UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE

IN RE:	:	CHAPTER 11
	:	
CURAE HEALTH, INC., *et al*.[1]	:	CASE NO. 18-05665
	:	
1721 Midpark Road, Suite B200 Knoxville, TN 37921	:	Judge Walker
	:	
	:	Jointly Administered
Debtors.	:	

LIMITED OBJECTION TO JOINT CHAPTER 11 PLAN OF LIQUIDATION

UnitedHealthcare Insurance Company (collectively, with its affiliates, subsidiaries, and parents, "United") hereby submits this limited objection to the Debtors' Joint Chapter 11 Plan of Liquidation [Docket No. 834] (the "Plan"). United objects to the Plan's inclusion of a permanent injunction that would bar it from exercising its right to setoff outstanding post-petition debts in accordance with a stipulation approved by this Court for purposes of curing defaults under contracts assumed and assigned in connection with the Debtors' sale of the Panola Medical Center. The inclusion of such a permanent injunction renders the Plan not confirmable under 11 U.S.C. §§ 1129(a)(1) and (3).

In support of its limited objection, United states as follows:

I. BACKGROUND

A. The United Agreements and the Resolution of the Cure Objection

1. United, contracting on behalf of itself, UnitedHealthcare of Mississippi, Inc., and its other affiliates, entered into a Facility Participation Agreement with Tri Lakes

[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).

Medical Center, the predecessor in interest to Batesville Regional Medical Center, Inc. ("BRMC") dated on or about April 1, 2015 (the "FPA"), for services provided at the Panola Medical Center.

2. United, contracting on behalf of itself, UnitedHealthcare of Mississippi, Inc., and its other affiliates, entered into a Medical Group Contract with Batesville Regional Physicians, LLC ("BRP" and together with BRMC, the "Debtors") dated on or about August 9, 2017 ("Group Contract" and together with the FPA, the "Agreements"), for services rendered by BRP's physicians.[2]

3. Pursuant to the Agreements, the Debtors agreed to provide certain covered medical services to members enrolled in United's health insurances plans, as well as self-funded health plans administered by United, in exchange for certain fees. In connection with paying claims submitted by the Debtors under the Agreements, United may periodically overpay a claim for a variety of reasons. When this occurs, United has the right to be reimbursed for such overpayments and may recover such overpayments by an offset against future payments due to the Debtors under the terms of the Agreements.

4. On August 24, 2018 (the "Petition Date"), the Debtors filed voluntary petitions under Chapter 11 in this Court.

5. On November 30, 2018, the Debtors filed a Notice of: (I) Debtors' Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property; and (II) Cure Amounts Related to the Foregoing [Docket No. 513] (the "Cure Notice"). Pursuant to the Cure Notice, the

[2] The Agreements contain United's highly confidential and sensitive commercial information. While the Debtor should have copies of the Agreements, other parties in interest may request copies of such Agreements by written request to the undersigned counsel and upon the entry into either an acceptable confidentiality agreement or the entry of an appropriate protective order.

Agreements were designated for assumption by the Debtors and assignment to Progressive Medical Management of Batesville, LLC (the "Purchaser"), in connection with the sale of the Panola Medical Center.

6. On December 18, 2018, United filed its Limited Objection to Notice of: (I) Debtors' Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property; and (II) Cure Amounts Related to the Foregoing [Docket No. 583] (the "Cure Objection"), pursuant to which United objected to the cure amounts set forth on the Cure Notice under 11 U.S.C. § 365.

7. On January 21, 2019, this Court entered an Agreed Order Resolving UnitedHealthcare Objection [Docket No. 691] ("Agreed Order"), pursuant to which United's Cure Objection was resolved in accordance with the Stipulation annexed to the Agreed Order. Pursuant to Paragraph 1 of the Stipulation, the Purchaser is responsible for paying the pre-petition overpayments owed to United under the Agreements. With regard to overpayments arising under the Agreements after the Petition Date and before the Closing Date (defined below), Paragraph 1 of the Stipulation provides that the Debtors will pay such amounts in the ordinary course of business up to $25,000 for amounts accruing between January 1, 2019 and the Closing Date, and thereafter, United's remedy to recover overpayments is to either (i) set-off or recoup such amounts from claims submitted by the Debtors for post-petition, pre-Closing Date services, or (ii) filing an application for an administrative expense claim under 11 U.S.C. § 503(b).

8. On March 14, 2019, the sale to the Purchaser of the Panola Medical Center closed with an effective time of 12:01 a.m. on March 1, 2019 (the "Closing Date"). (*See* Docket No. 881.)

9. Currently, the Debtor owes $11,194.94 in post-petition, pre-Closing Date overpayments under the Agreements. It is anticipated that additional overpayments may become due and owing as United continues to review claims paid to the Debtors post-petition.

B. The Plan

10. On March 4, 2019, the Debtors filed the Plan. The Plan is one of liquidation and the Debtors will not continue to operate post-confirmation. (*See, e.g.*, Plan Art. VII.A.) As such, the Plan provides that the Debtors are not entitled to a discharge under 11 U.S.C. § 1141(d)(3). (Plan Art. XI.F.)

11. However, Article XI.A provides, in pertinent part, as follows:

> Except as otherwise expressly provided in the Plan or to the extent necessary to enforce the terms and conditions of the Plan, the Confirmation Order, or a separate Order of the Bankruptcy Court, as of the Effective Date, all entities who have held, hold, or may hold Claims[3] against the Debtors, are permanently enjoined, on and after the Confirmation Date, from . . . (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from the Debtors, the Debtors' estates, the Liquidating Trust, or the Liquidating Trustee, or against the property or interests in property of the Debtors, the Debtors' estates, the Liquidating Trust, or the Liquidating Trustee on account of any such Claim. Such injunction shall extend for the benefit of the Debtor Representative, the Liquidating Trustee, and any successors of the Debtors, and to any property and interests in property subject to this Plan.

[3] The Plan defines "Claims" by reference to 11 U.S.C. § 101(5). (Plan Art. I.)

II. LIMITED OBJECTION

12. United objects to the Plan under 11 U.S.C. §§ 1129(a)(1) and (3) because the permanent injunction in Article XI.A.iv of the Plan (i) is at odds with this Court's Agreed Order and annexed Stipulation, which expressly preserves United's right to set-off or recoup post-petition overpayments under the Agreements, as well as United's rights under 11 U.S.C. § 365(b), and (ii) does not comply with 11 U.S.C. §§ 524(a) and 1141 since the Debtors are not entitled to a discharge.

13. All of the subsections of § 1129(a) must be met for a plan to be confirmed. *See* 11 U.S.C. § 1129(a). Section 1129(a)(1) provides that a plan must comply with all applicable provisions of title 11. Section 1129(a)(3) provides that a plan must be proposed in good faith and not by any means forbidden by law. "Courts have held that in the context of chapter 11, 'good faith' means that the plan will likely achieve a result consistent with the objectives and purposes of the Code. 'In assessing whether a plan complies with § 1129(a)(3)'s good faith standard, a bankruptcy court must examine the totality of the circumstances.'" *Fed. Nat. Mortg. Ass'n v. Vill. Green I, GP*, 483 B.R. 807, 822 (W.D. Tenn. 2012) (internal citations omitted). Here, the Plan's permanent injunction violates both §§ 1129(a)(1) and 1129(a)(3), and, thus, the Plan cannot be confirmed as currently drafted.

14. First, the Plan's attempt to permanently enjoin United from exercising its right of set-off or recoupment with regard to post-petition, pre-Closing Date overpayments violates this Court's Agreed Order and Paragraph 1 of the Stipulation annexed thereto. The Stipulation expressly provides United with the remedy to set-off or recoup such overpayments as part of the cure of the defaults under the Agreements. The Plan is not

proposed in good faith and does not comply with the Bankruptcy Code's applicable provisions because the permanent injunction is an end-run around the Agreed Order and Stipulation, as well as the Debtors' obligation to cure all of the defaults under the Agreements under § 365(b).

15. Second, the permanent injunction in Article XI.A.iv is not consistent with the Bankruptcy Code's discharge provisions. Section 524(a) provides for an injunction against attempts to recover debts discharged under § 1141. *See* 11 U.S.C. § 524(a). However, § 1141(d)(3) provides that a plan does not discharge a debtor if its plan is one of liquidation, the debtor does not engage in business after consummation of its plan, and the debtor is a business that would be ineligible for a discharge under 11 U.S.C. § 727(a).

16. Here, the Debtors' Plan is one of liquidation, the Debtors will not be operating post-confirmation, and the Debtors are ineligible for a discharge under § 727(a)(1). Indeed, the Debtors conceded in the Plan that they are ineligible for a discharge. (Plan Art. XI.F.) Thus, the Plan's permanent injunction seeks to provide what §§ 524(a) and 1141(d)(3) expressly disallow.

17. For the foregoing reasons, the Plan cannot be confirmed under §§ 1129(a)(1) and (a)(3).

18. United has discussed its objection with the Debtors' counsel and has provided counsel with the following language for inclusion in any confirmation order that would resolve this objection in its entirety: "Notwithstanding anything in the Joint Chapter 11 Plan of Liquidation (the 'Plan') or this order confirming the Plan (the 'Confirmation Order'), UnitedHealthcare Insurance Company ('United') may set-off or recoup any post-petition overpayments owed to it by the Debtors from any claims submitted to United by

the Debtors or the Liquidating Trust (as defined in the Plan) for services rendered on or after the Petition Date as agreed to in that certain Stipulation Regarding Cure Amount as approved by this Court's Agreed Order Resolving UnitedHealthcare Objection [Docket No. 697] (the 'Stipulation'). Nothing in the Plan or Confirmation Order is intended to alter the terms of the Stipulation, which shall remain binding on United, the Debtors, and the Liquidating Trust."

WHEREFORE, United respectfully requests that the Court enter an order (i) either (a) denying confirmation of the Plan or (b) conditioning confirmation of the Plan on the inclusion of the language in the confirmation order specified above preserving United's rights under the Agreed Order and Stipulation; and (ii) granting such further relief as the Court deems appropriate.

April 17, 2019 Respectfully submitted,

/s/ Michael G. Abelow
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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2019, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties requesting notice under Fed. R. Bankr. P. 2002, by operation of the Court's electronic filing system or by U.S. mail, postage prepaid, to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

I hereby further certify that on April 17, 2019, the foregoing was served on the below listed notice parties by email or first class mail (as indicated).

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/s/ Michael G. Abelow
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