

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

In re:)	
)	Chapter 11
Curae Health, Inc., <i>et al.</i> ¹)	Case No. 18-05665
)	
1721 Midpark Road, Suite B200)	Judge Walker
Knoxville, TN 37921)	
Debtors.)	Jointly Administered

**MOTION OF DEBTORS FOR ENTRY OF AN AGREED ORDER
EXTENDING THE DEADLINE TO ASSUME OR REJECT UNEXPIRED LEASE OF
NONRESIDENTIAL REAL PROPERTY**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move (the “**Motion**”), pursuant to section 365(d)(4) of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of an order substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”) extending the deadline to assume or reject the unexpired lease of nonresidential real property for the Clarksdale Hospital (as described in detail below, the “**Clarksdale Lease**”) for an additional ninety (90) days from the end of the period determined under Bankruptcy Code section 365(d)(4)(A). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

¹ 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).

2. The statutory predicate for the relief requested herein is Bankruptcy Code section 365(d)(4).

BACKGROUND

3. On August 24, 2018 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with this Court commencing the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”). The general factual background regarding the Debtors, including their business operations, debt structure, and the events leading to the filing of the Chapter 11 Cases is set forth in detail in the *Declaration of Stephen N. Clapp, Chief Executive Officer of Curae Health, Inc., in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”) [Docket No. 49] and fully incorporated herein by reference.

4. The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Cases. On September 6, 2018, the official committee of unsecured creditors was appointed.

5. The Debtors are party to the Clarksdale Lease, an unexpired lease of real property, with Coahoma County, Mississippi for the Clarksdale Hospital. The Clarksdale Hospital was originally leased to Clarksdale HMA, Inc. and Health Management Associates, Inc. (“**HMA**”) on December 28, 1995. On or around January 27, 2014, HMA merged with Community Health Systems, Inc. (“**CHS**”), with Health Management Associates, LLC, a Delaware limited liability company (“**HMA, LLC**”), a wholly owned subsidiary of CHS, becoming the surviving entity. On or about November 17, 2017, the Debtors purchased the Clarksdale Hospital from Clarksdale HMA, Inc. and assumed the Clarksdale Lease.

6. On October 12, 2018, the Debtors filed their *Emergency Motion for Entry of Order Authorizing Debtors to (I)(A) Shut Down the Clarksdale Hospital; (B) Reject Unexpired Leases and Contracts or Clarksdale; and (C) Receive Related Relief; or, in the Alternative, (II)(A) Transfer Operations of the Clarksdale Hospital to a New Operator Free and Clear of Any Liens, Claims, or Encumbrances Pursuant to an Operations Transfer Agreement to be Filed with the Court; (B) Assume and Assign the Coahoma County Lease and Certain Other Unexpired Leases and Contracts Requested by the New Operator; and (C) Receive Related Relief* [Docket No. 314] (the “**Emergency Motion**”).

7. On November 2, 2018, the Court entered an Interim Order on the Emergency Motion [Docket No. 393], which Order memorialized the agreement of the Debtors and Coahoma County to work collectively to attempt to keep the Clarksdale Hospital open.

8. On December 13, 2018, the Court entered the Order Authorizing the Debtors to Enter into the Interim Management Services Agreement with Clarksdale HMA, LLC, Coahoma County, and CHS/Community Health Systems, Inc.

RELIEF REQUESTED

9. By this Motion, the Debtors request entry of the Proposed Order, pursuant to Bankruptcy Code section 365(d)(4)(B), granting a 90-day extension of the time period by which they must determine whether to assume or reject the Clarksdale Lease to which a Debtor is a party and which has not yet already been rejected, assumed and assigned, expired, or otherwise terminated. Such an extension would be without prejudice to the Debtors’ rights to seek further extensions of the time to assume or reject the Clarksdale Lease with the consent of the affected lessor, Coahoma County, as contemplated by Bankruptcy Code section 365(d)(4)(B)(ii).

BASIS FOR RELIEF

10. Due to the projected duration of these Chapter 11 Cases, the Debtors submit that

there is good and sufficient cause for extending the time period by which they must determine to assume or reject the Clarksdale Lease and which has not yet been rejected, assumed and assigned, expired, or otherwise terminated. Pursuant to Bankruptcy Code section 365(d)(4), if the Clarksdale Lease is not assumed or rejected on or prior to December 22, 2018, then the Clarksdale Lease shall be deemed rejected unless the Debtors receive, pursuant to Bankruptcy Code section 365(d)(4)(B)(i), an extension of time within which they may assume or reject the Clarksdale Lease.

11. Bankruptcy Code section 365(d)(4) provides:

(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

(i) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan

(B) (i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause. (ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

11 U.S.C. § 365(d)(4)(A), (B). Thus, upon a showing of cause, a court has the discretion to grant an extension of ninety days beyond the initial period allotted to the Debtors to assume or reject nonresidential real-property leases.

12. Courts have considered the particular needs of the debtor when determining whether to grant an extension. *See, e.g., Legacy, Ltd. v. Channel Home Ctrs., Inc. (In re Channel Home Ctrs., Inc.)*, 989 F.2d 682, 689 (3d Cir. 1993) (“[N]othing prevents a bankruptcy court from granting an extension because a particular debtor needs additional time to determine whether the assumption or rejection of particular leases is called for by the plan of reorganization

that it is attempting to develop.”); *see also In re GST Telecom Inc.*, No. 00-1982- GMS, 2001 WL 686971, at *3 (D. Del. June 8, 2001) (stating that “equity dictates that courts can grant debtors additional time in which to decide whether to assume or reject a particular lease”). The purpose of this additional time is to allow the debtor an opportunity to evaluate carefully all of the leases so that decisions can be made to maximize the value of the estate.

13. Under Bankruptcy Code section 365(d)(4), a court can grant the extension for cause, but the Bankruptcy Code does not define what constitutes “cause” for the approval of an extension. However, courts have articulated certain factors that indicate whether there is “cause” for the approval of an extension. These factors include:

- a. whether the debtor is paying for the use of the property;
- b. whether the debtor’s continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code;
- c. whether the lease is the debtor’s primary asset;
- d. whether the debtor has had sufficient time to formulate a plan of reorganization;
- e. complexity of the case facing the debtor; and
- f. number of leases the debtor must evaluate.

See S. St. Seaport Ltd. P’ship. v. Burger Boys, Inc. (In re Burger Boys, Inc.), 94 F.3d 755, 760–61 (2d Cir. 1996); *see also Vt. Partners, Ltd. v. Thaler (In re Poseidon Pool & Spa Recreational, Inc.)*, 377 B.R. 52, 61 (E.D.N.Y. 2007); *In re Wedtech Corp.*, 72 B.R. 464, 471 (Bankr. S.D.N.Y. 1987).

14. As illustrated below, application of these factors demonstrates that there is more than sufficient “cause” to grant the Debtors’ requested extension of the time within which they may assume or reject the Clarksdale Lease.

15. Coahoma County consents to the relief requested herein.

16. Given the complexity of the Chapter 11 Cases and the Interim Management Agreement with CHS for the Clarksdale Hospital, and the consent of the landlord, Coahoma County, the Debtors submit that cause exists for the requested extension through and including March 22, 2019, without prejudice to the Debtors' right to seek further extensions of such deadline with the consent of landlord Coahoma County, as provided in Bankruptcy Code section 365(d)(4)(B)(ii).

NOTICE

17. Concurrently with the filing of this Motion, the Debtors shall provide notice of this Motion to: (a) the Office of the United States Trustee for the Middle District of Tennessee; (b) Centers for Medicare and Medicaid Services; (c) State of Tennessee Department of Health Division of Licensure and Regulation Office of Health Care Facilities; (d) Mississippi State Department of Health; (e) counsel to the official committee of unsecured creditors established in these cases pursuant to Section 1102 of the Bankruptcy Code; (f) ServisFirst Bank and its counsel; (g) Midcap Financial Trust and its counsel; (h) CHS/Community Health Systems, Inc. and its counsel (i) all Tennessee local counsel having entered a notice of appearance in these cases; (j) the Internal Revenue Service; (k) the Tennessee Attorney General's Office; (l) the Mississippi Attorney General's Office; (m) the Tennessee Secretary of State; (n) Coahoma County and its counsel; (o) the patient care ombudsman and her counsel; and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002. Service is being executed via the Court's CM/ECF system, email, hand delivery, and/or overnight mail.

NO PRIOR REQUEST

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

WHEREFORE, the Debtors respectfully request that the Court: (i) enter the Proposed

Order in substantially the same form as that attached as Exhibit A, granting the relief requested herein; and (ii) provide such other relief as the Court deems appropriate and just.

Dated: December 14, 2018
Nashville, Tennessee

POLSINELLI PC

/s/ Michael Malone _____

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*Counsel to the Debtors and
Debtors in Possession*

Exhibit A

(Proposed Order)

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

In re:)	
)	Chapter 11
Curae Health, Inc., <i>et al.</i> ¹)	Case No. 18-05665
)	
1721 Midpark Road, Suite B200)	Judge Walker
Knoxville, TN 37921)	
Debtors.)	Jointly Administered

**AGREED ORDER EXTENDING THE DEADLINE TO ASSUME OR REJECT
UNEXPIRED LEASE OF NONRESIDENTIAL REAL PROPERTY**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an order, pursuant to Bankruptcy Code section 365(d)(4), extending the initial deadline to assume or reject the unexpired lease of nonresidential real property for the Clarksdale Hospital (the “**Clarksdale Lease**”) for an additional ninety (90) days from the end of the period determined under Bankruptcy Code section 365(d)(4)(A); and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors consent to entry of a final order under Article III of the United States Constitution; and (c) notice of the Motion was due and proper under the circumstances; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest and that the landlord, Coahoma County, consents to the extension; and after due deliberation, and good and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

¹ 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).

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

1. The Motion is GRANTED as set forth herein.
2. The Debtors' time to assume or reject the Unexpired Leases is hereby extended, pursuant to Bankruptcy Code section 365(d)(4)(B)(i), for 90 days, through and including March 22, 2019.
3. The entry of this Order shall be without prejudice to the rights of the Debtors to request further extensions of the time to assume or reject the Clarksdale Lease as provided in Bankruptcy Code section 365(d)(4).
4. To the extent that the Debtors and Coahoma County agree to a further extension of the time period within which the Debtors must assume or reject an Unexpired Lease, the Debtors may submit to the Court a consensual form of order approving such further extension, pursuant to Bankruptcy Code section 365(d)(4)(B)(ii), under certification of counsel without the need for further notice or hearing.
5. Nothing contained in this Order shall be deemed to authorize the assumption or rejection of any agreement, contract, or lease pursuant to Bankruptcy Code section 365.
6. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

This Order Was Signed And Entered Electronically As Indicated At The Top Of The First Page

APPROVED FOR ENTRY:

POLSINELLI PC

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