

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

In re:)
) Chapter 11
CURAE HEALTH, INC., et al.¹) Case No. 18-05665
) Judge Walker
Debtors.) Jointly Administered
)
April 9, 2019 10:00 am)
Courtroom 2)
2nd Floor Customs House)
701 Broadway, Nashville, TN 3720)

PARTIAL OBJECTION TO PROPOSED AGREED INTERIM ORDER
AUTHORIZING DEBTORS TO PAY THE DIP OBLIGATIONS,
AND OTHER RELIEF

AND

ALTERNATIVE MOTION FOR LEAVE TO FILE OBJECTION TO
MARCH 8, 2019 MOTION AND/OR TO ADJOURN THE HEARING ON
THE PROPOSED AGREED INTERIM ORDER TO A DATE AFTER
APRIL 9, 2019, AND FOR OTHER RELIEF

The State of Mississippi Division Of Medicaid (MSDOM”) submits this partial objection to the entry of the proposed interim order [Docket No. 896] (“Proposed Order”) “(i) authorizing the Debtors to use Cash Collateral

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). This Motion does not concern and is not directed at Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

through and including April 12, 2019, (ii) granting ServisFirst adequate protection upon the terms set forth in this Order, (iii) modifying the automatic stay, and (iv) granting related relief.”

MSDOM further seeks leave to file an objection to the March 8, 2019 [Docket No. 847] Motion and requests that the issues presented by the Proposed Order and Motion [Docket No. 847] be adjourned until after the potential confirmation of the Plan or at least until after the Court rules on MDSOM’s Motion [Docket No. 758] concerning its Administrative Priority Claims For Unpaid Taxes, post-petition.

In support of its objection and request for relief, MSDOM shows:

1. On March 8, 2019, the Debtors filed an Expedited Motion [Docket No. 847] “for entry of an order, substantially in the form filed contemporaneously herewith (the ‘Proposed Order’), (i) authorizing the Debtors to pay the DIP Obligations (defined below); (ii) authorizing the use Cash Collateral (defined below) of ServisFirst (defined below) in accordance with the budget, attached to the Proposed Order as Exhibit 1 (the ‘Budget’); (iii) granting adequate protection upon the terms set forth in the Proposed Order, (iv) modifying the automatic stay, and (v) granting such other and further relief as the Court deems just and appropriate.”

2. The March 8, 2019, Motion stated that the DIP Loan made by MidCap should be paid off and that Court Approval was sought but was

unnecessary. [Docket No. 847 ¶37].²

3. The March 8, 2019, Motion stated that the ONLY need for use of Cash Collateral was:

41. The Cash Collateral will be used to fund the operations of Panola Medical Center and allow the Debtors to transition the Panola Medical Center to a new operator. Immediate access to this liquidity will permit the Debtors to fund payroll, pay vendors, provide patient care, and otherwise continue business in the ordinary course.... Moreover, the use of Cash Collateral will provide the Debtors with funds in order to pay administrative expenses until confirmation of the Plan.

4. MSDOM had no objection to Cash Collateral being used to operate the Panola Medical Center. Nor did MSDOM have objections to the limited payment of administrative expenses, such as the taxes due it, in accordance with law until confirmation of the Plan.

5. After March 8, 2019, the Panola Medical Center was transferred to its new owner and the Debtors have no need to use Cash Collateral to operate the Panola Medical Center.

6. The need for an expedited motion and hearing no longer exists.

7. On March 25, 2019, the Debtors, Medhost,³ Mississippi Emergency Physician Services, LLC, Comprehensive Hospitalists of MS, LLC,

² MSDOM does not object to the proposal to pay MidCap.

³ MSDOM does not object to the settlement reached with Medhost to the extent it satisfies post-petition expenses which were necessary for post-petition operations preserving the estate.

Shumacher Clinical Partners⁴ and ServisFirst Bank submitted a Proposed Order which does not “fund the operations of Panola Medical Center and allow the Debtors to transition the Panola Medical Center to a new operator” and which does not “provide the Debtors with funds in order to pay administrative expenses until confirmation of the Plan.”

8. Instead the Proposed Order expressly excludes the use of Cash Collateral for payment of “any allowed amount of any claim of the Mississippi Division of Medicaid.” [Docket No. 896 p. 5 ¶7].

9. Instead the Proposed Order revealed on March 25, 2019, a proposed budget which does not allege that the expenses in the budget are “the actual, necessary costs and expenses of preserving the estate” as required to be alleged and proven for administrative claim status by 11 U.S.C. §503(b)(1) (A).

10. Instead the Proposed Order revealed on March 25, 2019, a proposed budget which projects “expected receipts” of \$3,770,000, and expected disbursement of \$3,332,307.00.⁵

11. Instead the Proposed Order revealed on March 25, 2019, a proposed budget which seeks to allocate \$1,210,000.00 to “Trustee and Prof

⁴ MSDOM does not object to the settlement reached with Mississippi Emergency Physician Services, LLC and Comprehensive Hospitalists of MS, LLC and Shumacher Clinical Partners to the extent it satisfies post-petition expenses which were necessary for post-petition operations preserving the estate.

⁵ Given that receipts will exceed disbursements there is no need to use Cash Collateral for any purpose other than paying administrative claims such as those of MSDOM.

Fees” and seeks to “carve out” a superior lien and administrative claim for accrued but unpaid fees and expenses (the “Professional Fees and Expenses”) of the attorneys, accountants, or other professionals retained by the Debtors, health care ombudsman⁶ and any statutory committee of unsecured creditors....” [Docket No. 896 p. 5 ¶11].

12. Despite the language to the contrary, the Proposed Order reflects ServisFirst control over the Debtors.

13. The Proposed Order states that “Nothing herein shall constitute (i) an allowance of the amount, nature, validity or priority of any prepetition or post-petition claims or interests of ServisFirst; (ii) a determination of the extent, validity or priority of any of ServisFirst’s asserted liens or security interests; or (iii) a determination that any portion of the Cash Collateral, any other property of the Debtors’ estates or any proceeds thereof constitute ServisFirst’s collateral.”[Docket No. 896 p. 3 ¶2].

14. Yet the Proposed Order states “ServisFirst is entitled, pursuant to Bankruptcy Code sections 361 and 363(e), to adequate protection of its interests in the Collateral, including, but not limited to, the Cash Collateral, for any diminution in value of their interests in the Collateral, including, without limitation, any such diminution resulting from the Debtors’ use of Cash Collateral and any other Collateral and the imposition of the automatic

⁶ MSDOM does not object to the payment of the reasonable fees of the health care ombudsman.

stay pursuant to Bankruptcy Code section 362.... ServisFirst is hereby granted senior priority replacement liens upon all assets and property of the Debtors and their estates of any kind or nature whatsoever, now existing or hereafter acquired, including, without limitation the Collateral... provided, however, that the Replacement Liens shall be subject and subordinate to the Carve-Out (as defined below).” [Docket No. 896 p. 6 ¶9].⁷

15. Yet the Proposed Order states “ServisFirst is hereby granted an administrative claim with a priority equivalent to a claim under Bankruptcy Code sections 364(c)(1), 503(b), and 507(b), on a dollar-for-dollar basis for and solely to the extent of any Diminution in Value, which administrative claim shall, among other things, have priority over all other costs and expenses of the kind specified in, or ordered pursuant to, Bankruptcy Code sections 105, 328, 330, 331, 503(a), 503(b) 507(a), 507(b), 546(c), 1113, and 1114 (the “Superpriority Administrative Claim”), except for expenditures constituting the Carve-Out.” [Docket No. 896 p. 7 ¶10].

16. The Proposed Order states “[t]he automatic stay under Bankruptcy Code section 362(a) shall be, and it hereby is, vacated and modified to the extent necessary to permit (i) ServisFirst to receive and apply payments made pursuant to this Order in accordance with the terms and provisions of this Order and the Budget, and (ii) to permit ServisFirst to send the Termination

⁷ The Proposed Order also subordinates the created “rights” of ServFirst to Official Committee of Unsecured Creditors in relation to the outcome of an adversary proceeding.

Notice (as defined herein) and to exercise any rights and remedies or other action authorized or contemplated by this Order, subject to the terms and conditions contained herein.”

17. Contrary to the statements in the Proposed Order ServisFirst is not entitled to the rights and benefits of Bankruptcy Code Section 552(b), because the “equities of the case” exception under Bankruptcy Code section 552(b) warrants otherwise.

18. The Proposed Order should not survive confirmation of any plan, a dismissal or conversion.

19. Approval of the Proposed Order would violate the due process and statutory rights of MSDOM. The very premise of the March 8, 2019, Motion no longer exists and a major exercise of the Proposed Order appears to unfairly deprive MSDOM of its status, or the benefits of its status, as the holder of administrative claims under 11 U.S.C. §503(b)(1)(B) and 11 U.S.C §507(a)(7).

20. The Proposed Order is unnecessary because it cannot be entered prior to April 8, 2019, and covers only the five (5) day period to April 12, 2019. Any retroactive coverage potentially coverts expenses, already incurred, which are not necessary to preserve the estate into claims held by ServFirst to the detriment of MSDOM.

21. MSDOM should be allowed time and discovery to properly defend its rights in relation to the Proposed Order.

22. MSDOM reserves the right to assert any and all arguments and positions relating to these matters not taken herein in due course, based on discovery and additional analysis of the facts and circumstances and governing documents.

ACCORDINGLY the State of Mississippi Division Of Medicaid prays that the Proposed Order be rejected except to approve payments due to the reasonable fees of the health care ombudsman, payment of the DIP loan to MidCap, and the settlement payments to the objecting parties (MEDHOST and Shumacher entities) but solely to the extent the payments are for post-petition actual, necessary costs and expenses of preserving the estate.

Additionally, MSDOM prays that the final hearing to consider entry of a final order and final approval of Debtors' Motion scheduled for April 9, 2019 at 10:00 a.m. Central Standard, be adjourned and continued to a date after the date set for confirmation of the proposed plan or at least until after the Court rules on MSDOM's pending Motion.

MSDOM prays for such other and further relief to which it may be entitled.

Dated: March 25, 2019

Respectfully submitted,

STATE OF MISSISSIPPI
DIVISION OF MEDICAID

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STATE OF MISSISSIPPI

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 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 electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

s/James A. Bobo
James A. Bobo