

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

In re: : Chapter 11
: :
Curae Health, Inc., *et al.*³ : Case No. 18-05665
: (Jointly Administered)
: :
Debtors. : Judge Walker
: :
: :

**LOCAL RULE 9013-1 NOTICE OF APPLICATION OF PATIENT CARE
OMBUDSMAN FOR ENTRY OF AN ORDER AUTHORIZING THE
RETENTION AND EMPLOYMENT OF GREENBERG TRAUIG, LLP
AS COUNSEL, *NUNC PRO TUNC* AS OF SEPTEMBER 18, 2018**

THE DEADLINE FOR FILING A TIMELY RESPONSE IS: OCTOBER 29, 2018

**IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: NOVEMBER 13, 2018
AT 11:00 AM, CUSTOMS HOUSE, COURTROOM 2, 701 BROADWAY, NASHVILLE,
TENNESSEE 37203**

Greenberg Traurig, LLP (“**Greenberg Traurig**”) has requested the following relief from the Court: to authorize the retention and employment of Greenberg Traurig, LLP as counsel to the Patient Care Ombudsman, *nunc pro tunc* as of September 18, 2018 (the “**Application**”).

YOUR RIGHTS MAY BE AFFECTED. If you do not want the Court to grant the attached Motion, then on or before **October 29, 2018**, you or your attorney must:

1. File with the court your response or objection explaining your position. PLEASE NOTE: THE BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE REQUIRES ELECTRONIC FILING. ANY RESPONSE OR OBJECTION YOU WISH TO FILE MUST BE SUBMITTED ELECTRONICALLY. TO FILE ELECTRONICALLY, YOU OR YOUR ATTORNEY MUST GO TO THE COURT WEBSITE AND FOLLOW THE INSTRUCTIONS AT: <https://ecf.tnmb.uscourts.gov>.

If you need assistance with Electronic Filing, you may call the Bankruptcy Court at (615)736-5584. You may also visit the Bankruptcy Court in person at: 701 Broadway, 1st Floor, Nashville, Tennessee 37203 (Monday – Friday – 8:00 a.m. – 4:00 p.m.)

³ 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. Your response must state that the deadline for filing responses is October 29, 2018, the date of the scheduled hearing is November 13, 2018, and the document to which you are responding is titled Application of Patient Care Ombudsman for Entry of an Order Authorizing the Retention and Employment of Greenberg Traurig, LLLP as Counsel, *Nunc Pro Tunc* as of September 18, 2018. If you would like a file stamped copy returned, you must include an extra copy and a self-addressed, stamped envelope.

3. You must serve your response or objection **by electronic service through the Electronic Filing System** described above. You must also mail a copy of your response or objection to:

John D. Elrod
Greenberg Traurig, LLP
3333 Piedmont Road NE, Ste. 2500
Atlanta, GA 30305
Telephone: (678) 553-2100
Facsimile: (678) 553-2212
elrodj@gtlaw.com

Nancy A. Peterman
Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Telephone (312) 456-8400
Facsimile: (312) 456-8435
petermann@gtlaw.com

If a response is filed before the deadline stated above, the hearing will be held at the time and place indicated above. ***THERE WILL BE NO FURTHER NOTICE OF THE HEARING DATE.*** You may check whether a timely response has been filed by calling the Clerk's office at (615) 736-5584 or viewing these cases on the Court's website at <https://ecf.tnmb.uscourts.gov>.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Application and may enter the attached order granting that relief.

Date: October 4, 2018

GREENBERG TRAUIG, LLP
/s/John D. Elrod
John D. Elrod
3333 Piedmont Road NE, Ste. 2500
Atlanta, GA 30305
Telephone: (678) 553-2100
Facsimile: (678) 553-2212
elrodj@gtlaw.com

-and-

Nancy A. Peterman
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Telephone (312) 456-8400
Facsimile: (312) 456-8435
petermann@gtlaw.com
*Proposed Counsel to the Patient
Care Ombudsman*

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

In re: : Chapter 11
: :
Curae Health, Inc., *et al.*¹ : Case No. 18-05665
: (Jointly Administered)
: :
Debtors. : Judge Walker
: :
:

**APPLICATION OF PATIENT CARE OMBUDSMAN FOR ENTRY OF AN ORDER
AUTHORIZING THE RETENTION AND EMPLOYMENT OF GREENBERG
TRAURIG, LLP AS COUNSEL, NUNC PRO TUNC AS OF SEPTEMBER 18, 2018**

Suzanne Koenig, the patient care ombudsman (the “**Ombudsman**”) appointed in the above-captioned chapter 11 cases (the “**Cases**”), submits this application (the “**Application**”) for entry of an Order, pursuant to sections 105, 330 and 333 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the retention and employment of the law firm of Greenberg Traurig, LLP (“**Greenberg Traurig**”), as counsel for the Ombudsman, *nunc pro tunc* as of September 18, 2018. The facts and circumstances supporting this Application are as set forth herein and in the Declaration of John D. Elrod in Support of the Application (the “**Elrod Declaration**”) annexed hereto as **Exhibit A** and incorporated herein by reference. In further support of this Application, the Ombudsman respectfully represents 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 over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief sought herein are sections 105, 330 and 333 of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016.

BACKGROUND

3. On August 24, 2018 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Tennessee, Nashville Division (the “**Court**”).

4. On September 6, 2018, the Court entered an order directing the appointment of a patient care ombudsman under section 333 of the Bankruptcy Code [Docket No. 111].

5. On September 18, 2018 the Office of the United States Trustee for the Middle District of Tennessee (the “**United States Trustee**”) appointed Suzanne Koenig of SAK Management Services, LLC to serve as patient care ombudsman in these Cases [Docket No. 191].

RELIEF REQUESTED

6. By this Application, the Ombudsman respectfully requests that this Court enter an Order authorizing the Ombudsman to employ and retain Greenberg Traurig as her counsel, pursuant to sections 105, 330 and 333 of the Bankruptcy Code, *nunc pro tunc* as of September 18, 2018.

7. The Ombudsman has determined that Greenberg Traurig has the resources and experience necessary to represent her in these Cases. Greenberg Traurig has represented the Ombudsman in other cases, including *See In re Illinois Skin, Inc.*, Chapter 7 Case No. 06-16098

(MB) (Bankr. N.D. Ill. February 21, 2007); *In re Dari Ann Ungaretti*, Chapter 7 Case No. 06-16094 (MB) (Bankr. N.D. Ill. February 21, 2007); *In re Bayonne Medical Center*, Chapter 11 Case No. 07-15195 (Bankr. D.N.J., April 16, 2007); *In re New York Westchester Square Medical Center*, Chapter 11 Case No. 06-13050 (Bankr. S.D.N.Y. Dec. 19, 2006); *In re Atlantic Health Services, Inc.*, Chapter 11 Case No. 06-10356 (PM) (Bankr. D. Md. January 24, 2006); *In re Upland Surgical Institute*, Chapter 11 Case No. 06-11298 (Bankr. S.D. Cal. August 9, 2006); *In re Brotman Medical Center Inc.*, Case No. 07-19705 (Bankr. C.D. Cal. June 4, 2008); *In re Meridian Behavioral Health, LLC*, Case No. 11-10860 (Bankr. S.D.N.Y. 2011, February 28, 2011), *In re Christ Hospital*, Case No. 12-12906 (Bankr. D.N.J. Feb. 6, 2012) and *In re ICL Holding Company, Inc., et al.*, Case No. 12-13319 (Bankr. D. Del. Dec. 11, 2012), *In re Horizon Health Center, Inc.*, Case No. 13-26348 (Bankr. D. NJ) and *In re Fairmont General Hospital, Inc., et al.*, Case No. 13-01054 (Bankr. N.D.W.VA). Given the nature of these Cases and the specific duties of the Ombudsman required under section 333 of the Bankruptcy Code, the Ombudsman believes that retention of Greenberg Traurig is appropriate and necessary.

SCOPE OF EMPLOYMENT

8. The professional services that the Ombudsman expects Greenberg Traurig to render include, but shall not be limited to, the following:

- (a) Representing the Ombudsman in any proceeding or hearing in the Bankruptcy Court, and in any action in other courts where the rights of the patients may be litigated or affected as a result of these Cases;
- (b) Advising the Ombudsman concerning the requirements of the Bankruptcy Code and Bankruptcy Rules and the requirements of the Office of the United States Trustee relating to the discharge of her duties under section 333 of the Bankruptcy Code;
- (c) Advising and representing the Ombudsman in evaluating any patient or healthcare related issues, including, in connection with any sale, reorganization or liquidation; and

- (d) Performing such other legal services as may be required under the circumstances of these Cases in accordance with the Ombudsman's powers and duties as set forth in the Bankruptcy Code, including assisting the Ombudsman with reports to the Court, fee applications or other matters.

9. Subject to the Court's approval of this Application, Greenberg Traurig has indicated that it is willing to serve as the Ombudsman's counsel in these Cases to perform the services described above.

**GREENBERG TRAUIG DOES NOT HOLD
OR REPRESENT ANY ADVERSE INTEREST**

10. As set forth in greater detail in the Elrod Declaration, Greenberg Traurig has completed a conflict check on the following names: (a) the Debtors; (b) the creditors set forth on the list of the Debtors' consolidated top thirty (30) unsecured creditors; (c) the Debtors' lenders; and (d) certain other creditors and/or parties-in-interest (collectively, the "**Potentially Interested Parties**"). A list of the names reviewed for such conflicts check is attached as **Exhibit 1** to the Elrod Declaration. As counsel to the Ombudsman, Greenberg Traurig does not believe it would be adverse to any of the parties. Out of an abundance of caution, Greenberg Traurig has attached as **Exhibit 2** to the Elrod Declaration a list of its connections with the Potentially Interested Parties (as defined in the Elrod Declaration).

11. To the best of the Ombudsman's knowledge, based upon the Elrod Declaration and except as set forth herein, Greenberg Traurig (a) does not hold or represent any interest adverse to the Debtors or its chapter 11 estates, its creditors or any other party in interest, and (b) is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code. Because Greenberg Traurig is a large firm with an international practice, the Ombudsman is aware that Greenberg Traurig may represent, or may have represented, certain creditors of the Debtors' estate or other parties in interest in matters unrelated to the Debtors or these Cases.

12. To the best of the Ombudsman's knowledge, (a) Greenberg Traurig's connections with those parties listed as Potentially Interested Parties (as defined in the Elrod Declaration) are disclosed in the Elrod Declaration and (b) the Greenberg Traurig professionals who will work on this matter are not relatives of the Honorable Charles M. Walker, the Bankruptcy Judge presiding over these Cases, the United States Trustee for this Region, or any person employed in the Office of the United States Trustee for this Region.

COMPENSATION AND REIMBURSEMENT OF EXPENSES

13. Subject to the Court's approval, and in accordance with section 330 of the Bankruptcy Code, the Bankruptcy Rules, the U.S. Trustee Guidelines, orders of the Court and the rules and other procedures that may be fixed by the Court, the Ombudsman requests that Greenberg Traurig be compensated on an hourly basis, plus reimbursement of the actual and necessary expenses Greenberg Traurig incurs, in accordance with the ordinary and customary rates which are in effect on the date the services are rendered, including, but not limited to, photocopies, courier service, computer assisted research, docket and court filing fees, telecommunications, travel, court reporting charges, and any other incidental costs advanced by the firm specifically for these matters, at the rates commonly charged for such costs to other Greenberg Traurig clients. In addition, Greenberg Traurig has advised the Ombudsman that it intends to seek compensation for all time and expenses associated with its retention and SAK Management Services, LLC's ("SAK") retention as a professional, including the preparation of this Application, the Elrod Declaration, and related documents, as well as any monthly, interim or final fee applications for Greenberg Traurig and SAK.

14. Greenberg Traurig has advised the Ombudsman that its hourly rates are in the following ranges:

Professional	Rate Per Hour
Shareholders	\$420 to \$950
Of Counsel	\$330 to \$950
Associates	\$250 to \$775
Legal Assistants/Paralegals	\$140 to \$430

15. Greenberg Traurig has advised the Ombudsman that the current hourly rates applicable to the principal attorneys and paralegals proposed to represent the Ombudsman are:

Professional	Rate Per Hour
Nancy Peterman (Shareholder)	\$650 ²
John Elrod	\$650
Emily Weaver	\$395
Carla Greenberg (Paralegal)	\$150

16. The Ombudsman understands that the hourly rates set forth above are subject to periodic adjustments to reflect economic and other conditions. The hourly rates will likely be adjusted upward as of January 1, 2019 and annually thereafter.

17. Greenberg Traurig represents the following with regard to its charges for actual and necessary costs and expenses incurred:

- (a) Copy charges incurred are \$.10 per page, which charge is reasonable, represents the cost of copy material, acquisition, maintenance, storage and operation of copy machines, together with a margin for recovery of cost expenditures. There is no charge for ordinary printing. In the event Greenberg Traurig utilizes outside copier/printing services for high volume projects, such copy/print charges will also be charged at the rate charged by such outside service provider.
- (b) Travel is fixed at \$.54.5 per driven mile, which charge is reasonable and represents the cost of fuel plus ordinary wear and tear on an individual's vehicle.
- (c) There will be no charge for long distance telephone calls.
- (d) Greenberg Traurig utilizes Westlaw and Lexis for online legal research. Online legal research is not a profit center for Greenberg Traurig, and charges for such research are billed to the client as a percentage usage of Greenberg Traurig's monthly contract rate.

² As a courtesy and for this matter only, Nancy Peterman's billing rate will be reduced from \$950 per hour to \$650 per hour.

- (e) Greenberg Traurig utilizes Soundpath Conferencing Services to host conference calls. The costs charged by Soundpath are passed through directly to Greenberg Traurig's clients without any markup. Thus, conference calls are not a profit center for Greenberg Traurig.

BASIS FOR RELIEF

18. Courts have approved the engagement of professionals by the court-appointed Ombudsman pursuant to sections 330 and 333 of the Bankruptcy Code. See *In re Illinois Skin, Inc.*, Chapter 7 Case No. 06-16098 (MB) (Bankr. N.D. Ill. February 21, 2007); *In re Dari Ann Ungaretti*, Chapter 7 Case No. 06-16094 (MB) (Bankr. N.D. Ill. February 21, 2007); *In re Bayonne Medical Center*, Chapter 11 Case No. 07-15195 (Bankr. D.N.J., April 16, 2007); *In re New York Westchester Square Medical Center*, Chapter 11 Case No. 06-13050 (Bankr. S.D.N.Y. 2006, Dec. 19, 2006); *In re Atlantic Health Services, Inc.*, Chapter 11 Case No. 06-10356 (PM) (Bankr. D. Md., January 24, 2006); *In re Upland Surgical Institute*, Chapter 11 Case No. 06-11298 (Bankr. S.D. Cal., August 9, 2006); *In re Brotman Medical Center Inc.*, Case No. 07-19705 (Bankr. C.D. Cal., June 4, 2008); *In re Meridian Behavioral Health, LLC*, Case No. 11-10860 (Bankr. S.D.N.Y. 2011, February 28, 2011), *In re Christ Hospital*, Case No. 12-12906 (Bankr. D. NJ, Feb. 6, 2012) and *In re ICL Holding Company, Inc., et al.*, Case No. 12-13319 (Bankr. D. Del., Dec. 11, 2012), *In re Horizon Health Center, Inc.*, Case No. 13-26348 (Bankr. D. NJ), and *In re Fairmont General Hospital, Inc., et al.*, Case No. 13-01054 (Bankr. N.D.W.VA).

19. Furthermore, section 330 specifically provides that the Court may award an ombudsman appointed under section 333 “reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by

any paraprofessional person employed by any such person.” Section 333 specifically grants bankruptcy courts authority to compensate the professionals of the Ombudsman.

20. Other authority exists to grant this Application and approve counsel for the Ombudsman. The appointment of a patient care ombudsman is analogous to the appointment of an examiner, and, in many cases, courts have routinely authorized examiners to employ professionals notwithstanding the absence of express authorization in the Bankruptcy Code for such employment, pursuant to section 105. *See, e.g., In re Tribune Co.*, Case No. 08-1311 (KJC) *Order Authorizing the Retention of Klee, Tuchin, Bogdanoff & Stern LLP as Counsel to the Examiner Nunc Pro Tunc to April 30, 2010* [Docket No. 4498] (Bankr. D. Del., May 19, 2010); *In re Southmark Corp.*, 113 B.R. 280, 283 (Bankr. N.D. Tex 1990) (authorizing examiner to retain professionals where appropriate to carry out the provisions of the Bankruptcy Code); *In re Tighe Mercantile, Inc.*, 62 B.R. 995, 1000 (Bankr. S.D. Cal. 1986) (“This Court holds that in appropriate circumstances, a bankruptcy court may rely on § 105(a) to authorize examiners to employ professional persons.”); 7 *Collier on Bankruptcy*, ¶ 1104.03[5], at 1104-49-50 (15th ed. rev. 2006) (Recognizing that, although the Bankruptcy Code does not expressly authorize examiners to retain professionals to assist in investigations, “it may be preferable to authorize an examiner to retain professionals when necessary for a complete investigation.”)

21. Thus, the Application should be granted by this Court to allow the Ombudsman to employ Greenberg Traurig to assist her in the fulfillment of her duties in these Cases. *See generally* 3 *Collier on Bankruptcy*, ¶ 333.05[1], at 1 (15th ed. rev. 2006) (“If the healthcare business is large or complicated, the ombudsman could be expected to retain professionals to assist in the discharge of the ombudsman’s duties.”).

NUNC PRO TUNC RETENTION AS OF SEPTEMBER 18, 2018

22. The Ombudsman requests that Greenberg Traurig's retention be made *nunc pro tunc* as of September 18, 2018 in order to allow Greenberg Traurig to be compensated for the work it has performed for the Ombudsman since her appointment, but prior to the Court's consideration of this Application.

NOTICE

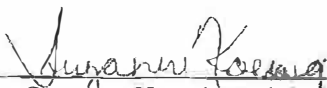
23. Notice of this Application has been provided to (a) the Office of the United States Trustee for the Middle District of Tennessee; (b) the Debtors; (c) counsel for the Debtors; (d) counsel for ServisFirst Bank; (e) counsel for Midcap Funding IV Trust; (f) counsel for Community Health Systems; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002.

24. No previous motion for the relief sought herein has been made to this or any other court.

WHEREFORE, based upon the foregoing, the Ombudsman respectfully requests that the Court enter an order (a) granting this Application, (b) authorizing the Ombudsman to retain and employ Greenberg Traurig in these Cases, *nunc pro tunc* as of September 18, 2018, and (c) granting such other and further relief as this Court may deem just and proper.

Dated: October 4, 2018

**SUZANNE KOENIG, AS COURT APPOINTED
PATIENT CARE OMBUDSMAN**

By: 
Suzanne Koenig, solely in her capacity as
Patient Care Ombudsman

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2018, a true and correct copy of the foregoing was sent via this Courts ECF notification system to all parties who are registered to receive ECF notification in these cases and via United States, postage paid, first class mail to the following:

David Gordon, Esq.
Polsinelli
1201 West Peachtree Street, Ste. 1100
Atlanta, GA 30309
Proposed Counsel for the Debtors

David Lemke, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union Street, Ste. 2700
Nashville, TN 37219
Counsel for Midcap Financial Trust

David Thompson, Esq.
Neal & Harwell, PLC
1201 Demonbreun Street, Ste. 1000
Nashville, TN 37203
Counsel for ServisFirst Bank

Megan Seliber, Esq.
Office of the United States Trustee
318 Customs House
701 Broadway
Nashville, TN 37203
Counsel for the United States Trustee

Paul Jennings, Esq.
Bass, Berry & Sims PLC
150 Third Avenue South, Ste. 2800
Nashville, TN 37201
Counsel for Community Health Systems

/s/John D. Elrod

John D. Elrod