

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

In re:

Curae Health, Inc., *et al.*<sup>1</sup>

1721 Midpark Road, Suite B200  
Knoxville, TN 37921

Debtors.

Chapter 11

Case No. 18-05665

Judge Walker

Jointly Administered

Re: Docket Nos. 1313, 1315

**STATUS REPORT OF STEVEN D SASS LLC, AS LIQUIDATING TRUSTEE**

Steven D Sass LLC, as Liquidating Trustee (the “Liquidating Trustee”), files this status report (the “Status Report”), in anticipation of the status conference in these cases scheduled for June 16, 2020 at 10:00 a.m. [Docket No. 1315], and respectfully represents as follows:

**SUMMARY**

Since the Liquidating Trustee’s appointment under the *Joint Chapter 11 Plan of Liquidation* (the “Plan”)<sup>2</sup> [Docket No. 1074, Exhibit A] for Curae Health, Inc., *et al.* (the “Debtors”), the Liquidating Trustee and its professionals have undertaken extensive efforts to ensure the solvency of the Debtors’ estates and augment the Liquidating Trust through the defense of an appeal of the Bankruptcy Court’s order approving the Plan (the “Confirmation Order”), litigation against the Debtors’ (i) largest secured creditor and (ii) former directors and officers, and the collection and reconciliation of the Debtors’ accounts receivable from both

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

<sup>2</sup> All capitalized terms otherwise undefined in this Status Report shall have the meanings ascribed to them in the Plan.

governmental entities and insurers. These efforts have been resoundingly successful for all creditors herein, bringing the total undisputed, unencumbered, and un-earmarked funds available for distribution under the Plan from \$0 as of the Plan’s Effective Date to in excess of \$6.4 million as of June 10, 2020 and paving the way for the reconciliation of the remaining claims asserted against the estates, the prosecution of avoidance actions, the payment of administrative expense and priority claims, and a prospective distribution to general unsecured creditors. Although there remains some opportunity for recovery of additional accounts receivable, the Liquidating Trustee’s early successes in this area have diminished it as a probable source of significant additional funds.

Crucially, after nearly a year of litigation, the Liquidating Trustee recently (i) settled a significant action against the Debtors’ former directors and officers (the “D&O Litigation”)<sup>3</sup>; (ii) prevailed in the appeal of the Confirmation Order (the “Appeal”)<sup>4</sup> by the Debtors’ largest secured creditor, ServisFirst Bank (“ServisFirst”); and (iii) reached a global resolution the claims and remaining issues between the estates and ServisFirst (the “ServisFirst Litigation”)<sup>5</sup>.

The Appeal and liens asserted by ServisFirst in connection with its \$18,773,834.20 secured claim collectively imperiled the very solvency of the estates, as the Appeal sought to recapture all funds available to the Liquidating Trustee to implement the Plan and administer the Liquidating Trust as of the Effective Date. Specifically, the Appeal concerned \$3.5 million in funds from a pre-confirmation settlement among the Debtors, the Official Committee of

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<sup>3</sup> *Steven D Sass LLC, as Debtor Representative and Liquidating Trustee v. Clapp, et al.*, Adv. Pro. No. 3:19-ap-90100.

<sup>4</sup> *ServisFirst Bank v. Steven D Sass LLC, in Its Capacity as Debtor Representative and Liquidating Trustee*, Case No. 3:19-cv-00432, U.S. District Court, M.D. Tenn.

<sup>5</sup> *Steven D Sass LLC, in Its Capacity as Liquidating Trustee and Debtor Representative v. ServisFirst Bank*, Adv. Pro. No. 3:19-ap-90010, U.S. Bankr. Court, M.D. Tenn.

Unsecured Creditors (the “Committee”), and Community Health Systems, Inc. (“CHS”) that constituted the basis for the Plan’s confirmation and was intended to fund the Liquidating Trust.<sup>6</sup> As a result, until the resolution of the disputes with ServisFirst, the Appeal and ServisFirst’s asserted liens constrained the Liquidating Trustee’s ability to make payments and distributions other than those necessary to establish the Liquidating Trust, pay pre-Effective Date professional fees and certain undisputed administrative expense claims, and fund the collection and reconciliation of the estates’ accounts receivable, the D&O Litigation, the ServisFirst Litigation, and the defense of the Appeal.

With considerable assistance from the Honorable Randall S. Mashburn (U.S.B.J., Bankr. M.D. Tenn.), who played an invaluable role as mediator, the Liquidating Trustee and the Debtors’ former directors and officers agreed in February 2020 to settle the D&O Litigation for a payment of \$3.475 million to the Liquidating Trust. The settlement was documented in early March 2020, and the funds were received in early April.

On April 6, 2020, the United States District Court for the Middle District of Tennessee (the “District Court”) granted the Liquidating Trustee’s motion to dismiss the Appeal as equitably moot [Docket No. 1296]. Mediation between the Liquidating Trustee and ServisFirst with respect to the remaining issues between the parties, again conducted by Judge Mashburn, who was, once again, instrumental in facilitating a resolution, took place later that month. As a result, the parties globally resolved their respective rights and claims, materially limited the claims pool, preserved millions of dollars for the Liquidating Trust and created a path to enable

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<sup>6</sup> It did not include approximately \$2 million escrowed prior to the Plan’s confirmation for the payment of pre-Effective Date professional fees, which funds were both required to be used to pay those fees and insufficient to do so in full.

the Liquidating Trustee to make distributions to creditors herein. The effective date of the stipulation and order documenting the settlement was June 5, 2020.

As a result of the collective efforts of the Liquidating Trustee and his professionals, the Liquidating Trust has in excess of \$6.4 million in unencumbered funds on hand as of June 10, 2020 and the Liquidating Trustee is now in a position to further the administration of the Liquidating Trust through, among other things, the analysis and reconciliation of the remaining claims against the estates, the prosecution of additional avoidance actions, the payment of administrative and priority claims, and the distribution of any remaining funds to the unsecured creditors.

In order to apprise the Bankruptcy Court, the U.S. Trustee, and the Liquidating Trust beneficiaries of the results of these efforts, the Liquidating Trustee will continue to file post-confirmation quarterly reports and requests the opportunity to provide a further update at a second status conference in six (6) months.

## **REPORT**

### **I. Bankruptcy Case Background**

The Debtors filed their voluntary chapter 11 petitions on August 24, 2018. Over the course of following months, the Debtors sold and/or transferred the operations of three hospitals in Mississippi owned and operated by Debtors Amory Regional Medical Center, Inc., Batesville Regional Medical Center, Inc., and Clarksdale Regional Medical Center, Inc., to new owners and operators. All three hospitals remain open and operating as of the filing of this report.

ServisFirst, which filed a secured claim in the amount of \$18,773,834.20 on November 14, 2018, asserted liens on substantially all of the hospital proceeds and remaining estate assets, other than certain causes of action (including causes of action arising under chapter 5 of the

Bankruptcy Code or against the Debtors' directors and officers) preserved by the Bankruptcy Court's final cash collateral and postpetition financing order (the "Financing Order") [Docket No. 455].<sup>7</sup> On January 16, 2019, the Committee initiated the ServisFirst Litigation, seeking, among other things, to avoid ServisFirst's asserted liens and determine its claims.

On April 14, 2019, ServisFirst objected to the Plan's confirmation, *inter alia*, on the ground that the Plan was not feasible because the Debtors lacked sufficient unencumbered funds to pay administrative and priority claims in full as required by the Bankruptcy Code [Docket No. 953]. On the eve of the May 9, 2019 Plan confirmation hearing, the Debtors and the Committee settled estate causes of action against CHS for a payment from CHS of \$3.5 million. The Bankruptcy Court confirmed the Plan on the basis of this settlement, holding that the Plan was feasible in light of the settlement funds, which would pass to the estates free and clear of ServisFirst's asserted liens.

The Bankruptcy Court entered the Confirmation Order on May 13, 2019, and ServisFirst appealed the Confirmation Order on May 22, 2019 [Docket No. 1088], putting the ultimate availability of the CHS settlement funds for the Plan's implementation into question.

Because the Confirmation Order was not stayed pending the Appeal's determination, the Plan's Effective Date occurred on June 11, 2019. Shortly after the Effective Date, when the Liquidating Trustee was vested with authority under the Plan, the Debtors' estates had approximately \$9 million in cash on hand, all of which was subject to the disputed liens and claims asserted by ServisFirst, imperiled by the Appeal, held for the benefit of other parties in these cases or earmarked for payment of pre-Effective Date professional fees. Simply, the

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<sup>7</sup> CHS and MidCap Financial Trust ("MidCap") also asserted liens on various estate assets. These liens were subsequently satisfied, waived, and/or released.

Liquidating Trustee faced a number of challenges prior to being in a position to make distributions to creditors herein.

## **II. Post-Effective Date Progress**

Upon assuming its duties on the Effective Date, the Liquidating Trustee addressed these significant challenges head-on, marshalled the Debtors' remaining assets, records, and accounts and engaged the professionals and personnel necessary to effectuate the Plan and administer the Liquidating Trust. The Liquidating Trustee further paid the pre-Effective Date professional fees required by the Plan (totaling approximately \$2.5 million) and approximately \$95,000 in stipulated administrative expense claims. These actions and payments, which utilized a material portion of the \$3.5 million CHS settlement payment that was subject to the Appeal, were necessary to position the Liquidating Trustee to manage the estates and Liquidating Trust (including by filing applicable tax returns and beginning to wind down the Debtors' affairs); take control of the Appeal, the ServisFirst Litigation, and the D&O Litigation (which the Committee had initiated prior to the Effective Date); and begin collecting and reconciling the Debtors' accounts receivable under the various purchase, transfer, and management agreements with the purchaser and new operators of the Debtors' former hospitals. They also resulted in the substantial consummation of the Plan, which, as set forth below, contributed to the dismissal of the Appeal as equitably moot.

However, the Liquidating Trustee was constrained from making further distributions or incurring additional fees and expenses (including with respect to the reconciliation of claims and prosecution of avoidance actions) until the Appeal, ServisFirst Litigation, and D&O Litigation were resolved. As set forth in the declaration of Steven D. Sass, Esq. in support of the Liquidating Trustee's motion to dismiss the Appeal [Appeal Docket No. 16], as of September 5,

2019, the Liquidating Trust had approximately \$2.4 million in unencumbered funds on hand. These were the CHS settlement funds remaining at that time, and were therefore subject to the Appeal.

In order to defend those funds, contest ServisFirst's asserted liens, and augment the Liquidating Trust with additional potentially unencumbered funds, the Liquidating Trustee substituted itself for the Debtors as appellee in the Appeal, and as plaintiff for the Committee in the ServisFirst Litigation and the D&O Litigation. The Liquidating Trustee's efforts in those proceedings over the following year involved months of negotiation (including multiple mediation sessions), discovery (including written discovery and depositions), and briefing (including motion practice). As described herein, thanks in large part to critical efforts by Judge Mashburn, they were also met with success.

First, following multiple rounds of mediation with Judge Mashburn, the Liquidating Trustee and the Debtors' former directors and officers agreed in February 2020 to settle the D&O Litigation for a payment of \$3.475 million to the Liquidating Trust. Because actions against the Debtors' directors and officers were protected and preserved for the estates by the Postpetition Financing Order, the settlement provided a significant source of additional unencumbered funds. However, ServisFirst contested the free and clear nature of the settlement funds and asserted liens and/or superpriority claims against them, limiting the Liquidating Trustee's ability to fully utilize the funds until the Appeal and ServisFirst Litigation were resolved.

In early April 2020, as the Liquidating Trustee and ServisFirst approached mediation with Judge Mashburn in the ServisFirst Litigation, the District Court granted a motion filed by the Liquidating Trustee to dismiss the Appeal as equitably moot. As set forth in the District

Court's written opinion [Docket No. 1296], the Liquidating Trustee's substantial consummation of the Plan as described above was a significant factor in the ruling. This result primed the parties for a successful mediation with Judge Mashburn, who had already facilitated the resolution of the D&O Litigation.

After a full day of mediation later that month, the Liquidating Trustee and ServisFirst agreed to resolve their remaining issues and claims, including ServisFirst's asserted secured claim, any deficiency claim, and the right to appeal the District Court's order dismissing the Appeal, thereby limiting the claims pool and preserving millions of dollars for the Liquidating Trust and creditors herein. The effective date of the stipulation and order resolving the ServisFirst Litigation occurred on June 5, 2020, resolving the last impediment to the further implementation of the Plan. The final exchange of funds and documents required by the stipulation and order occurred on June 9, 2020.

As a result of all of the foregoing, since the occurrence of the Effective Date, the Liquidating Trustee has collected or otherwise received approximately \$5.8 million in settlement proceeds, accounts receivable, and other funds; made disbursements on account of pre-Effective Date fees and claims, post-Effective Date fees and expenses, and post-Effective Date settlements, totaling approximately \$8.5 million; and has in excess of \$6.4 million in unencumbered cash on hand as of June 10, 2020.

### **III. Future Administration**

The Liquidating Trustee is now in a position to reconcile, contest, and resolve the remaining claims against the Debtors' estates, and has already engaged in discussions with several significant creditors and litigation claimants to that end. In particular, the reconciliation and resolution of the administrative and priority claims asserted against the Debtors' estates



represents the next critical step in these cases, as the unreconciled asserted amounts of these claims reflected on the claims register maintained by BMC Group, Inc. total in excess of \$8 million in the aggregate.<sup>8</sup>

The Liquidating Trustee has also begun to analyze the estates' remaining potential avoidance actions (including actions to avoid preferential transfers under section 547 of the Bankruptcy Code) in order to further augment the Liquidating Trust and advance the claim reconciliation and resolution process. Further, as has been the case since its appointment, the Liquidating Trustee continues to collect and reconcile accounts receivable and guard the estates from depletion by parties asserting liabilities that are stayed, barred, or obligations of third parties.

The Liquidating Trustee believes that the unencumbered funds on hand as a result of its and its professionals' efforts to date will be sufficient to satisfy the fully-reconciled administrative and priority claims, and is optimistic that the Liquidating Trust will have funds remaining after the payment of those claims sufficient to fund a meaningful distribution to the general unsecured creditors.

The Liquidating Trustee will continue to file quarterly post-confirmation reports, and requests the opportunity to update the Bankruptcy Court, the U.S. Trustee, and the Liquidating Trust beneficiaries of its progress at a further status conference in six (6) months.

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<sup>8</sup> The Liquidating Trustee reserves all rights, defenses, and objections with respect to all claims that have not been Allowed (as that term is defined in the Plan), and anticipates that, after reconciliation and resolution, the administrative and priority claims will be reduced to an amount that the unencumbered funds in the Liquidating Trust are sufficient to satisfy.

Dated June 12, 2020

Respectfully submitted,

MANIER & HEROD, P.C.

/s/ Robert W. Miller

Michael E. Collins (Bar No. 16036)

Robert W. Miller (Bar No. 31918)

1201 Demonbreun Street, Suite 900

Nashville, TN 37203

Telephone: (615)-244-0030

Facsimile: (615) 242-4203

mcollins@manierherod.com

rmiller@manierherod.com

and

SILLS CUMMIS & GROSS P.C.

Andrew H. Sherman (admitted *pro hac vice*)

Boris I. Mankovetskiy (admitted *pro hac vice*)

One Riverfront Plaza

Newark, NJ 07102

Telephone: (973) 643-7000

Facsimile: (973) 643-6500

asherman@sillscummis.com

bmankovetskiy@sillscummis.com

*Co-Counsel for Steven D Sass LLC, as Liquidating  
Trustee*

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 12, 2020, the foregoing was served via electronic delivery upon all parties consenting to the Court's CM/ECF system.

/s/ Robert W. Miller

Robert W. Miller