UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE

In re:	)	
	)	
CURAE HEALTH INC., *et al.*	)	Case No. 3:18-bk-05665
	)	Chapter 11
Debtors.	)	Judge Charles M. Walker
	)	
	)	(Jointly Administered)
	)	

Objection deadline: April 17, 2019
Hearing date: May 9, 2019, 9:00 a.m.,
Courtroom 2, 701 Broadway, Nashville, TN

OBJECTION OF CHS/COMMUNITY HEALTH SYSTEMS, INC. TO CONFIRMATION OF JOINT CHAPTER 11 PLAN OF LIQUIDATION

CHS/Community Health Systems, Inc. ("CHS/"), by and through its undersigned counsel, hereby submits this objection (the "Objection") to the Debtors' Joint Chapter 11 Plan of Liquidation (the "Plan") (Doc. No. 834). In support of its Objection, CHS/ states as follows:

BACKGROUND

1. CHS/ is the largest unsecured creditor in this case, with the Debtors owing CHS/ and its affiliates in excess of $30 million and possibly as much as $45-$50 million. As set forth in several proofs of claim filed by CHS/ and its affiliates, CHS/'s claims arise out of, among other things, (1) promissory note, term loan, and guaranty obligations incurred by the Debtors in connection with the Debtors' purchase of the Amory, Batesville, and Clarksdale hospitals from CHS/ in 2017; (2) obligations incurred by the Debtors in connection with certain transition services agreements entered into between the Debtors and CHS/ and/or its affiliates; and (3) certain contractual guaranty obligations of CHS/ and/or its affiliates arising out the Debtors' default under leases, contracts or other agreements assigned to Debtors in connection with the Debtors' purchase of hospitals from CHS/, including, among others, a real property lease with

Coahoma County, Mississippi with a remaining term that runs through 2035 and which includes more than $14 million in remaining liability.

2. In addition to being the Debtors' largest unsecured creditor, CHS/ now operates one of the hospitals formerly operated by the Debtors in Clarksdale, Mississippi. Specifically, on or around December 13, 2018, following a motion filed by Curae to shut down the Clarksdale hospital, CHS/ and its subsidiary, Clarksdale HMA, LLC, entered into an Interim Management Services Agreement ("IMA") pursuant to which Clarksdale HMA, LLC, as Manager, and CHS/, as Indemnitor, voluntarily agreed to take over operations of the Clarksdale hospital from the Debtors and to bear the financial risk associated with the Clarksdale hospital operations effective December 16, 2018 (the "IMA Effective Date"). The terms of the IMA, which was approved by the Court at Docket No. 558, are incorporated herein by reference.

3. Pursuant to Section 1.4 of the IMA, the Debtors and CHS/ agreed generally that CHS/ would own all revenues generated by the Clarksdale hospital pertaining to items and services rendered after the December 16, 2018 IMA Effective Date and would pay all expenses, invoices, accounts payable, and other obligations of the Clarksdale hospital attributable to the time period after the IMA Effective Date. Likewise, the parties agreed that Curae would own all revenues pertaining to items and services rendered prior to the IMA Effective Date and would pay all expenses, invoices, accounts payable, and other obligations of the Clarksdale hospital attributable to the time period prior to the IMA Effective Date.

4. On March 4, 2019, the Debtors filed their Plan and related Disclosure Statement. (Doc. No. 834 and 835). Pursuant to the Plan, the Debtors have created three separate classifications of general unsecured claims, including (1) Class 5 – General Unsecured Claims; (2) Class 6 – Deficiency Claim of ServisFirst; and (3) Class 7 – Deficiency Claim of CHS.

Notwithstanding these separate classifications, Class 5, 6, and 7 Claims – all of which are general unsecured claims - are treated exactly the same, with holders of such claims receiving a pro rata share (calculated upon the collective claims in Classes 5, 6, and 7) of the net proceeds of the GUC and Deficiency Liquidating Trust Assets.

5. Section 1122(a) of the Bankruptcy Code provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. §1122(a). While Section 1122(a) does not specifically address whether similar claims *must* be placed in the same class, the Sixth Circuit has found that a debtor's flexibility to determine classifications of claims "must have limits in order to prevent a plan proponent from gerrymandering classes to ensure confirmation." *See Zentek GBV Fund IV v. Vesper*, 19 Fed. Appx. 238, 249 (6th Cir. 2001) (citing *Teamsters Nat'l Freight Indus. Negotiating Comm. v. U.S. Truck Co., Inc. (In re U.S. Truck Co.)*, 800 F.2d 581, 586 (6th Cir.1986) ("We agree with the Teamsters Committee that there must be some limit on a debtor's power to classify creditors in such a manner. The potential for abuse would be significant otherwise.").

6. Here, the Debtors' Plan cannot be confirmed under 11 U.S.C. § 1129(a). The Plan engages in impermissible gerrymandering in violation of 11 U.S.C. § 1122(a) by classifying similar claims differently in order to gerrymander an affirmative vote on the Plan. In particular, Class 5, Class 6, and Class 7 all contain general unsecured claims that are treated exactly the same under the Plan. However, these claims have been placed in separate classes for voting purposes, with CHS/'s general unsecured deficiency claim placed in Class 7, separate from other general unsecured creditors. The clear purpose and effect of this treatment is to increase the chance of Plan confirmation by depriving CHS/ of the voting power to thwart a cram down by

voting against Plan confirmation within a single class of general unsecured claims. This is impermissible gerrymandering under the Bankruptcy Code. *See id*; *In re WBA Associates Ltd. Dividend Housing Ass'n Ltd. Partnership*, 224 B.R. 40, *42-43 (Bankr. E. D. Mich. 1998); *Boston Post Road Ltd. Partnership v. F.D.I.C. (In re Boston Post Road Ltd. Partnership),* 21 F.3d 477, 483 (2d Cir.1994) (holding that a legitimate reason other than creation of impaired assenting class must be proven for separate classification to be allowed); *John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assoc.*, 987 F.2d 154, 159–60 (3d Cir.1993) (holding that a debtor's power to classify claims is limited); *Travelers Ins. Co. v. Bryson Properties, XVIII (In re Bryson Properties, XVIII),* 961 F.2d 496, 502 (4th Cir.1992) (holding that separate classification of similar claims is allowed, but only "for reasons independent of the debtor's motivation to secure the vote of an impaired, assenting class of claims"); *Phoenix Mut. Life Ins. Co. v. Greystone III Joint Venture (In re Greystone III Joint Venture)*, 995 F.2d 1274, 1279 (5th Cir.1991) (articulating the "one clear rule" on this subject as being, "thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan").

7. While CHS/ is not yet privy to the results of the balloting process relative to the Plan, it is highly likely that the Plan would be rejected if general unsecured claims were properly classified together in Class 5. CHS/ has a general unsecured claim valued at up to $50 million, and it has voted to reject the Plan. Considering the size of CHS/'s claim relative to other unsecured creditors, proper classification of CHS/'s claim would almost certainly result in the Plan being rejected by Class 5.

8. In addition to the foregoing, CHS/ understands that the Mississippi Department of Medicaid (MDOM) has asserted administrative claims against the Debtors relating to the Clarksdale hospital in the approximate amount of $1.5 million. (See, e.g., Doc. No. 758, 919,

942.) Notwithstanding the agreement between the Debtors and CHS/ under the IMA, which provides that the Debtors will remain responsible for all expenses attributable to items and services rendered prior to the IMA Effective Date, the MDOM has also asserted that CHS/ is liable for unpaid assessments by MDOM during the pre-IMA Effective Date period. It is unclear that the Plan adequately provides for the proper treatment of the MDOM claim in accordance with the terms of the IMA. Accordingly, CHS/ further objects to confirmation of the Plan on that basis.

9. For the foregoing reasons, CHS/ respectfully objects to confirmation of the Plan. CHS/ further expressly reserves all of its rights under this Objection and Plan, including but not limited to the right to assert further objections to any amendment(s) to the Plan made by the Debtors.

Respectfully submitted,

/s/ Paul G. Jennings
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CERTIFICATE OF SERVICE

I hereby certify that, on the 17th day of April, 2019, notice of the filing of the foregoing was served upon all parties on the electronic service list by operation of the Court's CM/ECF system.

/s/ Paul G. Jennings