

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

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

THE STATE OF MISSISSIPPI DIVISION OF MEDICAID'S  
OBJECTION TO PROPOSED PLAN  
AND CERTIFICATE OF SERVICE

The State of Mississippi, Mississippi Division of Medicaid (“MSDOM”) objects to the Joint Chapter 11 Plan of Liquidation [Docket No. 834] (“Plan”) filed by Curae Health, Inc., et al, the debtors-in-possession, and the Official Committee of Unsecured Creditors. In support of this objection, MSDOM shows the following:

1. MSDOM is party in interest and holds an administrative claim for

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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).

unpaid taxes incurred by each of the estates of Amory Regional Medical Center, Inc., Batesville Regional Medical Center, Inc., and Clarksdale Regional Medical Center, Inc.

2. As of April 9, 2019, MSDOM is owed \$3,855,018.13, in unpaid post-petition taxes, interest and penalties. The nature of the taxes is set forth in Miss. Code §43-13-145. See Docket No. 919 which is fully incorporated herein by reference.

3. The above referenced taxes are taxes incurred by the estates of Amory Regional Medical Center, Inc., Batesville Regional Medical Center, Inc., and Clarksdale Regional Medical Center, Inc.

4. The taxes, interest and penalties are entitled to allowance and payment under 11 U.S.C. §503(b)(1)(B).

5. This entire amount, and any taxes, interest and penalties which come due after April 9, 2019, should be paid to MSDOM as and when such payments are due and payable to MSDOM under Mississippi law. 28 U.S.C. §960.

6. MSDOM objects to the Plan to the extent the Plan does not provide for the full payment of these taxes, interest and penalties in accordance with Mississippi law in advance of approval of the Plan or alternatively on the first business day after the Confirmation Order becomes a final order and fails to provide for payment of new taxes, interest and penalties as might be-

come due and payable after the date of the Confirmation Order.

7. Pursuant to 28 U.S.C. §§959 and 960, the debtors are required to manage and operate the property of the estate according to the requirements of the valid laws of the State of Mississippi in the same manner that the owner or possessor of such property would be bound to do if in possession outside of bankruptcy. Congress amended §960 specifically to require post-petition taxes to be paid “on or before the due date of the tax under applicable non-bankruptcy law.” Therefore, any tax liabilities incurred by debtors post-petition should be paid under and in accordance with state law and not in accordance with the proposed Treatment of Claims of Article IV of the Plan.

8. MSDOM objects to the plan to the extent it seeks to put in place procedures and mechanisms which avoid Mississippi’s process for determining tax liability. A taxpayer cannot challenge a state tax for the first time in federal court when a state provides a process to challenge the tax, see, e.g., **Patel v. City of San Bernardino**, 310 F.3d 1138, 1141 (9th Cir. 2002); **Bernard v. Village of Spring Valley, N.Y.**, 30 F.3d 294, 297 (2d Cir. 1994) (holding that action in federal court was barred when plaintiff had procedurally adequate remedies that could be sought in state court); **Daytona Beach Racing and Recreational Facilities Dist. v. County of Volusia**, 579 F.2d 367,

369 (5th Cir. 1978) (holding that plaintiff could not “fail to take advantage of the state remedy and then litigate in federal court”).

9. MSDOM objects because the Plan does not clearly provide for full payment of Administrative Claims that may be disputed and subsequently become allowed by final order. Article VII.I. of the Plan provides that Disputed Claims that ultimately become allowed shall be paid in accordance with the provisions of the Plan. But the Plan does not provide for any reserve of funds, thus it does not clearly show Debtors’ ability to pay Disputed Claims which later become Allowed claims. MSDOM’s tax claims must be paid in full, plus interest and penalties, in accordance with §503 and §1129 of the Bankruptcy Code. Therefore, the Plan should clearly provide for a Disputed Claims reserve, in an interest-bearing account, in an amount sufficient to enable the debtors to properly fund payments in full on Disputed Claims which subsequently become allowed.

10. Objection is made to the extent Article IV.A., of the Plan seeks to require holders of administrative expense claims to file an application for payment of such claims. Section 503(b)(1)(D) of the Bankruptcy Code clearly states that a governmental entity such as MSDOM shall not be required to file a request for the payment of an administrative expense for post-petition tax liabilities as a condition of being an allowed administrative expense.

11. MSDOM objects because the Plan improperly restricts MSDOM

from assessing or collecting taxes from any non-debtor person or entity that may be liable directly or indirectly for the debtors' taxes. The Plan includes broad release, exculpation, and injunction provisions which appear to release and permanently enjoin MSDOM from pursuing non-debtor responsible entities. These restrictions on assessment and collection violate the Anti-Injunction Act, which provides that the "district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.." 28 U.S.C. §1341.

12. In addition §524(e) of the Bankruptcy Code clearly states that a "discharge of a debt of the debtor does not affect the liability of any other entity on... such debt." As proposed, the Plan conflicts with §524(e) and should not be confirmed.

13. MSDOM objects to the extent the Plan purports to restrict or enjoin creditors from asserting setoff rights or rights to recoupment. Although the Bankruptcy Code does not establish a right of setoff, §553 is widely recognized as preserving any right to setoff under applicable non-bankruptcy law. See **Citizens Bank v. Strumpf**, 116 S.Ct. 286, 289 (1995)9. MSDOM expressly preserves its setoff rights, under federal and state law, and rights to recoupment. MSDOM asserts preservation of setoff rights by objecting to any attempt to limit those rights through the Plan. Section § 1129(a)(1) of

the Bankruptcy Code requires a plan to comply with all applicable provisions of the Bankruptcy Code in order to be confirmed. To the extent the Plan attempts to restrict or enjoin creditors' setoff rights or rights to recoupment, it does not comply with §553 of the Bankruptcy Code and should not be confirmed.

14. Alternatively to the extent any of MSDOM's claims are determined to be Priority Tax Claims, they should be treated in accordance with §1129(a)(9)(C) of the Bankruptcy Code. The Plan generally provides for payment of Allowed Priority Tax Claims in accordance with §1129(a)(9)(C). However, MSDOM requests more specific terms such as an identifiable date of the first payment, the frequency of payments, and that the claims will be paid with the proper rate of interest under Mississippi law. See e.g., Miss. Code §27-41-9 (1% per month).

15. MSDOM objects because the Plan does not include meaningful provisions for an event of default to parties holding Priority Tax Claims. Pursuant to 11 U.S.C. § 1123(a)(5)(G), which requires that a plan provide adequate means for the plan's implementation, such as "curing or waiving of any default," the provisions set forth above should be added to the Plan.

16. The Plan repeatedly states that payments will be made "as soon thereafter as practicable." This language is not clear and does not meet the requirements of 11 U.S.C. §503 and §1129(a)(9)(C) which requires payment

of administrative claims and priority tax claims in full, and 11 U.S.C. §511(a) and (b) which requires interest on such claims at 1% per month under Mississippi law. The problem with the Plan language, is the vague statement that payment may occur “thereafter as practicable.” The Plan should provide for interest at the statutory rate in effect for the calendar month in which the Plan is confirmed if the priority claim is not paid in full on the effective date.

17. MSDOM objects to the Plan to the extent it seeks to make matters which are governed by Mississippi law as matters to be governed by Tennessee Law.

18. Counsel for MSDOM will confer with counsel for the debtors.

19. A proper Plan would provide:

Notwithstanding anything in the Plan or this Confirmation Order to the contrary:

- a. MSDOM is allowed an Administrative claim of \$3,855,018.13, plus additional taxes, interest and penalties which accrue after April 9, 2019;
- b. The Administrative claim of MSDOM will be paid in full immediately and in no event later than the first business day after the Confirmation Order becomes a final order with additional taxes, interest and penalties which accrue after April 9, 2019, to be paid at the time and in the manner required by Mississippi law;
- c. the MSDOM’s setoff rights under section 553 of the Bankruptcy Code and Mississippi law and recoupment rights are

preserved and neither the Debtors nor the Liquidating Trustee shall have setoff rights against MSDOM;

- d. No administrative bar date will apply to any administrative tax, interest or penalty. MSDOM shall not be required to file any proofs of claim or requests for payment in the Chapter 11 Cases for any Administrative Claims for the liabilities described in section 503(b)(1)(B) and (C) of the Bankruptcy Code. The Debtors or the Liquidating Trustee, as applicable, shall timely remit full payment, including penalties and interest, for all taxes due or coming due, as required under applicable Mississippi Law, and, should the Debtors, or Reorganized Debtors, or Liquidating Trustee, as applicable, fail to so timely pay, MSDOM may proceed with Mississippi state law remedies for collection of any amounts due and/or seek such relief as may be available from the Court. As to MSDOM, there shall be no release, exculpation, or discharge beyond the discharge provisions in 11 U.S.C. §1141;
- e. To the extent MSDOM's Priority Tax Claims, if any, are not paid in full in cash on the Effective Date, such Priority Tax Claims shall, at a minimum, be paid by regular, quarterly installment payments in cash over a period not to exceed five years, or the proposed Plan term, whichever is shorter, after the date of the order for relief under section 301 of the Bankruptcy Code, all as required section 1129(a)(9)(C) of the Bankruptcy Code, along with non-bankruptcy interest in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code and Mississippi state law, as applicable;
- f. The Chapter 11 Cases shall have no effect on the MSDOM's rights and claims as to non-Debtor third parties;
- g. The statutorily mandated treatment of MSDOM's Allowed Administrative Claims, any Priority Tax Claims and/or any liabilities to MSDOM described in section 503(b)(1)(B) and (C) of the Bankruptcy Code shall not be considered a settlement or compromise;



h. MSDOM may timely amend any Proof of Claim against any Debtor after the Effective Date with respect to (a) a pending audit, or (b) an audit or reconciliation which may be performed;

i. in the event of a default in payment of Priority Tax Claims of the MSDOM, if any, MSDOM shall send written notice of default to the Debtors, Reorganized Debtors, or Liquidating Trustee, as applicable, to the address in MSDOM's records. If such default is not cured within 10 business days after such notice of default is mailed, the MSDOM may (a) enforce the entire amount of its claim; (b) proceed with Mississippi state law remedies for collection of any amounts due and/or (c) seek such relief as may be available from the Court; and,

j. Except to the extent the Bankruptcy Code, Bankruptcy Rules, or other federal law is applicable, the rights and obligations arising under the Plan in relation to MSDOM shall be governed by, and construed and enforced in accordance with, the laws of the State of Mississippi, without giving effect to the principles of conflicts of law of such jurisdiction.

## CONCLUSIONS AND RESERVATIONS OF RIGHTS

20. For the reasons stated herein, MSDOM respectfully requests that this Court (i) sustain the Objection of MSDOM to the Plan and deny confirmation; and (ii) grant such other and further relief as the Court deems just and proper under the circumstances.

21. MSDOM hereby expressly reserves all of its rights under this Objection and the Plan (as such may be amended, modified or supplemented), and any other or new plan which debtors may file, including, but not limited

to, the right to assert any and all objections it may have to confirmation of the Plan.

Dated: April 15, 2019.

Respectfully submitted,

STATE OF MISSISSIPPI  
DIVISION OF MEDICAID

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Local Counsel

## CERTIFICATE OF SERVICE

I hereby certify that on April 15, 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. Specifically including:

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