy court approval to late-file a claim after a bar date. Movant's argument fails for two critical reasons.

First, Movant was an unknown creditor of the Debtors at the time notice of the Bar Date was issued and therefore was only entitled to constructive notice of the Bar Date. In accordance with the Bar Date Order, the Debtors provided appropriate and Court-approved constructive notice of the Bar Date to all potential medical malpractice claimants via publication in national and local newspapers.

Second, Movant's ignorance of the law does not satisfy a finding of "excusable neglect" in the Second Circuit for two reasons: (i) admitted attorney ignorance of the Bar Date and (ii) risk of opening the floodgates to a panoply of late-filed claims. Given that the MedMal Trust Monitor is close to completing its administration of the MedMal Trust, permitting the filing of late claims could prejudice holders of timely filed allowed medical malpractice claims by inflating the number and amount of claims asserted against the trusts as they are near wind-

[2] Capitalized terms used but not defined in this Preliminary Statement shall have the meanings ascribed to them in the Objection.

down and closure. In addition, general unsecured creditors would suffer further delay in administration of the Second Bankruptcy Case. Accordingly, SVCMC and the MedMal Trust Monitor respectfully request that the Court deny the Motion.

BACKGROUND

A. The Debtors' Cases

1. On July 5, 2005, SVCMC, CMC Physician Services, P.C., CMC Radiological Services P.C., CMC Cardiology Services P.C., Medical Service of St. Vincent's Hospital and Medical Center, P.C. and Surgical Service of St. Vincent's, P.C. (collectively, the "Debtors" and, as reorganized or liquidated, as applicable, the "Post-Effective Date Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Court").

2. On May 17, 2006, the Office of the United States Trustee appointed an official committee of tort claimants (the "Tort Committee") consisting of: (i) Ms. Elizabeth Evans, Co-Guardians ad Litem for Michelle McCord; (ii) Ms. Barbara Vaccaro; (iii) Resham Singh, by his attorney-in-fact, Parminder Kaur; (iv) Mr. Alberto Cruz; and (v) Ms. Edeline Dodard. That same day, the Tort Committee selected Cooley LLP ("Cooley") as its counsel in these chapter 11 cases (the "Cases").

B. The Bar Date Order

3. On January 25, 2006, the Court entered an order (the "Bar Date Order") establishing March 30, 2006 at 4:00 p.m. (ET) as the deadline by which proofs of claim were required to be filed by each person or entity asserting a pre-petition claim against one or more of the Debtors (the "Bar Date") [Docket No. 1037]. In accordance with the Bar Date Order, written notice of the Bar Date (the "Bar Date Notice") [Docket No. 1049] was mailed to, among others,

all creditors listed on the Debtors' schedules. The Bar Date Notice unequivocally stated that "*ALL* POTENTIAL CREDITORS MUST FILE A PROOF OF CLAIM" by the Bar Date.

4. The Bar Date Order further provides, in relevant part, that:

> any holder of a claim against the Debtors who is required, but fails to file a proof of such claim in accordance with this Order on or before the Bar Date shall be forever barred, estopped and enjoined from asserting such claim against the Debtors (*or filing a Proof of Claim with respect thereto*), and the Debtors and their property shall be forever discharged from any and all indebtedness or liability with respect to such claim, and such holder shall not be permitted to . . . participate in any distribution in [the Bankruptcy Cases] on account of such claim . . . .

See Bar Date Order at 6 (emphasis added).

5. Because the Debtors could not have known all potential creditors and did not have up-to-date contact information for all potential creditors, including potential medical malpractice claimants, the Debtors requested authority to provide notice of the Bar Date to potential and unknown creditors by publication. In the Bar Date Order, the Court authorized, pursuant to Bankruptcy Rule 2002(1), supplemental notice of the Bar Date by publication in *The New York Times* (National Edition) and in the largest local papers of general circulation in Brooklyn, Queens, Staten Island, the Bronx and Westchester. The Debtors proposed this criteria for selecting the papers for publication of the Bar Date Notice to enhance the likelihood that potential claimants would receive constructive notice of the Bar Date and claims would be filed timely. In accordance with the foregoing, the Debtors published the Court-approved notice of the Bar Date in *The New York Times*, *The Daily News* and the *Staten Island Advance* on March 9, 2006 [Docket Nos. 1270, 1271 and 1279] and in *The Journal News* on March 10, 2006 [Docket No. 1280].

C. The Debtors' Plan of Reorganization

6. On June 5, 2007, the Debtors filed their first amended chapter 11 plan (the "Plan") [Docket No. 3207], which generally provided for the reorganization of SVCMC. The Court entered an order approving the Plan on July 27, 2007 (the "Confirmation Order") [Docket No. 3490] and the Plan went effective on July 31, 2007 (the "Effective Date").

7. The Confirmation Order provided that "all Persons or entities . . . are permanently enjoined, on and after the Effective Date, . . . from . . . commencing, continuing or asserting in any manner any action or other proceeding of any kind with respect to any Claims and causes of action which are extinguished or released pursuant to the [Plan] . . . ." See Confirmation Order at ¶ 39 (emphasis in original). Section 7.6 of the Plan and the Confirmation Order provided that any Disputed Claim for which a proof of claim was not timely filed as of the Effective Date would be deemed disallowed. See id. at ¶ 11; see Plan at §7.6.

8. Among other things, the Plan (a) provided the Debtors' assets vested in the Post-Effective Date Debtors free and clear of claims as and to the extent provided in the Plan and (b) established separate trusts for three classes of medical malpractice claims (collectively, the "MedMal Trusts"). The MedMal Trusts were specifically established under the Plan and Confirmation Order for the purposes of, *inter alia*, holding trust assets and distributing such assets only to holders of timely-filed, allowed medical malpractice claims (collectively, the "MedMal Claims"). Since the Effective Date, holders of timely-filed MedMal Claims have been liquidating their claims in state court. Once such claims have been liquidated by final trial verdict or settlement, such claimants are permitted to seek satisfaction of those allowed claims from the proceeds of applicable insurance policies and/or the applicable MedMal Trust to the extent there are no insurance proceeds available.

9. Section 6.6(g) of the Plan provided for the appointment of the MedMal Trust Monitor to, among other things, monitor the assets of the MedMal Trusts, provide reports on creditor distributions made from those assets, and respond to creditor inquiries concerning such assets and distributions. Michael E. Katzenstein was appointed as the MedMal Trust Monitor for each of the MedMal Trusts pursuant to (i) the SVCMC MedMal-BQ Trust Agreement, (ii) the SVCMC MedMal-MW Trust Agreement, and (iii) the SVCMC MedMal-SI Trust Agreement (collectively, the "MedMal Trust Agreements"). Cooley, formerly counsel to the Tort Committee, was retained as counsel to the MedMal Trust Monitor under section 6.6(g)(ii) of the Plan and the MedMal Trust Agreements.

D. The Second Bankruptcy Cases

10. On April 14, 2010, the Debtors filed voluntary petitions for relief (the "Second Bankruptcy Case"), under chapter 11 of the Bankruptcy Code.

11. In the Second Bankruptcy Case and in connection with the Debtors' Second Amended Joint Chapter 11 Plan, dated June 21, 2012 [Docket No. 3060, App. 1] (the "SV2 Plan"), the Debtors entered into amendments to the MedMal Trust Agreements. Relevant provisions of the MedMal Trust Agreements remained in effect and were not materially modified. The MedMal Trust Monitor retained the sole and exclusive authority to reconcile and resolve MedMal Claims in accordance with the Plan.

E. The Relief Requested in the Motion

12. On September 8, 2017, over ten years after the Effective Date and over eleven years after the Bar Date, the Movant filed a motion seeking permission to late-file a proof of claim (the "POC") against the Debtors for compensatory damages related to injuries allegedly suffered by Movant on March 15, 1999 shortly after her birth. The incident purportedly occurred

at St. Mary's Hospital of Brooklyn ("St. Mary's"), which was one of the hospitals operated by the Debtors. See Motion, ¶ 5.

13. According to the Motion, Movant's mother, Micaela Lopez, retained Harry Organek, Esq. as counsel in June 2004—approximately five years after the alleged incident occurred and two years before the Bar Date. Id. at ¶ 7. In March of 2009, approximately ten years after the date of the alleged incident and five years after Movant's mother retained counsel, Movant commenced an action in the New York Supreme Court, Kings County (Index 6241/09), sounding in medical malpractice and negligence (the "State Court Action"). Id. at ¶¶ 4, 7. Movant's counsel states that he delayed commencement of the State Court Action until 2009 because "the full extent of the injuries sustained by the infant plaintiff were not then fully known and would not become fully known until further cognitive and psychological development occurred beyond infancy[.]" Id. at ¶ 7.

14. According to Movant's counsel, in April of 2009, he was "made aware by defendants' attorneys that St. Mary's Hospital of Brooklyn was in bankruptcy"[3] and "that on January 25, 2006, an Order of the Bankruptcy Court established . . . March 30, 2006 as the deadline to file proofs of claim" against the Debtors and their estates. Id. at ¶ 8.

15. On July 10, 2017, medical malpractice counsel for St. Mary's moved to dismiss the State Court Action on the ground that Movant never filed a proof of claim in these Cases (the "Motion to Dismiss"). According to Movant's counsel, at the time St. Mary's moved to dismiss the State Court Action, he "was informed and learned for the first time that a late proof of claim might be allowed after a bar date by making an application to the Bankruptcy Court[.]" Id. at ¶ 11.

[3] By late 2006, St. Mary's Hospital of Brooklyn discontinued services and closed.

16. On September 11, 2017, oral argument on the the Motion to Dismiss, was held in the Kings County Supreme Court. After oral argument, Judge Weston marked the Motion "Decision Reserved". As of February 6, 2018, the status of the Motion remains as "Decision Reserved".

17. Contemporaneously, Movant filed the instant Motion seeking to enlarge the time for filing a proof of claim against the Debtors or otherwise treat the POC as timely filed.

JURISDICTION

18. The Court has jurisdiction to consider this matter 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.

ARGUMENT

A. Movant Was an Unknown Creditor and Was Not Entitled to Actual Notice of the Bar Date

19. Movant contends that she should be permitted to late-file her POC because she did not receive actual notice of the Bar Date. Id. at ¶ 10. However, the law is well-settled that only "known creditors" are entitled to actual notice of the claims bar date in order to satisfy due process requirements under the Bankruptcy Code. Movant was not a known creditor of the Debtors at the time the Bar Date Notice was issued.

20. "Due process requires notice [of the claims bar date] that is reasonably calculated to reach all interested parties, reasonably conveys all the required information, and permits a reasonable time for a response." Chemetron Corp. v. Jones, 72 F.3d 341, 346 (3d Cir. 1995) (unknown claimants do not require actual notice) (citation omitted). For purposes of notice, bankruptcy law differentiates between "known" and "unknown" creditors. Id. Known creditors are entitled to actual notice of the applicable claims bar date. As for unknown creditors, notice

by publication is generally sufficient. Id.; see also DePippo v. Kmart Corp., 335 B.R. 290, 296–97 (S.D.N.Y. 2005) (publication notice sufficient to satisfy due process requirements); Grant v. U.S. Home Corp. (In re U.S.H. Corp.), 223 B.R. 654, 658 (Bankr. S.D.N.Y. 1998) (publication notice sufficient to satisfy due process rights and if plaintiffs were "unknown" creditors at the time of the bar date order, their claims were barred).

21. The Supreme Court has explained that a "known" creditor is one whose identity is either known or "reasonably ascertainable" by the debtor. Tulsa Prof'l Collection Servs., Inc. v. Pope, 485 U.S. 478, 490 (1988). "A creditor's identity is 'reasonably ascertainable' if that creditor can be identified through 'reasonably diligent efforts.'" U.S.H. Corp., 223 B.R. at 659-60 (holding purchasers of townhomes that debtors had constructed were not "known creditors" that required actual notice of the bankruptcy case). However, reasonable diligence does not require "impracticable and extended searches . . . in the name of due process.'" Id. (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 317-18 (1950)). Rather, "[t]he requisite search instead focuses on the debtor's own books and records" and a debtor is not required to go beyond "a careful examination of these documents." Id.

22. Conversely, a creditor is "unknown" if their "interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to knowledge [of the debtor]." Mullane, 339 U.S. at 317. Debtors "cannot be required to provide actual notice to anyone who potentially could have been affected by their actions [because] such a requirement would completely vitiate the important goal of prompt and effectual administration and settlement of debtors' estates." U.S.H. Corp., 223 B.R. at 659 (citation omitted).

23. Here, Movant was an unknown creditor at the time notice of the Bar Date was issued. To our knowledge, Movant was not listed as a creditor in the Debtors' books and records, and did not make her claim against the Debtors' estates known until she commenced the State Court Action in 2009—three years after the Bar Date had lapsed. Movant did not file any papers in the Debtor's bankruptcy cases prior to the Effective Date or take any other action that could have the effect of notifying the Debtors that Movant had a possible claim. At the time the Bar Date Notice was filed and served, Movant's claim was "merely conceivable, conjectural or speculative," which the Debtors would not have uncovered after diligent review of their books and records. See DePippo, 335 B.R. at 296–97 (publication in *The New York Times*, *The Wall Street Journal*, and *USA Today*, was sufficient to bar claimant from asserting untimely filed prepetition claim against the debtor).

24. The admission from Movant's counsel that he waited several years to commence the State Court Action due to the uncertainty regarding Movant's potential claim is sufficient in itself to establish that Movant did not make any effort to inform the Debtors of her potential claim prior to service of the Bar Date Notice. Thus, Movant was clearly an unknown creditor.

B. Because Movant Was an Unknown Creditor, Constructive Notice of the Bar Date Via Publication Was Sufficient

25. Because Movant was an unknown creditor, the Debtors were not required to provide her with actual notice of the Bar Date. The law is clear that "when a creditor is 'unknown' to the debtor, publication notice of the claims bar date is adequate constructive notice sufficient to satisfy due process requirements[.]" Id. at 296; see also Mullane, 339 U.S. at 317 ("[I]n the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights."); Tulsa Prof'l, 485 U.S. at 490 ("For creditors who are not

'reasonably ascertainable,' publication notice can suffice."); Chemetron, 72 F.3d 341 (affirming district court's ruling that creditors were unknown and notice by publication was sufficient); In re XO Commc'ns, Inc., 301 B.R. 782, 792–93 (Bankr. S.D.N.Y. 2003) (if a creditor is unknown, constructive notice is generally sufficient).

26. On March 9 and March 10, 2006, the Debtors satisfied the notice requirement for unknown creditors by publishing the Bar Date in *The New York Times* (National Edition) and the largest local papers in Brooklyn, Queens, Staten Island, the Bronx and Westchester—the counties where the Debtors operated hospitals and where potential claimants were most likely to reside. The comprehensive Bar Date noticing program at issue here was fully vetted with the input of the Debtors' general unsecured creditors and was approved by the Court.

27. The Bar Date Notice included the Bankruptcy Code's definition of a "claim" and alerted all potential creditors that they were required to file a proof of claim by the Bar Date. The Bar Date Notice contained more than adequate information and unambiguous language that placed parties on notice of the opportunity to assert claims—including potential claims—against the Debtors by the Bar Date, and was disseminated to both local and national publications.

28. Finally, the Bar Date Order also included a finding by this Court that publication of the Bar Date "shall be deemed good, adequate, and sufficient publication notice of the Bar Date" See Bar Date Order at 7. This finding has been affirmed by the District Court for the Southern District of New York. See Curatola v. Saint Vincent's Catholic Med. Ctrs. of N.Y., 07 Civ. 8257 (WHP), 2008 WL 1721471 (S.D.N.Y. Apr. 10, 2008) (affirming, among other things, the sufficiency of the constructive notice of the Bar Date Order provided by the Debtors to "unknown" creditors); Larney v. Saint Vincents Catholic Med. Ctrs. of N.Y., 07 Civ. 8778

(AKH) (S.D.N.Y. Feb. 6, 2008) (same). In light of the foregoing, Movant received adequate notice of the Bar Date.

C. Movant Has Not Demonstrated "Excusable Neglect"

29. Even where a claimant received adequate notice of the claims bar date, the court may nonetheless permit such claimant to late-file a claim upon a showing of "excusable neglect" under FRBP 9006(b). The burden of proving excusable neglect lies with the late-filing claimant. See Midland Cogeneration Venture Ltd. P'ship v. Enron Corp. (In re Enron Corp.), 419 F.3d 115, 134 (2d Cir. 2005) (holding court would not accept late-filed proof of claim on "excusable neglect" theory).

30. The United States Supreme Court set forth the parameters for determining whether "excusable neglect" exists under FRBP 9006(b) in Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380 (1993). There, the Supreme Court held that excusable neglect is an "elastic concept," and is not limited to situations where the failure to timely file was due to circumstances beyond the filer's control. Id. at 392. Rather, "excusable neglect" may encompass situations involving inadvertence, mistake or carelessness. Id. at 388. However, the Supreme Court made clear that ignorance of the rules does not usually constitute excusable neglect. Id. at 392. Pioneer set forth the following four factors to guide in a court's analysis of whether a claimant has established excusable neglect: (i) the reason for the delay, including whether it was within the reasonable control of the movant, (ii) the danger of prejudice to the debtor, (iii) the length of the delay and its potential impact on judicial proceedings, and (iv) whether the movant acted in good faith (collectively, the "Pioneer Factors"). Id. at 395.

31. In the Second Circuit, the claimant's excuse for the late filing is given more weight than the other Pioneer Factors. Enron, 419 F.3d at 123. Indeed, the other factors are

relevant only in close cases. Gold v. New York Ins. Co., No. 09 CIV. 3210 WHP, 2012 WL 3834756, at *2 (S.D.N.Y. Aug. 14, 2012) (citation omitted) (discussing excusable neglect in the context of Fed. R. App. P. 4(a)). Here, the Court need only assess the predominant Pioneer Factor – the reason for the delay – to conclude that Movant has not satisfied her burden to demonstrate excusable neglect. See In re Musicland Holding Corp., 356 B.R. 603, 609 (Bankr. S.D.N.Y. 2006) (holding inattention and lack of supervision by creditor's attorney did not support finding of excusable neglect to allow filing of untimely proof of claim).

1. Ignorance of the Law Does Not Excuse Delay

32. Movant's counsel states that he did not timely file a proof of claim because he was unaware of the Debtors' Bankruptcy Cases and the Bar Date until he commenced the State Court Action in April of 2009—three years after the Bar Date had already expired, even though Movant's counsel was retained two years prior to the Bar Date. Movant's Counsel further stated that he did not immediately seek permission from the Bankruptcy Court to late-file a claim after learning of the lapsed Bar Date because he "had not been aware until then that the filing of a late proof of claim might have been allowed by making an application to the Bankruptcy Court" and that he maintained "a small solo law firm" and has "never practiced in Bankruptcy Court." Motion at ¶ 11.

33. The Second Circuit has made clear that Movant's articulated excuse of ignorance of the Bar Date and the Bankruptcy Rules is insufficient to demonstrate excusable neglect. The Second Circuit has adopted what has been characterized as a "hard line" test for determining whether a party's neglect is excusable. Enron, 419 F.3d at 122. "[T]he equities will rarely if ever favor a party who 'fail[s] to follow the clear dictates of a court rule,' and . . . . where 'the rule is entirely clear, . . . a party claiming excusable neglect will, in the ordinary course, lose under the Pioneer test.'" Silivanch v. Celebrity Cruises, Inc., 333 F.3d 355, 366-67 (2d Cir.

2003) (holding claimant failed to establish untimely filing was due to excusable neglect) (citing Canfield v. Van Atta Buick/GMC Truck, Inc., 127 F.3d 248, 250–51 (2d Cir. 1997)).

34. It is well established that an attorney's ignorance of the law or a law office failure, without more, does not constitute excusable neglect under FRBP 9006(b). "If a clear deadline is missed due to a law office failure, including inattention or lack of oversight, an extension is not justified." In re Musicland, 356 B.R at 608; see In re Dana Corp., No. 06-10354 (BRL), 2008 WL 2885901, at *5 (Bankr. S.D.N.Y. July 23, 2008) ("[O]ffice mix-ups, clerical mistakes, and failure to follow office procedures do not generally constitute excusable neglect."); Enron, 419 F.3d at 126 (noting movant's weak argument based upon counsel's inadvertence); Canfield, 127 F.3d at 251 ("Counsel's failure to read and obey an unambiguous court rule" was not excusable). This is so because "clients must be held accountable for the acts and omissions of their attorneys." Pioneer, 507 U.S. at 396.

2. The Length of the Delay and Potential Prejudice to Holders of Timely Filed MedMal Claims Weigh Against a Finding of Excusable Neglect

35. Movant filed the Motion more than ten years after the Bar Date and confirmation of the Plan. The significant length of Movant's delay is fatal to her claim. There is no legal support in this jurisdiction or others for a finding of excusable neglect where a claimant seeks to late-file a claim more than a decade after the Bar Date and Plan confirmation. While some courts have allowed claims filed as late as two years after the bar date, see, e.g., In re Beltrami Enters., Inc., 178 B.R. 389, 392 (Bankr. M.D. Pa. 1994), others have rejected claims filed just one day late, see, e.g., In re Kmart Corp., 381 F.3d 709, 714-15 (7th Cir. 2004). Indeed, most courts have found far shorter delays to be too substantial to allow the claimant to late file a claim. See, e.g., In re Cable & Wireless USA, Inc., 338 B.R. 609, 616 (Bankr. D. Del. 2006) (a fourteen-month delay is "substantial"); In re Enron Corp., 298 B.R. 513, 526 (Bankr. S.D.N.Y.

2003) (six-month delay "is substantial"); XO Commc'ns, 301 B.R. at 797 (finding that a delay of four months weighed against permitting a late proof of claim); In re Limited Gaming of Am., Inc., 213 B.R. 369, 377 (Bankr. N.D. Okla. 1997) ("The lapse of thirteen months between the expiration of a claims deadline and the submission of a proof of claim presents the danger of prejudice to a debtor and has a significant potential impact on the judicial proceedings.").

36. The Bar Date is an essential part of a debtor's reorganization process because it allows the Debtor to understand the total amount of potential outstanding liabilities. See Enron Corp., 419 F.3d at 127-28 ("[A] bar order does not function merely as a procedural gauntlet, but as an integral part of the reorganization process.") (quoting In re Hooker Invs., Inc., 937 F.2d 833, 840 (2d Cir. 1991)). An extension of this time after the plan of reorganization has been confirmed and consummated, directly affects the debtor's ability to execute the terms of its plan.

37. In determining how long of an extension is too long, courts generally consider the degree to which, in the context of a particular proceeding, the delay "may disrupt the judicial administration of the case." In re Infiltrator Sys., Inc., 241 B.R. 278, 281 (Bankr. D. Conn. 1999). Some courts have also suggested that a relevant consideration is whether a reorganization plan has been filed or confirmed by the time a late claim is submitted. Id. at 281 ("Where . . . the debtor has not yet filed a plan and is still engaged in assessing the validity and amounts of the timely filed claims, the impact upon administration of the case . . . is not significant.").

38. These Cases have been dormant for years. Since Plan confirmation, the MedMal Trust Monitor has been administering the MedMal Trust assets and making distributions to holders of allowed MedMal Claims pursuant to the terms of the Plan and the MedMal Trust Agreements. The MedMal Trust has resolved and closed over 558 cases. To allow Movant to late-file her claim at this juncture in the Cases, when less than thirty cases remain (twenty of

which have settled and are awaiting closing documents), would significantly frustrate the administration of remaining funds in the MedMal Trusts, and prejudice any holders of timely-filed MedMal Claims who have not yet sought recovery from the applicable MedMal Trust.

39. Granting the Motion would create a "danger of opening the floodgates to potential claimants" that would prejudice holders of timely-filed MedMal Claims. Enron, 419 F.3d at 132 n.2 ("[C]ourts in this and other Circuits regularly cite the potential 'flood' of similar claims as a basis for rejecting late-filed claims."); see In re Dana Corp., No. 06-10354 (BRL), 2007 WL 1577763, at *6 (Bankr. S.D.N.Y. May 30, 2007) (noting that "the floodgates argument is a viable one."); In re Keene Corp., 188 B.R. 903, 913 (Bankr. S.D.N.Y. 1995) (noting that a "[late-filed] claim could adversely affect the administration of the case by possibly opening the floodgates to many similar claims."). Excusing the extreme untimeliness of Movant's alleged prepetition claim would "set an untenable precedent and would likely precipitate a flood of similar claims" because the claim asserted by Movant is not unique and she has provided no valid justification for the significant delay. Dana, 2007 WL 1577763, at *6; see Enron, 419 F.3d at 132-33 (late-filed claim was "insufficiently distinguishable from other . . . claims that permitting its late filing would be unduly prejudicial").

40. While the Motion appears to have been made in good faith, this factor alone cannot outweigh Movant's lack of valid reason for the delay, the length of the delay, and the resulting prejudice that would result from the allowance of Movant's claim at this stage. If Movant is permitted to assert her claim more than ten years after the Bar Date based on her counsel's ignorance of the law, the Court would be forced to allow virtually every other late claim in these Cases. For the foregoing reasons, the Motion must be denied.

CONCLUSION

41. For the foregoing reasons, the Post-Effective Date SVCMC and the MedMal Trust Monitor respectfully request that the Court enter an order (i) denying the Motion, and (ii) granting any such further relief as this Court deems just and proper.

Dated: New York, New York
February 8, 2018

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