

**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

Lead Case No. 18-05665

Judge Walker

Jointly Administered

**OBJECTION OF MISSISSIPPI EMERGENCY PHYSICIAN SERVICES, LLC AND  
COMPREHENSIVE HOSPITALISTS OF MS, LLC TO  
EXPEDITED MOTION OF DEBTORS FOR ENTRY OF AN ORDER  
(I) AUTHORIZING PAYMENT OF THE DIP OBLIGATIONS, ET AL.**

Mississippi Emergency Physician Services, LLC (“MEPS”) and Comprehensive Hospitalists of MS, LLC (“Comprehensive”), affiliated creditors of the above-captioned Debtors and former and current providers of emergency department staff and hospitalists to various of the Debtors’ facilities (collectively, “Schumacher”), file this objection (the “Objection”) to the *Expedited Motion of Debtors for Entry of an Order (I) Authorizing Payment of the DIP Obligations, (II) Authorizing the Use of Cash Collateral, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief*, filed by the Debtors on March 8, 2019 [Docket No. 847] (the “Motion”).<sup>2</sup>

By the Motion, Debtors seek authority to, among other things, repay the DIP Obligations utilizing, *inter alia*, \$950,020.00 held in the “Debt Service Account.” First, granting the Motion

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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> Capitalized terms not otherwise defined herein shall take the meanings ascribed to them in the Motion.

upon the expedited timeframe which Debtors request would cause great prejudice to Schumacher by depriving it of the necessary time to gather evidence, analyze claims and respond to the relief requested therein. Accordingly, Schumacher reserves all rights to take discovery and assert any positions other than those set forth herein as Schumacher may decide to assert at any future time. If the Court does wish to consider the Motion on an expedited basis, however, amounts held in the Debt Service Reserve Fund do not comprise assets of Debtors' estates and therefore cannot be used to repay the DIP Obligations. Therefore, the expedited relief requested in the Motion should be denied.

### **I. Background Facts**

1. As of the Petition Date, Debtors owed Schumacher in excess of \$3 million under contracts that were either then still in effect or terminated, under which Schumacher provided emergency department physicians and mid-level providers, and hospitalists and mid-level providers (the "Schumacher Contracts").

2. As of June 1, 2018, Debtors entered into a letter agreement with Schumacher, setting forth a schedule for payment by Debtors of amounts then and in the future owing under the Schumacher Contracts (the "Letter Agreement"). A true and correct copy of the Letter Agreement is attached hereto as Exhibit "A".

3. The Letter Agreement provides, among other things, that, upon closing of the sale of Debtors' "Alabama affiliates," the amount of \$503,000.00 would be paid from the Debt Service Account to Schumacher and be applied to then outstanding debt.

4. On August 24, 2018 (the "Petition Date"), prior to the closing of the sale of the "Alabama affiliates," the Debtors filed these jointly administered Chapter 11 Cases. As of the Petition Date, these funds, which were earmarked for payment to Schumacher at the appropriate

time, were being held in the Debt Service Account.

5. The closing of the sale of the “Alabama affiliates” was authorized by the Court in connection with the *Expedited Order (I) Authorizing the Debtors to Enter into the Member Substitution Agreement with Respect to the Russellville Hospital and (II) Granting Related Relief*, entered by the Court on November 30, 2018 [Docket No. 511] (the “Russellville Order”).

6. The Russellville Order provides that funds in the Debt Service Account, then totaling \$950,020.00, would continue to be held by ServisFirst, subject to further order of the Court. Russellville Order, ¶ 3.

7. On March 8, 2019, Debtors filed the Motion on an expedited basis and requested relief be entered on March 12, 2019, just three business days later.

## **II. Law and Argument**

### **A. The Court should provide Schumacher with additional time to respond to the relief requested in the Motion.**

8. Debtors filed the Motion on March 8 and requested a hearing on March 12, three (3) business days later. Debtors contacted Schumacher on March 6 and informed Schumacher of their intent to utilize funds in the Debt Service Account to pay the DIP Obligations. In total, Schumacher has had less than one (1) week to respond to this emergency request, which could impact over \$500,000 of Schumacher’s recovery.

9. Schumacher understands the pressure that has been exerted upon Debtors by the DIP Lender, the challenges associated with the failed closing of the Panola facility, and the weighty and important issues associated with the need for Debtors’ hospitals to provide healthcare in a rural setting. However, Schumacher, a prepetition creditor owed in excess of \$3 million and a supplier of important medical staffing to Debtors’ facilitates who has dutifully performed post-petition under its executory contracts, is being asked to bear an outsized

proportion of the burden associated with these problems on an expedited basis. That is an inequitable result and should not stand.

10. Schumacher respectfully requests that the Court consider the Motion on a time table permitting Schumacher to carefully consider the facts and legal issues presented and bring before the Court all of the reasons for which the Motion should be denied.

**B. Funds in the Debt Service Account are earmarked for payment of Schumacher's claims and should not be turned over to the DIP Lender.**

11. If the Court does decide to consider the Motion on the expedited basis requested, the Motion should be denied. Funds in the Debt Service Account are earmarked for the repayment to Schumacher of prepetition amounts owed. The earmarking doctrine is an equitable doctrine under which, in certain circumstances, bankruptcy courts permit unsecured creditors to assert interests in funds set aside for payment of their claims. In *In re Hartley*, 825 F.2d 1067, 1070 (6th Cir. 1987), the Sixth Circuit Court of Appeals stated that, where money is loaned to a debtor specifically to enable the debtor to satisfy the claim of a designated creditor, “the general rule is that the proceeds to the creditor [are] not preferential.” Citing *Grubb v. General Contract Purchase Corp.*, 94 F.2d 70 (2d Cir. 1938), the Sixth Circuit recognized that payments made to a creditor with earmarked funds would not be preferential because the “transaction merely substituted one creditor for another without loss to the estate.” Courts have applied the earmarking doctrine to disputes over whether funds earmarked for payment to a specific creditor constitute property of the estate under Section 541 of the Bankruptcy Code. See *In re Barefoot Cottages Dev. Co., LLC*, 2009 WL 2842735 (Bankr. N.D. Fla. 2009) (ruling that funds paid to preserve the debtor’s estate that were at no time under the exclusive possession of the debtor were not property of the debtor but rather earmarked for payment to the creditor).

12. The funds on deposit in the Debt Service Account have been earmarked for

payment to Schumacher in accordance with the Letter Agreement.

13. Funds in the Debt Service Account, which were earmarked prepetition for payment to Schumacher, at all times preserved Debtors' estates and value by collateralizing the loan by ServisFirst and permitting Debtors to continue operating in compliance with their applicable financial covenants. Since the funds in the Debt Service Account were never property of the Debtors' estate, paying those funds to Schumacher in accordance with the Letter Agreement does not diminish Debtors' estate.

14. Further, Debtors have never exerted control over the funds in the Debt Service Account, which is a requirement for invocation of the earmarking doctrine. Prior to closing of the sale of the "Alabama facilities," such funds remained on deposit with and, presumably were subject to the control of, ServisFirst. After closing the transactions contemplated by the Russellville Order, the funds remained on deposit with ServisFirst and subject to "further order of the Court." Importantly, Debtors are specifically precluded from setting off or applying any funds in the Debt Service Account to the indebtedness of ServisFirst (and doubtless any other indebtedness) absent consent of various parties in interest and order of the Court. Russellville Order, ¶ 3.

15. Because funds in the Debt Service Account are earmarked for payment to Schumacher, they do not constitute property of the Debtors' estates and, accordingly, should be paid to Schumacher and not to the DIP Lender in satisfaction of the DIP Obligations.

**C. Reservation of Rights.**

16. Schumacher reserves the right to assert any and all arguments and positions relating to the Debt Service Account not taken herein in due course, based on discovery and additional analysis of the facts and circumstances and governing documents.

Dated March 11,2019.

Respectfully submitted,

**NELSON MULLINS RILEY  
& SCARBOROUGH LLP**

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And

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### **CERTIFICATE OF SERVICE**

I hereby certify that, on March 11, 2019, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's CM/ECF electronic filing system to all parties receiving electronic notice thereunder.

**By ECF to all parties of record, including:**

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[cewang@polsinelli.com](mailto:cewang@polsinelli.com)

Megan Reed Seliber  
U.S. Trustee's Office  
701 Broadway, Suite 318  
Nashville, TN 37203

Dated March 11, 2019.

/s/ James. A. Haltom  
JAMES A. HALTOM

**Exhibit “A”**

**Copy of Letter Agreement**





**SCHUMACHER**  
CLINICAL PARTNERS

June 1, 2018

Mr. J. Allen Tyra  
Chief Executive Officer  
Gilmore Memorial Hospital  
1105 Earl Frye Blvd.  
Armory, MS 38821-5500

Mr. Joel Southern  
Chief Executive Officer  
Northwest Mississippi Medical Center  
1970 Hospital Drive  
Clarksdale, MS 38614-7202

Mr. Wayne Thompson  
Interim Chief Executive Officer  
Panola Medical Center  
303 Medical Center Drive  
Batesville, MS 38606-8608

Re: Payment Plan for Past Due Balances owed for Gilmore Memorial Hospital (EM & HM),  
Panola Medical Center (EM), and Northwest Mississippi Medical Center (EM & HM)

Dear Gentlemen:

We are writing to confirm the parties' agreement regarding repayment of the past due balances for Gilmore Memorial Hospital, Panola Medical Center, and Northwest Mississippi Medical Center which are owed to Mississippi Emergency Physician Services, LLC and Comprehensive Hospitalists of MS, LLC (hereinafter collectively referred to as "Groups").

Currently, as of May 25, 2018, the following amounts are past due:

Facility & Type of Services	Provider Group	Past Due Balance
Gilmore Memorial Hospital (EM)	Mississippi Emergency Physician Services, LLC	\$932,858.40
Gilmore Memorial Hospital (HM)	Comprehensive Hospitalists of MS, LLC	\$707,800.00
Panola Medical Center (EM)	Mississippi Emergency Physician Services, LLC	\$691,493.99
NW Mississippi Medical Center (EM)	Mississippi Emergency Physician Services, LLC	\$258,052.51
NW Mississippi Medical Center (HM)	Comprehensive Hospitalists of MS, LLC	\$436,500.00
	<b>TOTAL</b>	<b>\$3,026,704.90</b>

The foregoing amounts, which are reduced from the original amounts owed, assume each Facility remits their regular subsidy payment for June 2018. Additionally, these amounts are contingent upon the following:

1. Gilmore Memorial Hospital signs the First Amendment to the Emergency Department Agreement, effective 1/1/2018, that changes the compensation model from a margin guarantee arrangement to a monthly subsidy of \$89,956.92.

2. Panola Medical Center signs the Second Amendment to the Emergency Department Agreement, effective 1/1/2018, that changes the compensation model from a margin guarantee arrangement to a monthly subsidy of \$57,941.67.
3. Northwest Mississippi Medical Center signs a new Emergency Department Agreement, effective 1/1/2018, that changes the compensation model from a margin guarantee arrangement to a monthly subsidy of \$51,089.67.

The parties have agreed to the following repayment plan to bring Curae's account current:

1. Hospitals will immediately make a payment of \$503,000.00 from the Debt Service Reserve Fund, when the sale of Curae's Alabama affiliates is complete (said transaction is expected to close on 6/30/2018). This amount will be applied to each Hospital's oldest invoices, leaving the following amounts due by each Hospital.

Facility & Type of Services	Payment applied to Invoice Nos.	Remaining Past Due Balance
Gilmore Memorial Hospital (EM)	22853 for \$91,092.08 23390 for \$88,475.00 23422 for \$29,593.46 (partial payment)	\$723,697.86
Gilmore Memorial Hospital (HM)	N/A	\$707,800.00
Panola Medical Center	23308 for \$88,473.00 23307 for \$88,473.00 23305 for \$29,593.46 (partial payment)	\$484,954.53
NW Mississippi Medical Center (EM)	25103 for \$87,300	\$170,752.51
NW Mississippi Medical Center (HM)	N/A	\$436,500.00
	<b>TOTAL</b>	<b>\$2,523,704.90</b>

2. Beginning July 15, 2018, Facilities will pay the remaining balance of \$2,523,704.90 over a ten (10) month period as follows:

Date of Payment	Amount of Payment	Remaining Balance
		\$2,523,704.90
7/15/2018	\$252,370.49	\$2,271,334.50
8/15/2018	\$252,370.49	\$2,018,964.10
9/15/2018	\$252,370.49	\$1,766,593.70
10/15/2018	\$252,370.49	\$1,514,223.30
11/15/2018	\$252,370.49	\$1,261,852.90
12/15/2018	\$252,370.49	\$1,009,482.50
1/15/2019	\$252,370.49	\$757,112.10
2/15/2019	\$252,370.49	\$504,741.61
3/15/2019	\$252,370.49	\$252,370.49
3/15/2019	\$252,370.49	\$0.00



3. Additionally, each hospital will continue to timely remit its monthly subsidy payments on or before the first of each month for each facility as follows:

Facility & Type of Services	Provider Group	Monthly Subsidy
Gilmore Memorial Hospital (EM)	Mississippi Emergency Physician Services, LLC	\$89,956.92
Gilmore Memorial Hospital (HM)	Comprehensive Hospitalists of MS, LLC	\$88,475.00
Panola Medical Center (EM)	Mississippi Emergency Physician Services, LLC	\$57,941.67
NW Mississippi Medical Center (EM)	Mississippi Emergency Physician Services, LLC	\$51,089.67

4. Should one or more of the Facilities default on the payment plan, or fail to timely remit its monthly subsidy payments, Groups will have no other choice but to terminate the agreements for non-payment.

Please sign and date below to indicate your acceptance and agreement to the foregoing payment plan.


Sincerely,

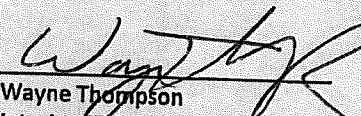
Comprehensive Hospitalists of MS, LLC and  
Mississippi Emergency Physician Services, LLC

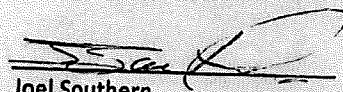


David Schillinger, MD  
Authorized Representative

Agreed to by Gilmore Memorial Hospital, Panola Medical Center and Northwest Mississippi Medical Center

By:   
J. Allen Tyra  
CEO, Gilmore Memorial Hospital

By:   
Wayne Thompson  
Interim CEO, Panola Medical Center

By:   
Joel Southern  
CEO, Northwest Mississippi Medical Center