

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF TENNESSEE**

IN RE:	)	
	)	
CURAE HEALTH, INC., <u>et al.</u> ,	)	Case No. 3:18-bk-05665
	)	(Chapter 11)
Debtor-in-Possession.	)	Judge Charles M. Walker

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**LIMITED OBJECTION OF PHILIPS MEDICAL CAPITAL, LLC TO THE NOTICE OF (I) DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY, AND UNEXPIRED LEASES OF LEASES OF NON-RESIDENTIAL PROPERTY; AND (II) CURE AMOUNTS RELATED TO THE FOREGOING**

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The respondent, Philips Medical Capital, LLC ("PMC"), a creditor and party-in-interest in this contested matter, and the counter-party to an equipment lease with Clarksdale Regional Medical Center, Inc. ("CRMC") files this limited objection to the "Notice of (I) Debtors' Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Leases of Non-Residential Property; and (II) Cure Amounts Related to the Foregoing" filed April 25, 2019 at Document No. 970 (the "Cure Motion") and states as follows:

**Background**

1. On August 24, 2018 ("Petition Date"), the Debtors commenced these Chapter 11 cases by filing voluntary petitions under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their affairs as debtors-in-possession under 11 U.S.C §§ 1107 and 1108.

2. Prior to the Petition Date, PMC leased to CRMC various medical equipment

pursuant to five (5) separate written lease agreements. A copy of the lease agreements is attached to PMC's previously filed proof of claim.

3. On April 25, 2019, the Debtors filed the Cure Motion proposing to assume and assign three (3) of the five (5) PMC lease agreements (collectively, the "Proposed Assumed Contracts") and listed the amount the Debtors believe were required to cure all defaults then existing under the PMC lease agreement (the "Cure Amount").

4. Pursuant to the Cure Notice, the Debtors identified \$48,103.51 as the amount which they allege to be owing to PMC under one (1) of the Proposed Assumed Contracts (the two (2) EPIQ Ultrasound devices). PMC agrees to the assumption of this contract and agrees with the \$48,103.51 cure amount proposed by the Debtors.

5. However, pursuant to the Cure Notice, the Debtors also identified \$0.00 as the amount which they allege to be owing to PMC under the other two (2) Proposed Assumed Contracts (the "Proposed Cure Amount"). These two (2) contracts relate to an Affinity Ultrasound device and various monitoring equipment.

6. PMC agrees to the assumption of Proposed Assumed Contracts with the Debtors; however, PMC disputes the Proposed Cure Amount in the Cure Motion. PMC's books and records reflect a cure amount of \$5,032.18, including \$1,200.00 in legal fees. The Proposed Cure Amount is less than what is actually owed under the Proposed Assumed Contract.

#### **Objection to Cure Amount**

7. PMC has no objection to the assumption of the Proposed Assumed Contract provided the proper cure amount is paid. Accordingly, PMC files this limited objection objecting to the Proposed Cure Amount set forth in the Cure Motion.

8. Pursuant to 11 U.S.C. § 365(b)(1)(A), the Debtors must cure any defaults under the PMC Contract in connection with any proposed assumption, as well as provide adequate assurance of future performance. In this case, Debtors' Proposed Cure Amount of \$0.00 fails to cure the existing defaults of the PMC Contract, as is required under section 365 prior to assumption.

9. The correct cure amount is \$5,032.18 for pre-petition payment defaults under the PMC Contract. As a result, under 11 U.S.C. § 365(b)(1)(A), in order to assume the PMC Contract, PMC must receive a cure payment of at least \$5,032.18. Otherwise, the PMC Contract cannot be assumed pursuant to section 365.

WHEREFORE, PMC respectfully requests (i) that the cure amount set forth in the Cure Motion be corrected to reflect the correct pre-petition cure amount of \$2,833.19, which represents pre-petition amounts due and owing under the PMC Contract; (ii) that PMC be paid a cure payment of \$5,032.18 in connection with the assumption of the PMC Contract; and (iii) that PMC be awarded such other and further relief to which it may be justly entitled at law or in equity.

Dated: May 3, 2019.

Respectfully submitted,

/s/ Joseph P. Rusnak  
Joseph P. Rusnak  
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**Certificate of Service**

I hereby certify that a true and exact copy of the foregoing "Limited Objection of Philips Medical Capital, LLC to the Notice of (I) Debtors' Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Leases of Non-residential Property; and (li) Cure Amounts Related to the Foregoing " has been served upon the following counsel for parties in interest herein by delivering same to the offices of said counsel, or by mailing same to the office of said counsel by United States mail with sufficient postage thereon to carry the same to its destination:

U.S. Trustee  
318 Customs House  
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Michael Malone, Esq.  
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Atlanta, GA 30309

Dated: May 3, 2019.

/s/ Joseph P. Rusnak  
Joseph P. Rusnak