

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

In re:)	
)	Chapter 11
Curae Health, Inc., <i>et al.</i> ¹)	Case No. 18-05665
)	
1721 Midpark Road, Suite B200)	Judge Walker
Knoxville, TN 37921)	
Debtors.)	Jointly Administered

**DEBTORS' EXPEDITED MOTION TO APPROVE STIPULATION WITH
MAGMUTUAL INSURANCE COMPANY**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move (the “**Motion**”), pursuant to section 105 of title 11 of the United States Code (the “**Bankruptcy Code**”); and Rule 9019 of Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”); for entry of an order, substantially in the form filed contemporaneously herewith (the “**Proposed Order**”), (i) authorizing the Debtors to enter into the stipulation, attached hereto as Exhibit B (the “**Stipulation**”) with MagMutual Insurance Company (“**MagMutual**”); (ii) authorizing the Debtor to receive and use the Dividend in a manner consistent with the Cash Collateral Order, as the terms are defined below ; (iii) finding that, as provided in the Stipulation, no other parties have claim to the Dividend; and (iv) granting such other and further relief as the Court deems just and appropriate. In support of the Motion, the Debtors respectfully represent as follows:

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).

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). The Debtors consent to entry of a final order under Article III of the United States Constitution.

2. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are Bankruptcy Code section 105 and Bankruptcy Rule 9019.

BACKGROUND

General Background

4. On August 24, 2018 (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the Declaration of Stephen N. Clapp, Chief Executive Officer of Curae Health, Inc., in Support of Chapter 11 Petitions and First Day Pleadings (Docket No. 49) (the “**First Day Declaration**”) and fully incorporated herein by reference.

5. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases. On September 6, 2018, the official committee of unsecured creditors (the “**Committee**”) was appointed.

6. Pursuant to the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, and (IV) Modifying the Automatic Stay* (Docket No. 455), entered November 15, 2018 (the “**Final DIP Order**”), the

Debtors are a party to a certain Debtor-In-Possession Credit Agreement (the “**DIP Credit Agreement**”). MidCap Financial Trust (“**Midcap**”), or one of its affiliates, serves as a DIP Agent² and DIP Lender under the DIP Credit Agreement.

7. Additionally, under the Final DIP Order, ServisFirst Bank (“**ServisFirst**”) has security interests in and liens (the “**ServisFirst Liens**”) on substantially all of Debtors’ assets (collectively, the “**Collateral**”). The ServisFirst Liens are subordinate to the DIP Liens.

8. On January 16, 2019, the Committee commenced an adversary proceeding on behalf of the Debtors’ estates against ServisFirst Bank, pending before the Court under adversary proceeding number 3:19-ap-90010, in which the Committee seeks to avoid certain transfers to ServisFirst, determine/disallow claims asserted by ServisFirst against the Debtors’ estates, and obtain declaratory relief with respect to certain non-Debtor assets.

9. On March 26, 2019, the Court entered the *Expedited Agreed Interim Order Granting Debtors' Motion to Use Cash Collateral (I) Authorizing Debtors' to Pay the DIP Obligations, (II) Authorizing the Use of Cash Collateral, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* (“**Cash Collateral Order**”) (Docket No. 899), whereby Debtors were granted authority to, *inter alia*, pay all outstanding obligations owed to Midcap and use cash collateral on an interim basis. Per the Cash Collateral Order, the Debtors paid all outstanding obligations to Midcap.

Settlement Agreement Background and Details

10. Prior to the Petition Date, MagMutual issued a Hospital Liability Insurance Claims-Made and Occurrence Policy for the policy period of 01/01/2018-01/01/2019 and identified by policy number HPL-3500029 02 (the “**Insurance Policy**”) to the Debtors.

² Unless stated otherwise, capitalized terms are afforded the same meaning as provided in the Final DIP Order.

11. As part of the Insurance Policy, the Debtors participated in the MAG Mutual Insurance Company Owners Circle benefits program (the “**Owners Circle**”). As a participant in the Owners Circle, MagMutual, at its sole discretion, would credit the Debtors’ policy account certain amounts calculated based on premiums paid for each eligible participant. Distributions from said account were later made once a participant reached a Qualifying Event.³ MagMutual has determined that a \$2,354 is owed to the Debtors on account of their participation in the Owners Circle.

12. Additionally, from time to time and at MagMutual’s sole discretion, MagMutual offers its policyholders dividends. In 2019, a 6% of premium dividend was announced by MagMutual’s board of directors. Based on this announcement, the Debtors are entitled to a \$22,388 dividend. Together with the Owners Circle payment described above, MagMutual has determined that \$24,742 was due and owing to the Debtors (the “**Dividend**”).

13. While MagMutual acknowledges that the Dividend is payable to the Debtors, given the ongoing disputes in this case, as discussed herein, the Debtors and MagMutual (collectively, the “**Parties**”) want to ensure that payment of the Dividend is made to the correct party and in compliance with all Court orders.

14. As such, the Parties seek to enter into a Stipulation, attached hereto as Exhibit B, whereby MagMutual shall transfer the Dividend to the Debtors and the Debtors shall use the Dividend in a manner consistent with the Cash Collateral Order.

Relief Requested

15. By this Motion, the Debtors seek entry of an order approving the Stipulation.

³ Term used as defined in the Insurance Policy. Any Insurance Policy reproductions contained herein are for convenience only. Nothing set forth herein shall amend, alter, waive, modify, or change any term, condition, limitation, or provision of the Insurance Policy. For all issues of coverage or otherwise, the terms, conditions, limitations, and provisions of the Insurance Policy apply as set forth in the Insurance Policy.

16. Section 105(a) of the Bankruptcy Code provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 105(a) has been interpreted to expressly empower bankruptcy courts with broad equitable powers to “craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain.” *Official Comm. Of Unsecured Creditors of Cybergenics Corp. ex rel Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003); *see also In re Caesars Ent. Oper. Co., Inc.*, 808 F.3d 1186, 1188 (7th Cir. 2015) (“Though section 105(a) does not give the bankruptcy court carte blanche . . . it grants the extensive equitable powers that bankruptcy courts need in order to be able to perform their statutory duties.”).

17. Bankruptcy Rule 9019 provides that, after notice and hearing, “the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a).

18. In bankruptcy proceedings, compromise is a favored and normal part of the Chapter 11 process. *In re Trism, Inc.*, 282 B.R. 662, 666 (B.A.P. 8th Cir. 2002). “A decision to approve or disapprove a proposed settlement under Bankruptcy Rule 9019 is within the discretion of the bankruptcy judge.” *Id.* at 666 (citing *In re Flight Transp. Corp. Sec. Litig.*, 730 F.2d 1128, 1135–36 (8th Cir. 1984)).

19. In determining whether or not to approve a settlement, “[t]he bankruptcy court . . . is obligated to weigh all conflicting interests in deciding whether the compromise is ‘fair and equitable,’ considering such factors as the probability of success on the merits, complexity and expense of litigations, and the reasonable views of creditors.” *Bauer v. Commerce Union Bank, Clarksville, Tennessee*, 859 F.2d 438, 441 (6th Cir. 1988). “In considering these factors, the bankruptcy court should canvass the issues and determine whether the proposed settlement falls

within the range of reasonableness in the case, but without trying the case or otherwise deciding the issues of law and fact presented.” *In re Media Cent., Inc.*, 190 B.R. 316, 321 (E.D. Tenn. 1994).

20. Moreover, the court “need not hold a mini-trial or write an extensive opinion every time he approves or disapproves a settlement. The judge need only apprise himself of the relevant facts and law so that he can make an informed and intelligent decisions, and set out the reasons for his decision.” *In re MQVP, Inc.*, 477 F. App'x 310, 313 (6th Cir. 2012) (citing *In re Fishell*, 47 F.3d 1168 (6th Cir. 1995) (quoting *In re American Corporation*, 841 F.2d 159, 163 (7th Cir. 1987))).

21. The trustee, or debtor-in-possession as the case may be, “is to be given considerable deference with respect to the settlements he or she makes on behalf of bankruptcy estate. This deference manifests itself in the business judgment rule.” *In re Engman*, 331 B.R. 277, 298 (Bankr. W.D. Mi. 2005); *see also In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (“Indeed, under normal circumstances the court would defer to the trustee’s judgment as long as there is a legitimate business justification.”) (citing *In re Schipper*, 993 F.2d 513, 515 (7th Cir. 1991)).

22. The Debtors believe the Stipulation is fair and reasonable and is in the best interest of the Debtors, their creditors, and the estates, and should be approved pursuant to Bankruptcy Rule 9019.

23. The Stipulation avoids the time and expense that might be necessary to litigate the issues relating to the Dividend. The Stipulation provides the Parties with reasonable assurance that the Dividend is being paid to the correct party and can be used in accordance with all the prior Court orders, including, but not limited to, the Cash Collateral Order.

24. The Stipulation is the product of good-faith discussions and arms' length bargaining among the Parties. The Debtors believe that the Stipulation represents a highly attractive outcome for the Debtors' estates.

25. Therefore, for the reasons stated above, the Debtors, in an exercise of their sound business judgment, submit that the Stipulation is fair, equitable, and appropriate and should be approved by this Court.

Notice

26. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, notice of this Motion has been given to the following parties, or in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee; (ii) counsel to the Committee; (iii) counsel to MagMutual; and (iv) parties requesting notice pursuant to Bankruptcy Rule 2002.

WHEREFORE, the Debtors respectfully request that the Court: (i) enter the Proposed Order in substantially the same form filed contemporaneously herewith, granting the relief requested herein; and (ii) provide such other relief as the Court deems appropriate and just.

Dated: April 29, 2019
Nashville, Tennessee

POLSINELLI PC

/s/ Michael Malone

Michael Malone
401 Commerce Street, Suite 900
Nashville, TN 37219
Telephone: (615) 259-1510
Facsimile: (615) 259-1573
mmalone@polsinelli.com

-and-

David E. Gordon (*Admitted Pro Hac Vice*)
Caryn E. Wang (*Admitted Pro Hac Vice*)
1201 West Peachtree Street NW
Atlanta, Georgia
Telephone: (404) 253-6000

Facsimile: (404) 684-6060
dgordon@polsinelli.com
cewang@polsinelli.com

*Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Order

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

In re:)	
)	Chapter 11
Curae Health, Inc., <i>et al.</i> ¹)	Case No. 18-05665
)	
1721 Midpark Road, Suite B200)	Judge Walker
Knoxville, TN 37921)	
Debtors.)	Jointly Administered

**ORDER GRANTING DEBTORS’ MOTION TO APPROVE STIPULATION WITH
MAGMUTUAL INSURANCE COMPANY**

Upon the motion (the “**Motion**”),² pursuant to section 105 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure, for entry of an order to approve the stipulation (the “**Stipulation**”) between the Debtors and MagMutual Insurance Company (“**MagMutual**,” and together with the Debtors, the “**Parties**”), a copy of which is attached as Exhibit B to the Motion; the Court having reviewed the Motion and the Stipulation and having considered the record with respect to the Motion; the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157, (c) notice of the Motion was sufficient under the circumstances and in full compliance with Rule 2002 of the Federal Rules of Bankruptcy Procedure, (d) the Stipulation (i) is the product of good faith, arms’ length negotiations among the Parties, (ii) is fair, equitable, appropriate, and in the best interests of the Debtors’ estates and (iii) represents a sound exercise of the Debtors’ business judgment, and (e) each of the Parties to the Stipulation

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).

² Capitalized terms not defined herein have the meaning used in the Motion or Stipulation, as applicable

provided sufficient consideration for the transactions contemplated by the Stipulation; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; IT IS HEREBY

ORDERED, ADJUDGED, AND DECREED THAT:

- 1) The Motion is granted as set forth herein.
- 2) The terms of the Stipulation are APPROVED in their entirety pursuant to section 105 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure.
- 3) The Parties are hereby authorized to take such additional actions or execute such additional documents as are necessary and appropriate to implement the terms of the Stipulation.
- 4) No other person or entity has or has asserted an interest in the Dividend therefore, upon payment of the Dividend, the Debtors are authorized to use the Dividend in a manner consistent with the terms of prior orders of this Court, including the Cash Collateral Order.
- 5) Notwithstanding the possible applicability of Rules 6004, 7062, or 9014, or any other Rule, of the Federal Rules of Bankruptcy Procedure, this Order shall be immediately effective and enforceable upon its entry and there shall be no stay of effectiveness or execution of this Order.
- 6) The Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, or enforcement of the Stipulation or this Order.

This Order Was Signed And Entered Electronically As Indicated At The Top Of The First Page

APPROVED FOR ENTRY BY:

POLSINELLI PC

/s/ Michael Malone

Michael Malone
401 Commerce Street, Suite 900
Nashville, TN 37219
Telephone: (615) 259-1510
Facsimile: (615) 259-1573
mmalone@polsinelli.com

-and-

David E. Gordon (Admitted *Pro Hac Vice*)
Caryn E. Wang (Admitted *Pro Hac Vice*)
1201 West Peachtree Street NW
Atlanta, Georgia
Telephone: (404) 253-6000
Facsimile: (404) 684-6060
dgordon@polsinelli.com
cewang@polsinelli.com

*Counsel to the Debtors and
Debtors in Possession*

EXHIBIT B

Stipulation

STIPULATION

This stipulation (the “Stipulation”) is made and entered into by and among Curae Health, Inc., and its affiliated debtors and debtors in possession (each, a “Debtor,” and collectively, the “Debtors”) and MagMutual Insurance Company (“MagMutual,” and together with the Debtors, the “Parties” and, individually a “Party”). The Parties hereby stipulate to and agree as follows:

Recitals

WHEREAS, on August 24, 2018 (the “Petition Date”), the Debtors commenced voluntary cases under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, in the United States Bankruptcy Court for the Middle District of Tennessee (the “Court”). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 cases (the “Cases”);

WHEREAS, prior to the Petition Date, MagMutual issued a Hospital Liability Insurance Claims-Made and Occurrence Policy for the policy period of 01/01/2018-01/01/2019 and identified by policy number HPL-3500029 02 (the “Insurance Policy”) to the Debtors;

WHEREAS, as part of the Insurance Policy, the Debtors participated in the MAG Mutual Insurance Company Owners Circle benefits program (the “Owners Circle”). As a participant in the Owners Circle, MagMutual, at its sole discretion, would credit the Debtors’ policy account certain amounts calculated based on premiums paid for each eligible participant. Distributions from said account were later made once a participant reached a Qualifying Event.¹ MagMutual

¹ Term used as defined in the Insurance Policy. Any Insurance Policy reproductions contained herein are for convenience only. Nothing set forth herein shall amend, alter, waive, modify, or change any term, condition, limitation, or provision of the Insurance Policy. For all issues of coverage or otherwise, the terms, conditions, limitations, and provisions of the Insurance Policy apply as set forth in the Insurance Policy.

has determined that a \$2,354 is owed to the Debtors on account of their participation in the Owners Circle;

WHEREAS, from time to time and at MagMutual's sole discretion, MagMutual offers its policyholders dividends. In 2019, a 6% of premium dividend was announced by MagMutual's board of directors. Based on this announcement, the Debtors are entitled to a \$22,388 dividend;

WHEREAS, MagMutual determined that a total of \$24,742 was due and owing to the Debtors (the "Dividend");

WHEREAS, as described in the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, and (IV) Modifying the Automatic Stay* (Docket No. 455), entered November 15, 2018 (the "Final DIP Order"), the Debtors are a party to a certain Debtor-In-Possession Credit Agreement (the "DIP Credit Agreement"). MidCap Financial Trust ("Midcap"), or one of its affiliates, serves as a DIP Agent² and DIP Lender under the DIP Credit Agreement;

WHEREAS, per the Final DIP Order, certain Debtors are parties to a certain pre-petition Loan Agreement dated May 1, 2017, as amended from time to time, with ServisFirst Bank (the "ServisFirst Loan Agreement"). The ServisFirst Loan Agreement is secured by substantially all of the Debtors' assets;

WHEREAS, the outstanding balance owed under the ServisFirst Loan Agreement, as of the Petition Date, is \$18,783,000;

² Unless stated otherwise, capitalized terms are afforded the same meaning as provided in the Final DIP Order.

WHEREAS, on January 16, 2019, the Official Committee of Unsecured Creditors (the “Committee”) commenced an adversary proceeding on behalf of the Debtors’ estates against ServisFirst Bank, pending before the Court under adversary proceeding number 3:19-ap-90010;

WHEREAS, on March 26, 2019, the Court entered the *Expedited Agreed Interim Order Granting Debtors' Motion to Use Cash Collateral (I) Authorizing Debtors' to Pay the DIP Obligations, (II) Authorizing the Use of Cash Collateral, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* (“Cash Collateral Order”) (Docket No. 899), whereby Debtors were granted authority to, *inter alia*, pay all outstanding obligations owed to Midcap and use cash collateral on an interim basis;

WHEREAS, per the Cash Collateral Order, on or about March 28, 2019, Debtors paid all outstanding obligations to Midcap;

WHEREAS, other than the Debtors, no person or entity has, or has asserted, an interest in the Dividend; and

WHEREAS, the Parties hereby enter into this Stipulation to ensure that the Dividend is paid to the correct party and in a manner that is consistent with the prior Court orders.

NOW THEREFORE, subject to Court approval, the Parties agree as follows:

1. The foregoing recitals and provisions are incorporated herein as if set forth separately below.
2. The Debtors acknowledge the liens and security interests arising from the ServisFirst Loan Agreement and the Cash Collateral Order (collectively, the “Security Interests”), subject to the Committee’s reservations of rights as set forth in the Cash Collateral Order.

3. Notwithstanding the Security Interests, MagMutual shall make a direct payment of the Dividend to the Debtors to use in a manner consistent with the terms of this Stipulation and the Cash Collateral Order. The Dividend shall be paid to the Debtors. No other person or entities need be identified on any payment check issued by MagMutual.

4. Nothing in this Stipulation shall in any way operate to, or have the effect of, impairing, supplementing, changing, expanding, decreasing, or modifying the Insurance Policy, or any term, condition, provision, or limitation of the Insurance Policy.

5. No provision of this Stipulation is intended to or shall affect or benefit any persons beyond the Parties. There are no third-party beneficiaries to this agreement, which is solely by and among the Parties.

6. This Stipulation is an integrated document, containing the entire undertaking between the Parties regarding the matters addressed herein, and, except as set forth in this Stipulation, no representations, warranties, promises, inducements or considerations have been made or relied upon by the Parties.

7. This Stipulation shall supersede all prior communications between the Parties or their representatives regarding the matters contained herein.

8. This Stipulation shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, legal representatives, successors and permitted assigns.

9. This Stipulation shall survive the dismissal or conversion of these Cases, and shall be binding on any trustee appointed, whether pursuant to a plan, following conversion to Chapter 7 of the Bankruptcy Code, or otherwise.

10. This Stipulation may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereupon and all

of which shall constitute one and the same instrument. This Stipulation shall be deemed fully executed when one or more counterparts hereof, individually or taken together, shall bear the signatures of the Parties.

11. The undersigned Parties, by and through their respective counsel, hereby represent and warrant that: (a) they have full authority to execute this Stipulation; (b) they have full knowledge of, and have consented to, this Stipulation; and (c) they are fully authorized to bind themselves to all of the terms and conditions of this Stipulation.

12. The Court shall retain jurisdiction, and the Parties consent to such retention of jurisdiction, to resolve any disputes or controversies arising from or related to this Stipulation and accompanying order.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date indicated below.

Date: _____

CURAE HEALTH, INC., ON BEHALF OF
ITSELF AND ITS AFFILIATED DEBTORS AND
DEBTORS-IN-POSSESSION

By: _____

Its: _____

Date: _____

MAGMUTUAL INSURANCE COMPANY

By: _____

Its: _____