

**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
)	
)	Judge Walker
Debtors.)	Jointly Administered

Responses due September 18, 2017

Hearing: September 25, 2018 at 09:00 AM, Courtroom 2, 2nd Floor Customs House,
701 Broadway, Nashville, TN 37203

**U.S. TRUSTEE’S LIMITED OBJECTION TO DEBTOR’S EXPEDITED
SALE MOTION**

The U.S. Trustee, Region 8 hereby files this limited objection to Debtors’ motion for an order (i) approving bidding procedures for the sale of the Gilmore Medical Center, a 95 bed acute care hospital and related healthcare operations and facilities located in Amory, Mississippi, owned by Debtor Amory Regional Medical Center, Inc., (ii) authorizing the sale of the Gilmore Hospital free and clear of all liens, claims, encumbrances and other interests, (iii) approving stalking horse purchaser, break-up fee, and overbid protections, (iv) establishing certain procedures for the assumption and assignment of executory contracts and unexpired leases, (v) scheduling an auction, (vi) scheduling a hearing and objection deadlines with respect to the sale of the Hospital and assumption and assignment of executory contracts and unexpired leases, (vii) approving the form and manner of notice, and (viii) granting related relief (Docket Entry 79, the “Sale Motion”).

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).

A debtor has a duty to obtain the highest price or greatest overall benefit possible for the estate when selling its assets. *In re Integrated Res.*, 147 B.R. 650, 659 (S.D.N.Y. 1992). To that end, bidding procedures must “facilitate an open and fair public sale designed to maximize value for the estate.” *In re Nashville Senior Living*, Case No. 08-07254, 2008 Bankr. LEXIS 3197, at *4-5 (Bankr. M.D. Tenn. Oct. 22, 2008) (quoting *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998)) (internal quotations omitted). Bidding procedures should not “undermine principles of fair play,” because “unless the bidding process remains fair and equitable, competitors will refrain from the type of full participation that is needed to assure bids for the highest reasonable value.” *In re Jon. J. Peterson, Inc.*, 411 B.R. 131, 137 (Bankr. W.D.N.Y. 2009).

Debtor has failed to ensure these ends based on the following grounds:

a. The Break-up Fee is Excessive. For a breakup fee to be permissible it must be designed to maximize value for the creditors of a debtor’s estate. *See Calpine Corp. v. O’Brien Envtl. Energy, Inc. (In re O’Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 535 (3d Cir. 1999) (“[T]he allowability of break-up fees, like that of other administrative expenses, depends upon the requesting party’s ability to show that the fees were actually necessary to preserve the value of the estate”). The Sale Motion proposes a 4% breakup fee of the \$15 million purchase price, despite only approximately \$9 million of that purchase price being new cash consideration. This percentage is well higher than what is generally approved by courts in this Circuit. *See In re AmFin Fin. Corp.*, No. 09-21323, 2010 Bankr. LEXIS 4387, at *4 (Bankr. N.D. Ohio Aug. 31, 2010) (order approving bid procedures relating to sale motion with a break-up fee of \$40,000.00, which constituted 1.6% of the proposed \$2,500,000.00 purchase price); *Nashville Senior Living*, 2008 Bankr. LEXIS 3197, at *7-8 (approving a break-up fee of \$500,000.00, which represented

approximately 1% of the proposed purchase price); *In re Sumner Reg'l Health Sys.*, No. 10-bk-04766, 2010 Bankr. LEXIS 6173, at *5, *21-22 (Bankr. M.D. Tenn. May 18, 2010) (order approving bid procedures relating to sale motion, including actual expenses of stalking horse bidder not to exceed \$1,000,000.00 which, when added to breakup fee, constituted a total payment of 2.27% of the \$154,108,687.00 purchase price). In this case, the break-up fee in this case should be limited to 1% of new cash consideration (\$90,000) plus any reasonable actual expenses.

b. Overbid Amounts Should Similarly Decrease. With the decrease of the break-up fee, the initial overbid amount should similarly decrease to encourage bidding.

c. The Apparent Lack of Marketing May Chill Bidding. Debtor's Sale Motion proposes to only require notice in the Monroe Journal and Daily Journal in Amory, Mississippi, as well as the BMC website. This sale should draw interest nationally. Debtors should be required to put forth evidence as to how this sale has been and will be marketed to encourage the maximum number of bidders.

d. Debtors Should Not Provide Indemnifications. Debtor Amory Regional Medical Center, Inc and its parent Debtor Curae Health Inc. should not provide additional indemnifications outside of the specific terms of the sale. Both debtors are liquidating. Any breach of the Asset Purchase Agreement is recoverable in this Court. It is not clear why a \$2 million escrow for security is needed in this case.

Additionally, a sale is a disbursement for purposes of quarterly fees under 28 U.S.C. § 1930. *See In re Hays Builders, Inc.*, 144 B.R. 778, 780 (W.D. Tenn. 1992). Provision must be made for the payment of United States Trustee quarterly fees arising from the sale of the assets of the estate.

WHEREFORE, the U.S. Trustee respectfully requests that the Court deny Debtor's Sale Motion until the aforementioned deficiencies are cured and any further relief to which the U.S. Trustee may justly be entitled.

Respectfully submitted,

PAUL RANDOLPH,
ACTING US TRUSTEE, REGION 8

/s/ Megan Seliber
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CERTIFICATE OF SERVICE

I hereby certify that I forwarded a true and correct copy of the foregoing objection by electronic notification to registered ECF users.

/s/Megan Seliber
Megan Seliber, Trial Attorney